

Oved Recording Requested By And
When Recorded Mail To:

SEATTLE CITY OF CITY-WTR
700 5TH AVE STE 4900-RPS
PO BOX 34018
SEATTLE WA 98124-4018

ATTACHMENT 1 - UTILITY EASEMENT AND AGREEMENT

Reference #s of Document Released or Assigned: None
Grantor:..... City of Seattle, Seattle Public Utilities
Grantee:..... Ryan-GHC Two, LLC
Legal Description (abbreviated):.....Portion NE 1/4 of NW 1/4 of Section 25,
Twp. 23 North, Range 4 East, W.M., King
County, WA.
Assessor’s Tax Parcel ID#:.....Portion of Parcel 0005800017 for the benefit
of Parcels 0886700100 and 0886700080

CITY to Ryan-GHC Two, LLC Drain Pipe Easement, SPU R/W File #**345-607**

RECITALS

WHEREAS, Ryan-GHC Two, LLC has developed property located South of the City of
Seattle’s Bow Lake Pipeline right of way, and

WHEREAS, the storm water from the development needs to be conveyed to a detention pond
that is located North of the City of Seattle’s Bow Lake Pipeline right of way, and

WHEREAS, Ryan-GHC Two, LLC has asked the City of Seattle to grant a permanent non-
exclusive easement across and under a portion of the City of Seattle Bow Lake
Pipeline right of way to construct and maintain an underground storm drain pipeline,
and

WHEREAS, the City of Seattle has authorized granting this easement by Ordinance
_____;

NOW THEREFORE, for and in consideration of Ten Thousand dollars (\$10,000), and the
mutual covenants and agreements hereinafter set forth herein, and other valuable
consideration, it is agreed by and between the parties hereto as follows:

A. EASEMENT GRANT AND AGREEMENT

1. On this ____ day of _____, 2018, **THE CITY OF SEATTLE, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities, ("City,")** hereby grants to **Ryan-GHC Two, LLC, a Delaware limited liability company**, and its successors and assigns, ("**Grantee,**") a permanent non-exclusive easement across and under that portion of the City of Seattle Bow Lake Water Transmission Pipeline right of way **located in County of King, State of Washington, as legally described and depicted in EXHIBIT A Pages 1 and 2 attached hereto ("Easement Area.")**
2. Grantee, hereby agrees that this easement conveys only those rights expressly contained herein, and is subject to the purpose, terms, conditions, and restrictions herein described.
3. Grantee agrees that the actions of any contractors, agents or invitees of Grantee are the same as if performed or caused by Grantee.

B. GRANTEE'S USE OF THE EASEMENT AREA

1. The purpose of this easement is for the location, construction, maintenance, rehabilitation and replacement of a **Storm Drain Pipe ("Facilities")** that conveys storm water from property located south of the Easement Area to a detention pond located North of the Easement Area. The Maintenance and Operation of the Detention Pond shall be as provided by that Easement recorded under King County (Washington) Recording Number 20151211001280.
2. Grantee shall limit its use of the City of Seattle's property to the purpose authorized herein.
3. Grantee is responsible for its Facilities within the Easement Area at no cost or expense to City.
4. Grantee's use of the Easement Area shall not interfere with present or future use by City.

5. If at any time the Grantee's Facilities interferes with the installation, repair or replacement of City facilities, Grantee upon written notice from City, shall temporarily remove its Facilities, and shall replace same under the supervision of City.
6. Grantee shall ensure that no erosion, excavation, runoff, pollution, siltation or turbidity from its activities shall adversely affect the property or the surrounding environment.
7. Grantee shall not install or modify a cathodic protection system on its Facilities without the prior written approval of City. Grantee shall provide, at its own expense, appropriate corrosion control measures to protect City's water pipelines or other facilities from stray electrical current caused by Grantee's Facilities or cathodic protection installations. If such corrosion or electrolytic action should occur, the repair of any such damage, and any investigation required to locate and determine the extent thereof, shall be performed by City or its designee at the sole cost and expense of the Grantee. It is the Grantee's responsibility to provide, at its own expense, appropriate corrosion control measures to protect the Grantee's Facilities from stray electrical current caused by City's facilities or cathodic protection installations. Grantee, at its own expense, shall join with City in cooperative testing for stray current interference.
8. If Grantee ceases to use the Easement Area for the purposes granted herein, Grantee shall decommission its Facilities pursuant to applicable laws as required, granted or supervised by any agency or subdivision of government with jurisdiction over Grantee's Facilities or the Easement Area.

