

When Recorded Return to:

Garden City Development Services Department  
6015 Glenwood Street  
Garden City, Idaho 83714

## **SANITARY SEWER AND WATER MAIN EASEMENT AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ an \_\_\_\_\_, (hereinafter "Grantor"), and the CITY OF GARDEN CITY, an Idaho municipal corporation (hereinafter "Grantee").

### **RECITALS**

WHEREAS, Grantor owns certain real property commonly referred to as (address):  
\_\_\_\_\_, Parcel # \_\_\_\_\_ being  
Lot \_\_\_\_ of Block \_\_\_\_ of \_\_\_\_\_ Subdivision, Garden City, Ada County, Idaho.

WHEREAS, Grantee seeks a permanent easement and right-of-way through and within \_\_\_\_\_, Garden City, for the purpose of maintaining, repairing, and operating a sewer and water main and the right of ingress and egress in, from and to said easement, for the purpose of inspecting, maintaining, and repairing such sewer and water main for the line described in "Exhibit A" and shown on "Exhibit B" attached hereto and incorporated herein by reference.

In consideration of the mutual promises and obligations contained herein, the Grantor and Grantee hereby covenant and agree as follows:

1. **Grant of Easement.**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants unto Grantee, its successors and assigns, a permanent easement and right-of-way through and within that portion of Grantor's property, legally described in "Exhibit A" and as depicted on Exhibit B" as "Water & Sewer Easement," for the purpose of maintaining, repairing, and operating a sewer and water main.

The perpetual, non-exclusive, easement and right-of-way is hereby given and granted for the sole purpose of maintaining, repairing, and operating the sewer and water main at the convenience of Grantee.

2. **Grant Reservation.**

Grantor hereby expressly reserves and shall have the right to use and enjoy the property for itself, its successors, assigns, and permittees; the right at all times and for any purpose to go upon, across and recross and to use the said easement premises in a manner consistent with the existing nature of the property. However, Grantor hereby covenants and agrees that it will not place or allow to be placed any permanent structures, trees, brush, or perennial shrubs or flowers within the area described for this easement, which would interfere with the use of said easement, for the purposes stated herein.

3. Restoration.

Upon completion of any repair or maintenance work contemplated herein, Grantee agrees to promptly restore the above-described property owned by Grantor to a condition equal or superior to that existing prior to exercising its rights under this easement. If and when Grantee makes any future repairs to the sewer and water main and/or allied facilities located on the above-described property, Grantee shall expediently replace and restore any affected portion of the property to a condition equal or superior to that existing prior to the under-taking of such repairs and maintenance. However, Grantee shall not be responsible for repairing, replacing or restoring anything placed within the area described in this easement that was placed there in violation of this easement.

Additionally Grantee is not responsible to repair or replace storm water systems or storm water components that are within the work limits of repair or maintenance operations for city water and sanitary sewer facilities that may be under or in said facilities.

4. Indemnity.

Grantee hereby agrees to indemnify, defend, save and hold harmless the Grantor from any and all liability, loss or damage, Grantor may suffer as a result of any and all actions, claims, damages, costs and expenses on account of, or in any way arising out of or from this Agreement, including but not limited to indemnify and save and hold harmless Grantor from any and all losses, claims, actions or judgments for damages or injuries to persons or property arising out of or from, or caused by, the operation, maintenance and use of the aforesaid easement and rights-of-way by Grantee or its agents. This indemnity shall continue so long as this Sanitary Sewer and Water Main Easement Agreement is in effect.

5. Not a Public Dedication.

Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Grantor's property to the general public, it being the intention that this Agreement will be strictly limited to and for the purposes expressed herein.

6. Duration.

The easement herein agreed to, created, and granted shall be perpetual, and may not be terminated without the express consent of the City of Garden City.

7. Severability.

If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

8. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho.

9. Successors.

All provisions of this Agreement, including the benefits and burdens hereof, run with the land, and are binding upon and inure to the benefit of the parties and their respective heirs, assigns, successors, and personal representatives.

10. Recitals.

The recitals set forth above are hereby incorporated by this reference.

11. Enforcement.

In the event of a breach of any term, covenant, restriction or condition of this Agreement by a party, the other party shall have, in addition to the right to collect damages, the right to enjoin such breach or threatened breach in a court of competent jurisdiction.

12. Attorney Fees.

In the event of any action between the Grantor or Grantee for a breach of or to enforce any provision or right herein, the nonprevailing party in such action shall pay to the prevailing party all costs and expenses, expressly including, but not limited to, reasonable attorney fees and costs incurred by the successful party in connection with such action, including without limitation all fees and costs incurred on any appeal from such action or proceeding.

13. Headings.

The headings in this Agreement are intended for convenience only and shall not be used to vary or interpret the intent of the text.

14. Legal Counsel.

This is a legally binding Agreement, and the parties each represent that they have had the opportunity to consult legal counsel regarding the terms and conditions of this Agreement.

15. Terms of Agreement.

The term of this Agreement shall be from the date approved by the Garden City Council and Mayor. The parties acknowledge that this Agreement shall not take effect until approved by Garden City Council.

16. Recording.

Grantee shall, at its expense, record this Sanitary Sewer and Water Main Easement Agreement in the records of Ada County, Idaho, and shall provide Grantor with conformed copies of the recorded instruments. Such recording shall take place within five (5) business days of the execution of this Agreement, and Grantee shall retain the executed originals of all documents.

IN WITNESS WHEREOF, the parties enter into this Sanitary Sewer and Water Main Easement Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

GRANTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

ON THIS \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said state, personally appeared \_\_\_\_\_, known or identified to me to be the Representative of \_\_\_\_\_, that executed the within instrument, and acknowledged to me that he/she executed the same on behalf of said \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

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Notary Public  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

CITY OF GARDEN CITY

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John G. Evans  
Mayor of Garden City

ATTEST:

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Lisa M. Leiby, City Clerk

STATE OF IDAHO )  
                    ) ss.  
COUNTY OF ADA )

ON THIS \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me,  
\_\_\_\_\_, a notary public in and for said state, personally appeared  
**John G. Evans**, known or identified to me to be the Mayor of the City of Garden City,  
the municipal corporation that executed the within instrument, on behalf of said  
municipal corporation, and acknowledged to me that he executed the same on behalf of  
said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal the day and year in this certificate first above written.

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Notary Public  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_