

**AGREEMENT BETWEEN THE CITY OF LYNDEN, BERTRAND WATERSHED
IMPROVEMENT DISTRICT, AND NORTH LYNDEN WATERSHED IMPROVEMENT
DISTRICT, RELATING TO PROVIDE FUNDING SUPPORT FOR WEST LYNDEN
AREA DRAINAGE PLANNING AND IMPLEMENTATION OF PROJECTS
IDENTIFIED IN DRAINAGE PLANNING**

This Agreement is made and entered into by and between the City Of Lynden (hereinafter referred to as the “City”), Bertrand Watershed Improvement District (hereinafter referred to as “BWID”), and North Lynden Watershed Improvement District, (hereinafter referred to as “NLWID”).

WHEREAS, the City of Lynden is planning for the development within its Urban Growth Areas which involves addressing stormwater that is consistent with the drainage needs of the surrounding agricultural area; and

WHEREAS, the City of Lynden is committed to continuing to support agricultural activities which occur outside of the City limits, recognizing that managed growth within the City is intended to preserve land for agricultural use and that many Lynden businesses and industries support or are closely related to that surrounding agricultural land use; and

WHEREAS, the commercial and industrial areas west of the Guide Meridian (SR 546) and the residential areas between Double Ditch Road and Benson Road and north of Main Street, referred to as the Pepin Creek Subarea, both have stormwater and drainage challenges connected with properties to the north, west and south of the Lynden urban growth boundary; and

WHEREAS, the BWID and NLWID are special purpose districts generally encompassing most of the agricultural lands to the north, west, and south of the City of Lynden and are created pursuant to RCW 87.03; and

NOW, THEREFORE, it is agreed by the parties hereto as follows:

1. **PURPOSE.** The purpose of this Agreement is to set the terms whereby all parties to the agreement will mutually plan, develop, and implement Comprehensive Stormwater and Drainage Plans for the West Lynden Commercial Area and Pepin Creek Subarea that serve the best interest of all parties. Initial action will be to outline potential options and explore funding partners to develop and implement preferred options.

2. PARTY RESPONSIBILITIES

A. CITY OF LYNDEN RESPONSIBILITIES

1. The City shall designate a one or more representative to participate in the West Lynden Stormwater and Drainage Work Group;
2. The City shall pursue outside funding for drainage studies.
3. The City shall wholly fund the work of engineers and surveyors to survey and perform a preliminary evaluation of the Mouw Ditch and the downstream portions of

- Bertrand Creek which receive drainage from the West Lynden Business Park and to analyze potential improvements to that conveyance system.
4. The City will seek additional funding for projects agreed to by the work group.
 5. Where drainage projects are identified outside the City which provide special benefit to developable properties within City, the City shall establish agreements that allow the City to contribute construction funding to recover those funds through stormwater connection charges to the specific properties at time of development to the extent that such is allowed by law.

B. WID RESPONSIBILITIES

1. Each WID shall designate a representative to participate in the West Lynden Stormwater and Drainage work group;
2. Bertrand WID shall encourage property owners to provide access to the City's engineers and surveyors to conduct the work identified in item A.3 above.
3. Each WIDs agree to provide support to the City in its efforts to secure funding from state and local funding authorities that would benefit both the City of Lynden and the adjoining agricultural lands
4. The WIDs agree to provide at least 5% of the funding for improvement projects agreed to by the work group within their respective boundaries.

3. TERM OF AGREEMENT

The period of performance for this Agreement shall be October 1, 2021 through June 30, 2024.

4. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of all of the parties hereto. Inclusion of other entities into the agreement will be allowed by consent of all existing parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. DISPUTES

In the event that a dispute arises under this Agreement, a dispute board shall resolve the dispute in the manner set forth in this section. The parties to this Agreement shall each appoint a member to the dispute board. The dispute board shall evaluate the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the parties hereto. In the performance of this Agreement, it is mutually understood and agreed upon by the parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance.

6. ASSIGNMENT

The obligations to be performed by the parties under this Agreement are not assignable or delegable by any party in whole or in part, without the prior written consent of both of the other parties.

7. WAIVER

A failure by any of the parties to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

8. TERMINATION

This Agreement may be terminated without cause by any Party effective upon sixty (60) days written notice, mailed postage pre-paid by certified mail, return receipt requested, to all remaining Parties last known address for the purposes of giving notice under this section. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

9. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

10. INTEGRATION OF AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

11. CONTRACT MANAGEMENT

No new separate legal or administrative entity is created to administer the provisions of this Agreement. No agent, employee, servant, or representative of any party shall be deemed to be an employee, agent, servant, or representative or any other party for any purpose. Each party will be solely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Agreement. The Contract Administrator for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

The Contract Administrator for the City is:

Steve Banham, Public Works Director
300 4th Street
Lynden, WA 98264
(360) 354-3446
banhams@lyndenwa.org

The Contract Administrator for the WIDs is:

Henry Bierlink, Executive Director
Bertrand and North Lynden WIDs
204 Hawley Street
Lynden, WA 98264
(360) 354-1337
henry@agwaterboard.com

12. COUNTERPARTS

This Agreement may be executed in multiple counterparts and each shall be deemed an original, but all of which together constitute a single instrument.

13. EFFECTIVE DATE

This Agreement shall be in full force and effect upon full execution by the Parties and filing with the Whatcom County Auditor or posting on each Party's website, whichever method of filing is chosen.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF LYNDEN

By: _____

Title: _____

Date: _____

NORTH LYNDEN WID

By: _____

Title: President

Date: 9-21-21

BERTRAND WID

By: Vern Vandeventer

Title: President

Date: 9/13/2021