

**RIGHT-OF-WAY USE PERMIT
CITY OF OHELLO, WASHINGTON**

J.R. SIMPLOT 2001 — INDUSTRIAL WASTEWATER LINE

J. R. Simplot Company, 1200 North Broadway, Othello, WA (“Simplot” or “Grantee”) desires to place, operate and maintain an industrial wastewater line within the street rights-of-ways of certain streets within the City of Othello. As a condition of receiving this Use Permit, Grantee has agreed to abide by the City's current and future lawful policies, ordinances and regulations regarding infrastructure usage, and street-cuts and rights-of-way.

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SECTION 1. DEFINITIONS. For the purposes of this Use Permit and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Subsidiary" when used in connection with Grantee means any corporation, Person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.2 "Use Permit Area" means the street rights-of-way for the following streets:

The approximate location of the pipeline is as follows: approximately 500 feet south of the northeast corner of section 4, T15N, R29E the pipe enters the west side of Broadway Avenue at a right angle to Broadway Avenue; thence east to a point approximately 5 feet east of the north-south section line of section 4; thence north to a point approximately 43 feet north of the southwest corner of section 34, T16N, R29E; thence east 3,300 feet approximately 43 feet from the section line; thence angling about 45° southeasterly to connect to the existing waste water line approximately 18 feet north of the section line.

and may be amended to include other areas, including any areas annexed by Grantor during the term of this Use Permit.

1.3 "Person" means any individual, natural Person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.4 "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Use Permit Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas.

SECTION 2. GRANT OF USE PERMIT

2.1 Grant

(A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Street rights-of-way within the Use Permit Area to construct, operate, maintain, reconstruct, and repair an Industrial wastewater line subject to the terms and conditions set forth in this Use Permit.

(B) This Use Permit is intended to convey limited rights and interests only as to those Streets in which the Grantor has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This Use Permit does not deprive the Grantor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Grantor's Streets covered by this Use Permit, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Use Permit is subject to the general lawful police power of Grantor affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Use Permit shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.

(D) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Use Permit, that any Subsidiary or joint venture or partner of the Grantee directly

involved in the construction or operation of a wastewater line in the designated rights-of-way will also comply with the terms and conditions of this Use Permit.

2.2 Use of Public Streets and Ways

Subject to Grantor's supervision and control, Grantee may install, construct, repair, replace, reconstruct, and retain under the public Streets, including rights-of-way and public easements within the Use Permit Area an industrial wastewater line for the benefit of the Grantee. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter, and must obtain any and all necessary permits from the Public Works Department prior to commencing any construction activities. Grantee, through this Use Permit, is granted a valuable right to operate its industrial wastewater line using Grantor's public rights-of-way and public utility easements within the Use Permit Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Use Permit.

2.3 Duration

The term of this Use Permit and all rights, privileges, obligations and restrictions pertaining thereto shall be from the effective date of this Use Permit through December 31, 2021.

2.4 Effective Date

The effective date of this Use Permit shall be April ____, 2001, unless Grantee fails to file an unconditional written acceptance of this Use Permit and post the security required hereunder by December 1, 2001, in which event this Use Permit shall be null and void, and any and all rights of Grantee to locate a wastewater line within the Use Permit Area under this Use Permit are hereby terminated.

2.5 Use Permit Nonexclusive

This Use Permit shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, right-of-way, easement, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Use Permit and for such additional Use Permits for Cable Systems as Grantor deems appropriate, upon such terms and conditions as Grantor deems appropriate.

2.6 Relations to Other Provisions of Law

This Use Permit and all rights and privileges granted under the Use Permit are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Use Permit term. However, this Use Permit is a contract, subject only to the Grantor's exercise of its police and other powers and applicable law. This Use Permit does not confer rights or immunities upon the Grantee other than as expressly provided herein. In the case of any conflict between the express terms of this Use Permit and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Use Permit issued and the Use Permit fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

2.9 Effect of Acceptance

By accepting the Use Permit, the Grantee accepts and agrees to comply with each and every provision of this Use Permit.

SECTION 3. USE PERMIT FEE AND FINANCIAL CONTROLS

3.1 Use Permit Fee

As compensation for the benefits and privileges granted under this Use Permit and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Use Permit fee to Grantor, throughout the duration of this Use Permit, annually an amount as indicated:

2001	\$50	2012	\$77
2002	\$52	2013	\$80
2003	\$54	2014	\$83
2004	\$56	2015	\$87
2005	\$58	2016	\$90
2006	\$61	2017	\$94
2007	\$63	2018	\$97
2008	\$66	2019	\$101
2009	\$68	2020	\$105
2010	\$71	2021	\$109
2011	\$74		

3.2 Alternative Remedies.

If any Section, subsection, paragraph, term or provision of this Use Permit or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section, subsection, paragraph, term or provision hereof. Under such a circumstance, the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to the Use Permit. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Use Permit within sixty (60) days, either party may either (1) resort to litigation to amend the Use Permit. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

3.3 Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Use Permit and any amendments thereto, as such notice or publication is reasonably required by Grantor or applicable law.

SECTION 4. FINANCIAL AND INSURANCE REQUIREMENTS

4.1 Insurance Requirements

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Use Permit to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Use Permit or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor from time to time. The Grantee shall obtain policies for the following initial minimum insurance limits:

(1) Commercial General Liability: Two-million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two million dollars (\$2,000,000) aggregate limit.

