

DONATION AGREEMENT

THIS DONATION AGREEMENT (the “Agreement”) is made between the City of Lynden (“Donor” or “City”), a Washington municipal corporation, and Whatcom County Cemetery District 10 (“Donee” or “Cemetery District”), a Washington special purpose district, for the donation of an M1898 Watervliet Howitzer cannon used in World War I (“Cannon”) from the City to the Cemetery District, as of March 21, 2022 (“Effective Date”). The parties may be referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, American Legion Lynden Post No. 99 secured the Cannon from Fort Stevens, Oregon, according to an article in the Lynden Tribune dated April 27, 1922; and

WHEREAS, the Cannon is one of only eighteen (18) of its type known to remain in existence today; and

WHEREAS, the Cannon was displayed for many years in both Lynden City Park and the Lynden Pioneer Museum; and

WHEREAS, the Cannon has been on loan to the Cemetery District since 2006, as approved by the Lynden City Council, for display in the Lynden Cemetery; and

WHEREAS, the Lynden Cemetery is the final resting place of a large number of local veterans and an appropriate location for the Cannon to remain indefinitely; and

WHEREAS, the Donor and Donee are both public entities organized under the laws of the State of Washington; and

WHEREAS, the Lynden City Council approved the donation of the Cannon to the Cemetery District, subject to a right of reversion, at its regular meeting on _____, 2022; and

WHEREAS, the foregoing recitals are a material part of this Agreement; and

WHEREAS, the City now wishes to donate the Cannon to the Cemetery District subject to the provisions of this Agreement.

NOW THEREFORE, in consideration for the foregoing and the mutual covenants of the Parties set forth in this Agreement, the Parties agree as follows:

AGREEMENT

1. Grant. The City hereby grants and conveys to the Cemetery District, without warranty of any kind, all of its right, title, and interest in the Cannon, subject to the right of reversion set forth herein.

2. Purpose. The purpose of this Agreement is to ensure that the Cannon will continue to be publicly displayed and enjoyed by the public at the Lynden Cemetery under the control of the Cemetery District. The Lynden City Council has found this to be a legitimate governmental purpose, which will best serve the community of Lynden and its educational and historical interests.

3. Right of Reversion. The City reserves a right of reversion in ownership of the Cannon. In the event that the Cemetery District dissolves or otherwise no longer exists, or if the Cannon is transferred or attempted to be transferred, assigned, or leased to any person or entity other than the City, relocated from Cemetery District property, or no longer made accessible for public viewing except for periods of repair or refurbishing, all right, title, and interest in the Cannon shall revert to the City. In such event the Cannon must be promptly returned to the City by the Cemetery District or its successors at a location designated by the City.

4. General Provisions

4.1 Authorization. The Parties are fully authorized to enter this Agreement as municipal entities in the State of Washington.

4.2 No Assignment or Third-Party Beneficiaries. The Cemetery District may not assign any of its rights and obligations under this Agreement. Any assignment of the Cemetery District's rights or obligations constitutes a default. This Agreement is between the City and Cemetery District only. There are no intended third-party beneficiaries to this Agreement or to any provision herein.

4.3 Termination. This Agreement is terminable only pursuant to Section 3.

4.4 Default. The failure of the Cemetery District to return the Cannon to the City, pursuant to Section 3, shall constitute a default.

4.5 Remedies. If the Cemetery District defaults, the City may seek damages and/or specific performance under this Agreement.

4.6 Governing Law and Venue. Any dispute arising out of this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Whatcom County Superior Court.

4.7 Severability. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

4.8 Attorney's Fees and Costs. In the event of any cause of action or litigation arising out of an alleged breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing Party.

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM).

I certify that I know or have satisfactory evidence that Dick Decima is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the WHATCOM COUNTY CEMETERY DISTRICT 10 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the
State of Washington, residing at
Whatcom County
My commission expires: 9-4-2025