

After recording, return to:
City of Lynden, Public Works
300 4th Street
Lynden, WA 98264

DRAFT

DOCUMENT TITLE:
EASEMENT AGREEMENT

GRANTOR:
City of Lynden, a Washington municipal corporation

GRANTEE:

ABBREVIATED LEGAL DESCRIPTION:

Full legal description at page(s) _____.

ASSESSOR'S PROPERTY TAX PARCEL NUMBER:

EASEMENT AGREEMENT

This Easement Agreement ("Easement") is made and entered into on this _____ day of _____, 2019, by and between the City of Lynden, a Washington municipal corporation ("the City" or "Grantor"), and _____ ("Grantee"). Grantor and Grantee shall be individually referred to as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Grantee desires to build a fence and/or plant vegetation, or install other removable appurtenances (hereafter collectively "improvements") on the City's property located at the Pepin Creek Corridor, in Lynden, Washington; and

WHEREAS, all or part of the improvements will be located on property owned by the City, described below as City Property; and

WHEREAS, Grantee is the owner in fee simple of the real property legally described at **Exhibit A** hereto, commonly known as _____, Lynden, Washington, Whatcom County Tax Parcel No. _____ (hereafter “Grantee Property”); and

WHEREAS, the City is the owner in fee simple of the following real property legally described at **Exhibit B** hereto, commonly known as the Pepin Creek Corridor Property, Lynden, Washington, Whatcom County Tax Parcel No. _____ (hereafter “City Property” or “Grantor Property”); and

WHEREAS, the City has authority to permit construction of a private fence and other improvements on property over which the City has an interest; and

WHEREAS, these recitals are material to this Easement;

NOW THEREFORE, the Parties agree as follows:

1. Grant of Easement. The City hereby gives grants and conveys to Grantee the right, until further notice, to use the portion of land owned by the City and labeled as “Easement Area” on the attached **Exhibit C** for the permitted uses described at Paragraph 3 below.
2. Consideration. This Easement is made pursuant to and in consideration of the City issuing a fence permit and in mutual consideration of the terms and conditions established herein. The Parties hereby acknowledge that there is no monetary consideration provided for grant of the Easement.
3. Permitted uses. Grantee may use the Easement Area for installing and maintaining improvements, namely a fence, planting vegetation and engaging in other landscaping, maintaining existing landscaping, installing and maintaining other removable appurtenances, and performing other related tasks in the Easement Area. Grantee may enter the Easement Area at any time without notice to the City. Uses that are in the City’s sole judgment inconsistent with the City’s ownership of the Easement Area are prohibited.
4. Non-exclusive use. This Easement grants Grantee non-exclusive use of the Easement Area. The City reserves the right to use the Easement Area as it sees fit. The City shall notify Grantee pursuant to Paragraph 14 below if it anticipates that its actions in the Easement Area will interfere with or damage any improvements Grantee has made to the Easement Area. The City reserves the right to grant other easements or legal interests in the Easement Area without notice to Grantee.
5. Termination. This Easement may be terminated by the City at any time in its sole discretion upon providing thirty (30) days prior written notice to Grantee. Notice of such termination

shall be made pursuant to Paragraph 14 below. Grantee agrees to promptly vacate the Easement Area and surrender use thereof within thirty (30) days after delivery of such notice. Any improvements remaining in the Easement Area thirty (30) or more days after the City has given notice of termination of this Easement shall thereupon become the property of the City. If said notice requests the removal of all or a portion of any improvements within the Easement Area, Grantee shall be responsible for complying with the removal request in accordance with Paragraphs 6, 7 and 8 below. Following termination of the Easement, the City may record notice thereof with the Whatcom County Auditor's Office.