C. CITY'S USE OF THE EASEMENT AREA

1. City shall have the right to install, repair, replace, maintain, operate and make lateral connections to any of its existing or future water supply lines and appurtenances, electrical transmission and distribution facilities, or other City Facilities within said easement area.
2. City shall notify Grantee of any direct interference or damage to Grantee Facilities caused by or resulting from any City work or operation within the Easement Area. City shall proceed to take such action(s) as may be necessary to ensure the integrity of Grantee Facilities and the safety of the public.
3. City reserves the right to grant or deny permission to use or occupy the Easement Area for any other purpose, including use by Grantee or other utility agencies; provided that

such use or occupancy shall not unreasonably conflict with the purposes herein granted.

D. COMPLIANCE WITH LAWS AND REGULATIONS

1. The use of the Easement Area is subject to all applicable rules, regulations and laws governing the construction, operation and maintenance of such use, including environmental laws.
2. Purpose, terms, conditions, and restrictions herein described shall not be construed to replace or to be used in lieu of any permit or licenses which may be required, granted or supervised by any agency or subdivision of government with jurisdiction over Grantee's Facilities or the Easement Area.
3. Grantee has not relied on the City for assessing site conditions or determining the suitability of the site conditions to accommodate Grantee's construction activities or Facilities installed within the Easement Area.

E. CONSTRUCTION, MAINTENANCE, AND REPAIRS WITHIN THE EASEMENT AREA

1. Before undertaking the construction, or future reconstruction, repairs or maintenance of the Grantee's Facilities within the Easement Area, plans and specifications must be submitted to, and approved in writing by Seattle Public Utilities. Review and approval of such plans and specifications shall occur within a timely manner. Such plans shall indicate the permanent grade established and depth of cover over any existing pipelines and other existing utilities, and the drainage pattern.
2. Grantee shall ensure that its Facilities are constructed in accordance with plans approved by Seattle Public Utilities, and to the specifications of any agency or subdivision of government having jurisdiction.
3. Grantee shall immediately phone Seattle Public Utilities at (206) 386-1800 if there has been an injury or death associated with the Grantee's use of the Easement Area.
4. Grantee shall immediately phone Seattle Public Utilities at (206) 386-1800 if City infrastructure is damaged, or at risk of damage, because of any Grantee activities.

5. The City has the right to stop work or modify any approved plans, if the City determines that work is not being performed as approved, there is a safety issue, or that City facilities or the facilities of others are at risk.
6. Grantee shall restore the Easement Area to substantially the same condition that existed prior to Grantee's entry into the Easement Area and leave it in a safe, orderly, fit, and sanitary condition upon completion of construction.
7. Grantee shall restore City survey monuments or property markers if such monuments are damaged, destroyed or moved because of its activities within City property.

F. DAMAGES, COSTS and EXPENSES

1. Grantee agrees to pay for all cost and expense resulting from any removal, raising, lowering, or other adjustment of the Grantee's Facilities necessitated by the alteration or installation of City's existing or future pipelines or other facilities; provided, however that City will use commercially reasonable efforts to avoid interference with Grantee's Facilities.
2. Grantee agrees to pay for any increase in City's cost of installing, replacing or repairing City's pipelines or other City Facilities resulting from the existence of Grantee's Facilities.
3. Grantee agrees to pay to City the reasonable cost of repair of any of City's facilities damaged by the installation, operation or maintenance of Grantee's facilities.
4. City is not liable for any cost or expense of repair of any damage to or replacement of Grantee Facilities except where such damage is caused by the sole or comparative negligence of the City, its agents or employees.
5. City can act immediately and unilaterally to repair or restore any facility or condition which poses a threat to health, safety, and the environment.
6. Other than situations as specified in section F.4 herein, Grantee agrees to repair any and all damage or injury done to the City property, or facilities of others, to City's or other facility owner's satisfaction, resulting from the installation, operation or maintenance of Grantee's Facilities, at the sole cost and expense of the Grantee.

7. If Grantee has not corrected, or made an acceptable agreement with City to correct any condition caused by Grantee that SPU reasonably determines as unacceptable within thirty (30) days of notification by City, City may perform such work, and all reasonable costs incurred shall be billed to Grantee. City may act immediately for conditions, which pose a threat to public health, safety or the environment. Grantee agrees to pay such bills in a timely manner.

