

ACCESS AGREEMENT

This ACCESS AGREEMENT (“Agreement”) is made this _____ day of _____, 2019, by and between City of Lynden, a municipal corporation (“City”), and the Lynden School District, a municipal corporation (“District”). City and District shall be referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the District owns the following-described real property:

Lots 1 through 10 of Block 32 and Lots 1 through 10 of Block 33 of the Supplemental and Corrected Plat of Lynden, according to the plat thereof, recorded in Volume 3 of Plats, Page 48, Auditor’s File Number 12894, records of Whatcom County, Washington, together with the alleys and the portion of Seventh Street vacated by Ordinance No. 208 of the Town of Lynden, Washington.

Situate in Whatcom County, Washington.

Subject to and together with all easements of record.

herein referred to together as the “Property”; and

WHEREAS, the City presently intends to purchase the Property from the District, and the District presently intends to the sell the Property to the City; and

WHEREAS, the Parties do not anticipate being able to sign a binding purchase and sale agreement (“PSA”) for the Property for at least 2 to 4 more weeks after the execution of this Agreement; and

WHEREAS, the expected PSA terms will allow the City to perform an environmental assessment of the Property at a level of the City’s choosing prior to closing; and

WHEREAS, due to the potentially time-consuming nature of the environmental assessment, both Parties wish that the City be allowed to commence the environmental assessment as soon as possible; and

WHEREAS, the purpose of this Agreement is to provide District authorization for the City to access the Property for the purpose of performing an environmental assessment of the level of its choosing; and

WHEREAS, these recitals are material to this Agreement.

ACCESS AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Access. The District hereby grants to the City a nonexclusive right to enter the Property to perform one or more environmental site assessment(s) of the Property at the level of the City's choosing ("Right of Access").
2. Term. This Agreement shall commence upon its execution and shall terminate automatically upon either (1) execution by both Parties of a PSA for sale of the Property; or (2) written notice from either Party to the other that it does not wish to continue with the proposed sale; or (3) sixty (60) days from the date of this Agreement, whichever is earlier. Provided, however, the obligation of the City under Section 4, 6 and 13 shall continue in full force and effect following termination.
3. City's Rights. The City shall, by its employees, contractors, subcontractors, and other agents and assigns, have the right to enter the Property and the right to perform all necessary tasks related on the Property related to an environmental site assessment, including visual inspections, sampling, testing, excavations, restoration, and the placement of flags, stakes, and other similar items on the Property. The City shall have the right to exclude the public from its area of work on the Property as needed for safety purposes.
4. Disclosure. Any work product produced by the City or its consultants under this Agreement will be for the City's use only and will not be provided to third parties or government entities without the express written consent of the District, unless in the City's opinion disclosure is mandated by the Public Records Act (Chapter 42.56 RCW). In the event the City obtains a request for disclosure of such work product, it shall promptly notify the District in writing of same and provide the District with not less than three (3) business days to file a motion seeking a court order preventing disclosure. The City will provide the District with copies of any reports or work product produced under this Section in the event the City elects not to proceed forward to Closing to purchase the Property.
5. Restoration. The City shall take care not to damage the Property. In the event the City excavates soils or disturbs grass it shall replace said excavated soils, reseed grass, and replant vegetation with a similar kind. In the event the City damages the Property during the course of the environmental site assessment, it shall restore the Property to as near its original condition as reasonably practicable.

6. No Further Obligation Created. This Agreement creates no obligation for either Party to execute the PSA or close the sale of the Property from the District to the City.
7. Notice Required. The City shall give 24 hours' notice of its intent to enter the Property for the purpose of carrying out a task associated with the environmental site assessment. The City shall not be required to give notice of entry for any other purpose.

- a. All notices required under this License Agreement shall be delivered to:

District:

Jim Frey
 Superintendent
 1203 Bradley Road
 Lynden, WA 98264
 FreyJ@lynden.wednet.edu

City:

Mike Martin
 City Administrator
 300 4th Street
 Lynden, WA 98264
 BanhamS@LYNDENWA.ORG

- b. Notice may be made by US First Class Mail and shall be considered effective the business day following the date the notice was mailed. Alternatively, notice may be made by email, read receipt requested, and shall be considered effective the date of sending.
8. Recording. Either Party may record this Agreement at its option. Upon the District's request, after the termination of this Agreement pursuant to Section 2 above, the City shall record a subsequent document extinguishing this Agreement. The City shall pay all costs of recording.
9. Severability. Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.
10. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the Superior Court for Whatcom County, State of Washington.
11. Expenses and Attorneys' Fees. The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of their reasonable attorney's fees, costs and expenses.
12. Not a Public Dedication. Nothing contained in this Agreement grants a dedication of any portion of real property to the general public or for any public use, except as may be specifically provided herein. No other right, privilege, or immunity of any Party shall inure to the benefit of any third party,

nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.

13. Indemnification.

- a. To the extent permissible by law, the City shall indemnify, defend and hold the District, its employees, officers, guests, invitees, partners, or licensees harmless for any injuries, damage to, or claims against the District or its employees, officers, guests, invitees, partners, or licensees, arising in relation to the City's negligent acts or omissions or negligent acts or omissions of the City's agents, employees, contractors, or subcontractors, pertaining to the exercise of its rights under this Agreement, except that the City's indemnification and hold harmless obligation shall be proportionally reduced by any negligent act, omission, or default on the part of the District and its agents, employees, contractors, or subcontractors.
- b. To the extent permissible by law, the District shall indemnify, defend and hold the City, its employees, officers, guests, invitees, partners, or licensees harmless for any injuries, damage to, or claims against the City or its employees, officers, guests, invitees, partners, or licensees, arising in relation to the District's negligent acts or omissions or negligent acts or omissions of the District's agents, employees, contractors, or subcontractors, pertaining to the exercise of its rights under this Agreement, except that the District's indemnification and hold harmless obligation shall be proportionally reduced by any negligent act, omission, or default on the part of the City and its agents, employees, contractors, or subcontractors.

14. Nonwaiver of Breach. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right enforce such provision. Waiver of any breach of any provision of this Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by either Party prior to or following entry of this License Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

DISTRICT:

CITY:

Jim Frey
Superintendent, Lynden School District

Scott Korthuis
Mayor, City of Lynden

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that James Frey is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Superintendent of the Lynden School District, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2019.

Typed/Printed Name:

NOTARY PUBLIC in and for the State
of Washington
Residing at: _____
My appointment expires: _____

STATE OF WASHINGTON

)

) ss

COUNTY OF WHATCOM

)

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden, a Municipal Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2019.

Typed/Printed Name:

NOTARY PUBLIC in and for the State
of Washington

Residing at: _____

My appointment expires: _____