6. Removal of improvements. Grantee shall, at Grantee's sole expense, remove all improvements located within the Easement Area as the City demands, doing so within thirty (30) days after written notice requesting such removal is delivered to the Grantee or occupant of the Grantee Property; provided that, in the event of an emergency, the City may immediately remove and possibly damage or destroy any improvements located within the Easement Area without prior notice to the Grantee or occupant of the Grantee Property. Grantee shall have no right to compensation arising from any such removal, damage, or destruction of Grantee's improvements by the City.
7. City's right to remove. In non-emergency situations, if the Grantee fails to remove any improvements within the Easement Area as the City demands within thirty (30) days after written notice requesting such removal is delivered to Grantee or occupant of the Grantee Property, the City may remove and possibly damage or destroy any improvements in order to exercise its right and use of the Easement Area. Grantee shall have no right to compensation arising from any such removal, damage, or destruction of Grantee's improvements by the City.
8. Expenses for removal by City. In the event that the City removes any improvements from the Easement Area, Grantee shall within thirty (30) days of delivery of an invoice from the City, reimburse the City for the cost of removal of any improvements. Late reimbursement of such costs shall accrue interest at a rate of twelve (12) percent per annum. Should the City initiate collection proceedings for delinquent payment, the Grantee shall reimburse the City for its reasonable legal costs and attorney's fees for collection of said funds. All removal and collection costs and fees, together with interest, shall be a lien on the Grantee Property until paid.
9. Replacement of improvements. It shall be the sole responsibility of Grantee to replace any improvements following removal or damage resulting from the City's exercise of its rights under this Easement. Under no circumstances shall the City be responsible for replacement or repair costs associated with removal of any improvements located within the Easement Area, even if such replacement or repair costs are attributable to the negligence of the City or its agents.
10. Run with the Land. This Easement shall run with the land, and shall be binding upon the heirs, successors, and assigns of the Grantee, until terminated as provided herein.

11. Indemnification and Hold Harmless. Grantee expressly agrees to appear, defend, indemnify and hold harmless Grantor, its successors in interest, and those persons who were, are now, or shall be contractors, subcontractors, employees or agents thereof (collectively, the "Grantor Indemnitees"), from and against any and all claims, losses, liabilities, judgments and expenses (including reasonable attorney's fees) arising wholly or partially out of any act, action, omission or default on the part of the Grantee, its occupants, contractors, subcontractors, employees and agents which pertain to the use of the Easement Area.
12. Release of Liability. Grantee hereby expressly agrees to release the City from any potential present or future liability to Grantee arising from damage to property or injury to persons as a result of Grantee's permissive use or occupancy of the Easement Area.
13. Insurance. Grantee shall add Grantor as an additional insured and loss payee on Grantee's homeowner's insurance policy within fifteen days of the recordation of this Easement and shall maintain homeowner's insurance with the City as an additional insured for so long as this Easement remains effective. Failure to maintain City as an additional insured shall result in this Agreement being automatically terminated.
14. Notice. All notices or demands to be given by any Party to any other Party pursuant to this Easement shall be deposited in the United States mail, postage prepaid, by first-class mail and addressed to the Party at issue. Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.
15. Governing Law and Venue. This Easement shall be governed in accordance with the laws of the State of Washington. Venue for any legal proceedings shall be Whatcom County Superior Court.
16. Complete agreement and amendment. This Easement constitutes the entire agreement as to the matters contained herein. No oral or written statements shall be considered a part of this Easement unless expressly incorporated herein in writing. This Easement may be modified in writing only, upon unanimous agreement of the Parties or the successors in interest.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement on the date first above written.

GRANTOR
City of Lynden

GRANTEE

By: Scott Korthuis
Its: Mayor

By: _____

State of Washington)
) §
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 and acknowledged to me that he signed the same as his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2019.

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington residing at: _____
My Commission expires: _____

State of Washington)
) §
County of Whatcom)

I certify that I know or have satisfactory evidence that FIRST M.I. LAST is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged to me that he signed the same as his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2019.

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington residing at: _____
My Commission expires: _____

Exhibit A
Legal Description of Grantee Property

Exhibit B

Legal Description of Grantor Property

Exhibit C
Depiction of Easement Area