



01/12/2016 09:14:49AM  
CITY OF YAKIMA - LEGAL

TRANSACTION # 187160  
DEPUTY ID:  
BIANCAH

FILE # 7896924  
COVENANT  
# PGS: 11

RECORDING FEE: \$83.00  
TOTAL: \$83.00

TENDER DETAILS:  
ON ACCT/CHARGE: \$83.00

THANK YOU  
CHARLES ROSS  
AUDITOR  
YAKIMA COUNTY, WA

**WHEN RECORDED RETURN TO:**

Mary Monahan  
Toxics Cleanup Program  
Department of Ecology  
1250 W. Alder Street,  
Union Gap, WA 98903-0009

**DOCUMENT TITLE(S)**

**Environmental Covenant**

**REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:**

**GRANTOR(S):**

City of Yakima

**GRANTEE(S):**

State of Washington, Department of Ecology

**ABBREVIATED LEGAL DESCRIPTION:**

S. 26, T. 13 N., R. 18; N 158 FT OF W 187 FT OF NW ¼ N/W ¼ SE ¼ EX N & W ST R/W

**TAX PARCEL NUMBER(S):**

181326-42051

After Recording Return  
Original Signed Covenant to:  
Mary Monahan  
Toxics Cleanup Program  
Department of Ecology  
1250 W. Alder Street,  
Union Gap, WA 98903-0009

### Environmental Covenant

**Grantor:** City of Yakima  
**Grantee:** State of Washington, Department of Ecology  
**Brief Legal Description:** S. 26, T. 13 N., R. 18; N 158 FT OF W 187 FT OF NW1/4  
NW1/4SE1/4 EX N & W ST R/W  
**Tax Parcel Nos.:** 181326-42051  
**Cross Reference:** NA

### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as Tiger Oil 24<sup>th</sup> Ave & W Nob Hill Site, Facility ID 469, ISIS Cleanup Site ID 4919. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property during and after completion of remedial actions. Specifically, the following principle contaminants remain on the Property:

Medium	Principle Contaminants Present
Soil	Gasoline (NWTPH-Gx) and BTEX
Groundwater	Gasoline (NWTPH-Gx) and BTEX

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment, allow continued investigations and remedial actions when needed and inspection of the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology. This includes the following documents:

- Cleanup Action Plan (CAP) and
- Interim Remedial Action Completion Report and As-built report).

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 USC Chapter 103.

f. This Covenant supersedes and replaces the existing Environmental (Restrictive) Covenant, which is recorded with Yakima County as # 7440243.

## COVENANT

The City of Yakima, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter "Ecology") the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. **Interference with Remedial Action.** The Grantor and any subsequent owners, operators and their agents, designees and assigns shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology. The Grantor retains access rights to the Property at all reasonable times to conduct inspections, operation, maintenance, and remedial action activities under the "Amended Consent Decree between Ecology and City of Yakima," filed in Thurston County Superior Court No. 02-2-00956-2 (hereafter "Amended Consent Decree").

b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.

c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

**d. Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

**e. Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

## **Section 2. Specific Prohibitions and Requirements.**

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

**a. Land use.** No land use or management activities may be taken on the Property that may interfere with site access, inspections, investigations, monitoring wells, infiltration galleries or other remedial actions shall be allowed without the prior written approval of Ecology and the Grantor.

**b. Vapor/gas controls.** Ecology and/or the Grantor shall have access to the Property at all reasonable times to investigate, monitor or remediate gasoline-related soil vapors until the final remedial action at the site is completed and the Grantor receives a Letter of Completion from Ecology.