(C) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Grantor, its officers, officials, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability

arising out of activities performed by, or on behalf of, Grantee under this Use Permit or applicable law, or in the construction, operation or repair, or ownership of its industrial wastewater line.

(D) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status.

4.2 Indemnification

(A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, operation or repair of its industrial wastewater line regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Use Permit. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

(1) To Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, or to which the Grantee's negligence shall in any way contribute.

(B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorneys' fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorneys' fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

(C) Indemnification By City. The Grantor shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantee and its officers, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages arising out of the construction, operation or repair of Grantor's utilities located within its rights-of-way so long as Grantee has registered the location of Grantee's industrial wastewater line with the one call locator service and the damage results from the City's negligence.

SECTION 5. GENERAL STREET USE AND CONSTRUCTION

5.1 Construction

(A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Use Permit, Grantee may perform all construction necessary for the installation, maintenance, repair and operation of its industrial wastewater line. All construction and maintenance of any and all facilities within Streets by Grantee shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.

(B) Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Use Permit and all applicable City Ordinances and Codes. When obtaining a permit,

Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of Street cuts. Grantee shall contact the Public Works Director to coordinate such work.

5.2 Location of Facilities

Grantee shall use the one call locator service prior to performing any excavation in the Grantor's Streets.

5.3 Relocation

Grantor shall have the right to require Grantee to change the location of any part of Grantee's industrial wastewater line within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Streets, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

5.4 Restoration of Streets

(A) Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to Grantor.

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the City within the area affected by the excavation. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove or repair any work done by Grantee which, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Use Permit, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to Grantor.

5.5 Maintenance and Workmanship

Grantee's industrial wastewater line shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, Grantor's authority.

5.6 Reservation of Grantor Street Rights

Nothing in this Use Permit shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's industrial wastewater line. However, if any of Grantee's Industrial wastewater line interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Industrial wastewater line shall be removed or

replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Industrial wastewater line. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

5.7 Street Vacation

If any Street or portion thereof used by Grantee is vacated by Grantor during the term of this Use Permit, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to Grantor, remove its facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Street, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Use Permit.

5.8 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public or governmental purposes.

5.9 Standards

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Industrial wastewater line.

SECTION 6. REVOCATION OF USE PERMIT

6.1 Revocation

(A) In addition to all other rights and powers retained by the Grantor under this Use Permit or otherwise, the Grantor reserves the right to forfeit and terminate this Use Permit and all rights and privileges of the Grantee hereunder, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to, the following:

- (1) Violation of any material provision of this Use Permit or any other Use Permit between Grantor and Grantee, or any material rule, order, regulation or determination of the Grantor or authorized agent made pursuant to this Use Permit or other Use Permit; or
- (2) If Grantee becomes insolvent, or the subject of a bankruptcy proceeding.

SECTION 7. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Use Permit is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Use Permit, all of which will remain in full force and effect for the term of the Use Permit.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1 Notices.

Throughout the term of the Use Permit, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Use Permit, such addresses shall be:

J. R. Simplot
PO Box
Othello, WA 99344

All notices to be sent by Grantee to Grantor under this Use Permit shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Use Permit, such address shall be:

City of Othello 500 E. Main Street
Othello, WA 99344

8.2 Binding Effect.

This Use Permit shall be binding upon the parties hereto, their permitted successors and assigns.

8.3 Authority to Amend.

This Use Permit may be amended at any time by written agreement between the parties.

8.4 Assignability.

This Use Permit is personal to the Grantee and Grantee may not assign, transfer, convey, give or devise its rights and duties under this Use Permit to any successor and the City shall not approve any assignment, conveyance, gift or devise of the Use Permit to any successor owner of the facility except upon conditions that the successor shall execute an acknowledgment of Use Permit and then the City shall determine, in its sole discretion, whether to approve or not approve an amendment to the Use Permit to allow such assignment, conveyance, gift or devise. Such approval shall only be unreasonably withheld by the Grantor.

8.5 Governing Law

This Use Permit shall be governed in all respects by the laws of the State of Washington.

8.6 Captions.

The captions and headings of this Use Permit are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Use Permit.

8.7 Entire Agreement.

This Use Permit contains all of the agreements of the parties with respect to any matter covered or mentioned in this Use Permit and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of

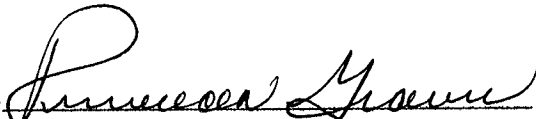
this Use Permit may be amended or added to except by agreement in writing signed by both of the parties.

8.8 Time Is of the Essence.

Time is of the essence of this Use Permit and each and all of its provisions in which performance is a factor.

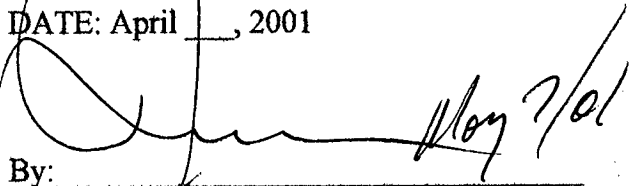
ACCEPTED BY J. R. SIMPLOT

DATE: April __, 2001

By: 
Name: Ronald N. Graves
Title: Vice President & Secretary

ISSUED BY THE CITY OF OTHELLO

DATE: April __, 2001

By: 
Name: W. E. Shaw
Title: City Administrator