G. INSURANCE

1. Grantee's Insurance Coverages and Limits. Grantee shall, at its sole cost and expense, and at all times shall maintain in full force and effect the following minimum limits of insurance, and adhere to all terms and conditions set forth below:

- a. **Commercial General Liability (CGL)** written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal/Advertising Injury Liability

Employers Liability / Washington Stop

\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of City as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Grantee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Grantee regarding this Agreement, nor (2) construed as limiting the liability of any

of Grantee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

- b. In the event that the City deems insurance to be inadequate to protect Grantee and the City, Grantee shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.
- c. Terms and Conditions for Grantee's Insurance.
 - i. The City of Seattle as Additional Insured: The CGL insurance shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Grantee's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term "insurance" in this paragraph shall include insurance and self-insurance (whether funded or unfunded),
 - ii. Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited: Grantee's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Grantee's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Grantee's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Grantee's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Grantee or reduced and/or offset against the Agreement.
 - iii. Cancellation Notice: Coverage shall not be cancelled without 30 day written notice of such cancellation, except 10 day written notice as respects cancellation for non-payment of premium, to the City at its notice address herein except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.).
 - iv. Minimum Security Requirements: Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VIII or

higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

- d. Deductible or Self-Insured Retention: Any deductible or self-insured retention (“S.I.R.”) must be disclosed to, and shall be subject to reasonable approval by, the City. Grantee shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Grantee to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Grantee. If a deductible or S.I.R. for CGL or equivalent insurance is not “fronted” by an insurer but is funded and/or administered by Grantee or a contracted third party claims administrator, Grantee agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.
- e. Evidence of Insurance. On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address herein as evidence of the insurance coverage required to be maintained by Grantee:
- i. Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and
 - ii. A copy of the policy’s declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;
 - iii. A copy of the CGL insurance policy provision(s) and endorsements expressly including the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement
- f. Failure of Comply. Failure of Grantee to comply with any of the terms of the above insurance provisions shall be considered a material breach of this Agreement and cause for its immediate termination at the option of the City.

Address to send proof of insurance:

Seattle Public Utilities – WTR

File Number 345-607
Facilities and Real Estate Services
PO Box 34018
Seattle WA 98124-4018

H. RELEASE AND INDEMNIFICATION

1. Grantee shall defend, indemnify and hold harmless City, City's officials, employees, agents, and representatives from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character asserted or arising from, on account of, or in connection with: (a) Grantee's exercise of its rights and obligations under this Agreement, (b) the acts or omissions of Grantee (and Grantee's officials, employees, agents, consultants, contractors, representatives, or licensees in or upon the Easement Area), or (c) any damage to or failure of the roadway, storm drain or other Grantee Facilities resulting in any damage or injury to any person or property, or any interest of any person or entity whatsoever; provided however, nothing herein shall require Grantee to so indemnify and hold harmless City to the extent of the negligence or other fault on the part of the City, its officials, employees, agents, consultants, contractors, representatives or licensees.
2. Grantee agrees to maintain compliance with any and all environmental laws and not to cause or permit the Easement Area to become contaminated with any hazardous substances in violation of such environmental laws; provided, that Grantee shall not be liable for the mere discovery of existing conditions. In the event that any property becomes contaminated as a result of the use of the Easement Area by Grantee, its officials, employees, agents, consultants, contractors, representatives, licensees, invitees or visitors, Grantee agrees to clean up and remediate damage to such property and to bring it into compliance with the environmental laws. Grantee agrees to indemnify, release and hold harmless the City from any environmental liability which may arise out of, result from, or be related to the past, present, or future contamination of the Easement Area by Grantee, its officials, employees, agents, consultants, contractors, representatives, licensees, invitees or visitors. For purposes of this paragraph, "environmental laws" shall mean any local, state or federal law, regulation, ordinance, order or other source of law, now or hereafter in effect relating to the protection of human health or the environment including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as

amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Water Act of 1977; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any regulations promulgated thereunder from time to time.