**c. Groundwater use.** The groundwater beneath within the area of the Property illustrated in Exhibit B/C remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. No groundwater may be taken for domestic use from the Property unless Method A Groundwater Cleanup Standards for the identified hazardous substances have been met at the Property (as described in section 6.2 of Exhibit B to the Amended Consent Decree), or as approved by Ecology in writing. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from this area for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

**d. Monitoring.** Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor, Ecology, and their agents, contractors, consultants or assigns may access the Property at any reasonable time to collect samples, make observations and any other activities deemed necessary to monitor contamination, potential exposures or exposure pathways, soil and/or hydraulic dynamics and characteristics and carry out any other necessary technical or safety data gathering activities. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

**Section 3. Access.**

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology and reserves to itself (the City of Yakima) and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, carry out the requirements of the Amended Consent Decree and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by any other third party to any portion of the Property is conveyed by this instrument.

**Section 4. Notice Requirements.**

- a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:
  - i. Notify Ecology at least thirty (30) days in advance of the conveyance.
  - ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

**NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND CITY OF YAKIMA ON \_\_\_\_\_ (date) AND RECORDED WITH THE YAKIMA COUNTY AUDITOR UNDER RECORDING NUMBER \_\_\_\_\_. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.**

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.
- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.
- c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.
- d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

City of Yakima Strategic Projects	Environmental Covenants Coordinator Washington State Department of Ecology
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129 North Second Street Yakima, WA 98901 (509) 576-6417	Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

**Section 5. Modification or Termination.**

- a. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.
- b. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

**Section 6. Enforcement and Construction.**

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.
- f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.



**Exhibit A**

**LEGAL DESCRIPTION**

The North 141 feet of the West 147 feet of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 26, Township 13 North, Range 18, E.W.M.,

EXCEPT the North 26 feet and the West 20 feet,

AND EXCEPT those portions conveyed to the City of Yakima by Deeds recorded October 16, 1964, under Auditor's File Nos. 2014381 and 2014382, and recorded January 20, 1987, under Auditor's File No. 2787766.

AND that portion of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 26, Township 13 North, Range 18, as described as follows:

Commencing at the Northwest corner of said subdivision;

thence South along the centerline of 24th Avenue South, a distance of 141.00 feet, said centerline being the West line of said subdivision;

thence South  $89^{\circ}17'00''$  East a distance of 28.50 feet to the Easterly margin of said 24<sup>th</sup> Avenue South and the true point of beginning;

thence continuing South  $89^{\circ}17'00''$  East a distance of 118.50 feet;

thence North on a line parallel with the West line of said subdivision 115.00 feet to the Southerly margin of Nob Hill Boulevard;

thence South  $89^{\circ}17'00''$  East along said Southerly margin a distance of 40.00 feet;

thence South a distance of 132.00 feet;

thence North  $89^{\circ}17'00''$  West a distance of 158.51 feet to the Easterly margin of 24th Avenue South;

