After Recording Return to:

Oak Lodge Water Services

14611 SE River Road

Oak Grove, Oregon 97267-1198

Until a Change is Requested, Send Tax Statements to:

No Change in Tax Statements

**PUBLIC EASEMENT: WATER SYSTEM FACILITIES**

This agreement is made and entered into this XX day of MONTH, 20XX by PARTY NAME, (hereinafter referred to as “Grantor”) and Oak Lodge Water Services, a municipal corporation of the State of Oregon, (hereinafter “Grantee”).

The true consideration for this easement is $XX.XX

Grantor and Grantee agree as follows:

1. **Grant of Permanent Easement.** Grantor hereby grants to Grantee, a perpetual, non-exclusive easement (“Easement”) on, over, and under that certain real property described in Exhibit A and depicted on Exhibit B (the “Easement Area”), both of which are attached hereto and incorporated herein by this reference. The Easement shall be used by Grantee only for the purposes and as provided herein.
2. Grantor does hereby grant unto Grantee, the right to lay down, construct, reconstruct and perpetually maintain a water system through, under and along the following together with rights of ingress and egress to and upon the easements for the uses and purposes stated, described property in the County of Clackamas and State of Oregon.

Those areas shown as “reciprocal and perpetual common access and public utility easement” on the Plat of PLAT NAME and PLAT NUMBER, Clackamas County Plat Records.

1. **Right of Entry and Use**. Subject to the terms of this Easement, Grantee and Grantee’s agents, employees, contractors, and other authorized persons entering the Easement under the express or implied consent of Grantee (collectively, “Grantee’s Parties”) shall have the right to enter upon and use the Easement for the purposes of constructing, operating, maintaining, repairing, replacing, and modifying the water pipelines, improvements and all appurtenances, incident thereto (Water System Facilities) located in the Easement. Within the Easement Area, Grantee shall have the right to remove, cut and trim trees, brush, overhanging branches, and remove structures and other obstructions as necessary for Grantees’ permitted use of the Easement. The use of the Easement by Grantees shall be in compliance with all applicable laws.
2. **Temporary Easement**. During construction, maintenance, repair or replacement of the Water System Facilities, Grantor hereby grants a temporary construction easement XX feet wide, generally on each side of the Permanent Easement as described on Exhibit A for such reasonable period to perform and complete any work or activities authorized under Section 2 the work.
3. **Restrictions on Grantee’s Use of Easement.** Grantee shall use, and shall cause Grantees’ Parties to use, the Easement only for the purposes described in Section 2 of this Easement. Grantee shall use best efforts to not interfere with Grantor’s use and enjoyment of Grantor’s remaining property or otherwise cause operations on Grantor’s remaining Property to be interfered with or interrupted by the use of the Easement by Grantee. Grantee shall maintain reasonable access to Grantor’s property during construction, maintenance, repair or replacement of the Water System Facilities. However, if access cannot be maintained, Grantee will provide reasonable notice and schedule the work to minimize the duration of closure and impact to Grantor.
4. **Non-Exclusive Grant; Use of the Easement.** The Easement herein shall be non-exclusive, except that Grantor may not use the easement premises inconsistent with the terms of this easement and Grantor may not permit third parties to use any portion of the Easement without the Grantees’ prior written approval, which shall not be unreasonably withheld, delayed or conditioned so long as:
	1. The Grantor or approved Third Party shall formally coordinate the use of the easement area with the Grantee so that the Grantee’s right to construct, use, access, repair and maintain the Water System Facilities is not impaired; and
	2. The Grantor or approved Third Party assumes full responsibility in the event the Water System Facilities are damaged or impaired by their actions, in which case the Grantor or such Third Party shall immediately remedy the damage or impairment and indemnify Grantee from all expenses, costs, damages or impacts associated with such remedy. Grantee reserves the right to make necessary repairs or remedies with their own forces or contractors with the cost to be reimbursed by Grantor or Third Party.
	3. All design and construction plans must be approved in writing by the Grantee in advance and construction shall require Grantee’s inspection and approval.
	4. The Grantor or approved Third Party complies with Section 6.
5. **Restrictions on Grantor.** Within the Easement, Grantor agrees not to build, construct, plant or create nor permit others to build, construct, plant or create any buildings, other structures, hazardous material storage, fuel storage, oil storage, chemical storage; not allow derelict personal property including but not limited to refuse piles, vehicles, equipment or machinery; not to plant trees, perform no grading that either adds or removes more than six (6) inches of material on the Easement; not place parallel utilities unless approved in writing; nor allow placement of loads of any kind over the Water System Facilities where the weight of the load could cause damage, all or any of which may interfere with the use by the Grantee of the Easement or with the normal access, and short or long term operation or maintenance of the Water System Facilities.
6. Grantor agrees to periodic easement corridor encroachment review by Grantee and will remove any unacceptable item (listed above) or any other item deemed detrimental to the Water System Facilities in the sole discretion of Grantee within thirty (30) days of notification by Grantee. Should Grantor fail to remedy the situation in the time frame provided, Grantee may remove said encroachment and charge the cost of removal to the Grantor on a time and materials basis. The Grantee will not in any way be responsible for replacing landscaping including any shrubs or trees, fencing, or other structures, surfaces or improvements that may exist or have been placed in the easement area. Replacing any improvements or surfaces or landscaping will be the sole responsibility of the Grantor following any maintenance or other activity by the Grantee.
7. **Maintenance, Repair, and Restoration**. It is understood and agreed that under no circumstances shall a building, fence, wall, revetment, or permanent structure be placed over a water sewer pipe or fitting or sewer easement without OLWS approval. This shall include overhanging structures with footings located outside the easement. OLWS will not in any way be responsible for replacing landscaping including any shrubs or trees, fencing, or other structures or improvements that may exist or have been placed in the easement including private roads and/or improvements. During any repair, OLWS will be responsible for the water pipe, line and fittings only and not any backfill, paving or any other surface improvements. This instrument does not grant or convey unto OLWS any right or title to the surface of the soil along the route of said sanitary sewerage and/or drainage system except for the purpose of laying down, inspecting, maintaining and replacing the same.
8. **Indemnification.** To the extent permitted by the Oregon Constitution and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300), Grantee shall indemnify, defend, and hold harmless Grantor and its members, managers, employees, agents, and representatives (collectively, “Indemnified Parties”) from and against any injury, expense, damage, liability, or claim, including, but not limited, to reasonable attorney fees, incurred by any Indemnified Party, arising directly or indirectly from the rights granted by Grantor to Grantee and Grantee’s Parties hereunder or any act or omission by Grantee or any Grantee’s Party. Grantee assumes all risk arising out of its activities and use of the Easement by it and the Grantee’s Parties.
9. **Insurance.** Grantee shall carry, and require its agents and contractors to carry, worker’s compensation insurance as required by applicable law and commercially reasonable comprehensive liability coverage for injury to or death of any person or persons and for damage to property occasioned by or arising out of any use of the Easement by Grantee or Grantee’s Parties.
10. **Default and Remedies.** Time is of the essence regarding the terms of this Easement. If Grantor or Grantee violates any of the terms, covenants, or conditions of this Easement, or fails to perform any of its obligations included in this Easement in a timely manner, the non-defaulting Party shall have the right to declare a default by written notice and seek available legal or equitable remedies in the Circuit Court of the State for Oregon in Clackamas County. Notice shall be given by first class mail addressed to the parties as follows:

GRANTOR NAME

 ADDRESS

 ADDRESS

 GRANTEE Oak Lodge Water Services

 Attn: TITLE

14496 SE River Rd.

Oak Grove, OR 97267

The notice shall provide a detailed statement(s) of the alleged default. If the default is not cured within 15 days from the date of notice, or if the defaulting party has not commenced to diligently commence cure for a matter that requires more than 15 days, then the non-defaulting party may commence litigation and seek all remedies available at law or in equity. If the Easement is terminated as a result of litigation, Grantee shall, at its sole cost and expense, return the Easement to Grantor in the same or better condition as existed prior to the grant of the Easement.

1. **Binding Effect.** This Easement is binding upon, inures to the benefit of and may be enforced by the Parties and their respective successors and assigns. Grantees may assign or transfer their interests without consent of Grantor. No third-party beneficiary rights are created by this Easement. This Easement shall be construed in accordance with Oregon law.
2. **Amendment.** This Easement may be amended only by an instrument in writing signed by both Grantor and Grantee. All approvals required hereunder shall be in writing.
3. **No Public Dedication**. Nothing in this Easement will be deemed to be a gift or a dedication of any portion of the Water System Facilities Easement to the general public or for the use of the general public or for any public purpose whatsoever, it being the intent of the parties that this Easement be strictly limited to and for the purposes expressed herein.

 [SPACE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the Owner has set his hand and seal the day and year first above written, and OLWS has caused these presents to be signed in its name by a representative, attested to the day and year first above written.

**OWNER** By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OWNER NAME
 COMPANY NAME
 ADDRESS

State of Oregon
County of Clackamas

The foregoing instrument was acknowledged before me on this day of , 20XX by

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Notary Public for Oregon
My Commission Expires: \_\_\_\_\_\_\_day of \_, 20\_\_\_\_\_

**OLWS** By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ NAME, TITLE

 Oak Lodge Water Services

 14611 SE River Road

 Oak Grove, OR 97267-1198

State of Oregon

County of Clackamas

The foregoing instrument was acknowledged before me on this day of , 20XX by

NAME, TITLE.

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Notary Public for Oregon
My Commission Expires: \_\_\_\_\_\_\_day of \_, 20\_\_\_\_\_