3. Any and all damage or injury done to the Easement Area, City facilities, or existing facilities of others, resulting from construction in, and the use of the Easement Area by Grantee or its agents or its Grantees, must be repaired to the City's and/or other Facilities owner's satisfaction within thirty (30) days of the occurrence of such damage or of notification to Grantee by the City or other facilities owner of the existence of such damage, at the sole cost and expense of Grantee. Grantee agrees to require an insurance policy of any of its agents in an amount adequate to cover any and all damages to the Easement Area and during the construction phase maintain a liability insurance policy in commercially reasonable amounts covering any property damage it may cause to the Easement Area.
4. If Grantee has not corrected, or made an acceptable agreement with City to correct, any dangerous condition caused by Grantee, or any of its agents that the City determines to be unacceptable within thirty (30) days of notification by City, City may perform such work, and all reasonable costs incurred shall be paid by Grantee, or its agents, within thirty (30) days of receipt of an invoice for the work. City may act immediately for conditions which pose a threat to public health, safety or the environment. Any late payments will be charged 1% per month interest.

I. GOVERNING LAW

1. This Agreement shall be construed and governed under Washington Law. Venue for any action between the parties arising from the subject matter of this Agreement will be in King County Superior Court.

J. SEVERABILITY

1. If any provision of this Agreement is found to be invalid, the remainder of the provisions of this Agreement that are not materially altered or invalidated shall remain in full force and effect.
2. This Agreement, and each of the terms, provisions, conditions and covenants herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

K. CONTACTS

CITY OF SEATTLE – SEATTLE PUBLIC UTILITIES:

Mailing Address:

Seattle Public Utilities - WTR
PO Box 34018
Seattle WA 98124-4018

24-HOURS CONTACT NUMBER

Location Address:

Seattle Public Utilities
700 Fifth Avenue, Suite 4900
Seattle WA 98124-4018

(206) 386-1800

RYAN-GHC TWO, LLC – GRANTEE:

Ryan-GHC Two, LLC
c/o Ryan Companies US, Inc., its Manager
533 South Third Street, Suite 100
Minneapolis, MN 55415

CONTACT NUMBER

and with a copy to:

Ryan Companies US, Inc.,
3900 East Camelback Road, Suite 100
Phoenix, Arizona 85018-2653

(602) 322-6100

L. TERMINATION

1. If Grantee ceases to use the Easement Area for the purposes granted herein for a period of three (3) years, the City may terminate this Easement.
2. If Grantee violates a material provision of this Agreement, and such violation remains uncured for ninety (90) days after notice and demand for cure by City, the City may terminate this Easement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed.

THE CITY OF SEATTLE

Ryan-GHC Two, LLC

By: Ryan Companies US, Inc., its Manager

Grantee Acknowledgement

STATE OF ARIZONA)
)
) ss.
COUNTY OF MARICOPA)

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Arizona, duly commissioned and sworn, personally appeared **Molly Ryan Carson** to me known to be the **Vice President of Ryan Companies US, Inc., Manager of Ryan-GHC Two, LLC**, and that she executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed on behalf of the corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal this _____ day of _____, 2018.

Signature

Printed Name

Notary Public in and for the State of **Arizona**

residing at _____

My appointment expires _____

EXHIBIT "A"
PAGE 1 OF 2
LEGAL DESCRIPTION

A STRIP OF LAND 30.00 FEET WIDE, LYING 15.00 FEET ON EACH SIDE OF THE BELOW DESCRIBED CENTERLINE OVER THAT PORTION OF THE BOW LAKE PIPELINE RIGHT OF WAY AS RECORDED UNDER A.F. #4131067, SITUATED IN BOEING LONGACRES PROPERTY SECOND AMENDED BINDING SITE PLAN RECORDING NUMBER 20050504000673 UNDER VOLUME 228 PAGES 022 THROUGH 028, KING COUNTY RECORDERS OFFICE, WASHINGTON, THE CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF TRACT C CITY OF RENTON LOT LINE ADJUSTMENT RECORDING NO. 20151224900008 IN VOLUME 338 PAGE 297, KING COUNTY RECORDERS OFFICE;

THENCE S87°14'34"E ALONG THE NORTH LINE OF SAID TRACT C ALSO THE SOUTH LINE OF SAID BOW LAKE PIPELINE RIGHT OF WAY A DISTANCE OF 136.66 FEET TO THE **POINT OF BEGINNING**;

THENCE N01°00'05"E A DISTANCE OF 30.01 FEET TO THE NORTH LINE OF SAID BOW LAKE PIPELINE RIGHT OF WAY AND THE **POINT OF TERMINUS**.

THE SIDELINES OF SAID STRIP SHALL BE SHORTENED OR LENGTHED AS NECESSARY TO INTERSECT WITH THE MARGINS OF SAID PIPELINE RIGHT OF WAY.

Containing 900 Square Feet or 0.0207 Acres more or less.