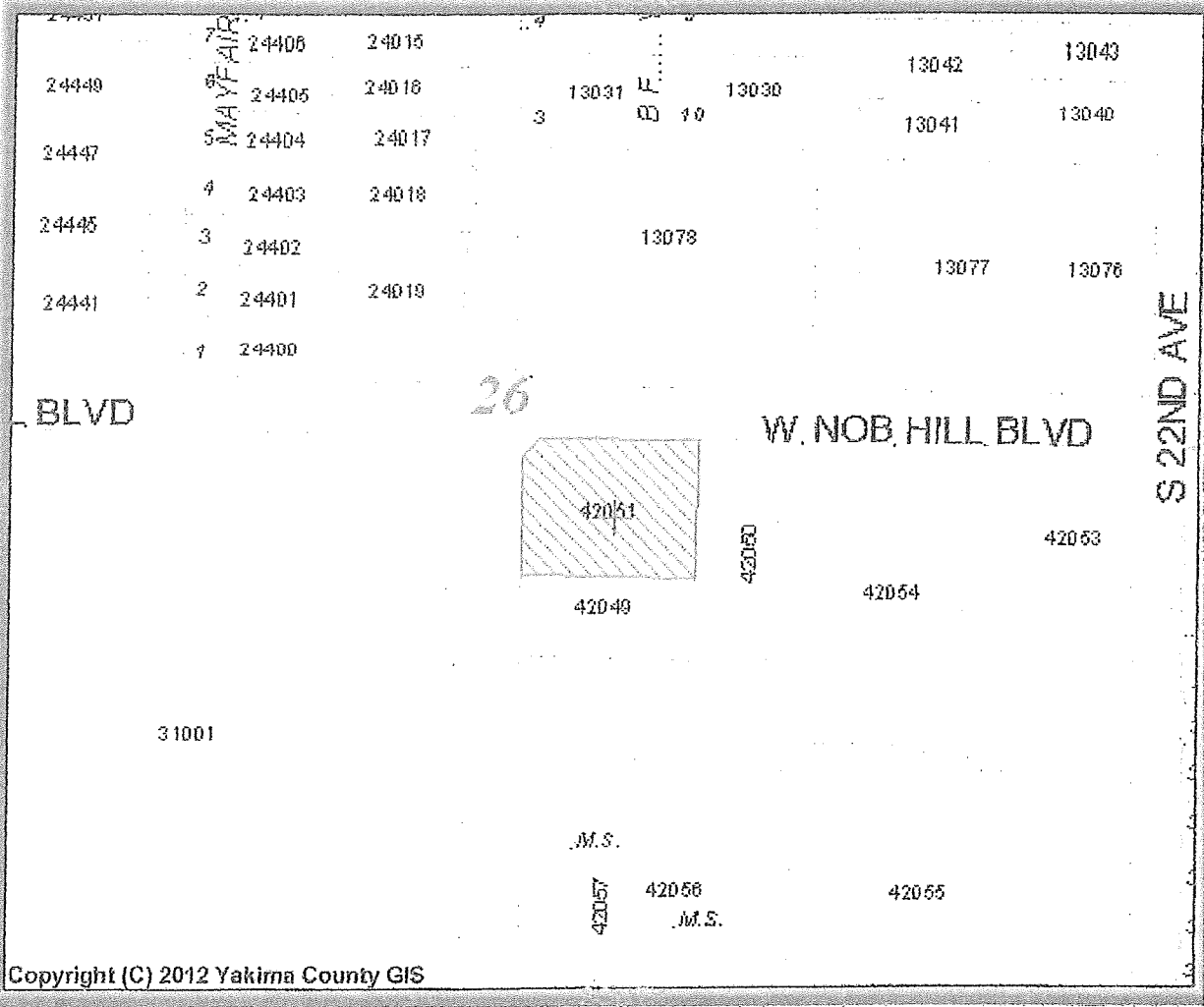
thence North along said Easterly margin a distance of 17.00 feet to the true point of beginning.

Yakima County Assessor's Parcel No. 181326-42051



Exhibit B

PROPERTY MAP



## EXHIBIT A

### SITE DIAGRAM

Exhibit C is a copy of a Site Plan attached to and incorporated as Exhibit "A" in that certain "Amended Consent Decree Between Ecology and City of Yakima" filed for record on September 5, 2014 in the Thurston County Superior Court Cause No. 02-2-00956-2, case captioned *State of Washington, Department of Ecology v. Tiger Oil Corporation; Tiger Oil Company; Federated Service Insurance Company; Mercy Development Company; M & E Company; and City of Yakima*. A copy of such Amended Consent Decree is filed with the City of Yakima Legal Department, 200 South Third Street, Yakima, Washington 98901-2830, and is available upon request.

**Exhibit D**

**SUBORDINATION AGREEMENT**

KNOW ALL PERSONS, That \_\_\_\_\_, the owner and holder of that certain \_\_\_\_\_ (Instrument) bearing the date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, executed by \_\_\_\_\_, \_\_\_\_\_, and recorded in the office of the County Auditor of \_\_\_\_\_ County, State of Washington, on the \_\_\_\_\_, 20\_\_\_\_, under Auditor's File Number \_\_\_\_\_, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated \_\_\_\_\_, 20\_\_\_\_, executed by \_\_\_\_\_, and recorded in \_\_\_\_\_ County, Washington under Auditor's File Number \_\_\_\_\_.

Dated \_\_\_\_\_, 20\_\_.

NAME

\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.