

## CITY OF LYNDEN

### CITY PARK LICENSE AGREEMENT

THIS CITY PARK LICENSE AGREEMENT (“Agreement”) is made and entered into this 21<sup>st</sup> day of June, 2021 (“Effective Date”), by and between the City of Lynden, a non-charter code city and municipal corporation (“City”), and Lynden Christian School, a Washington nonprofit corporation, (“School”). For the purposes of this Agreement, the City and the School may be referred to individually as “Party” and collectively as the “Parties.”

#### RECITALS

WHEREAS, the School wishes to use of a portion (“Licensed Area”) of the City park known as City Park (“Park”) for the purpose of expanding the recreational area available to its students while school is in session; and

WHEREAS, the City desires to grant to the School, its invitees, consultants, contractors and subcontractors a revocable, non-exclusive license to enter and use the Licensed Area on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### AGREEMENT

**1. GRANT OF LICENSE.** Subject to the provisions, covenants, and agreements herein contained, the City hereby grants to the School a non-exclusive license (“License”) to use the Licensed Area described in **Exhibit A** without monetary compensation. A Fence shall be installed per Section 4, as described in Exhibit A. In the event the installed Fence location does not match the description in Exhibit A, the as-built Fence shall be the outer boundary of the Licensed Area. The License granted hereunder is expressly non-exclusive. No provision of this Agreement shall impair in any way City’s rights or ability to negotiate with any third-party with respect to the use by such third-party of the Licensed Area, except to the extent such use conflicts with the rights specifically granted to the School hereunder.

**2. TERM.** This Agreement shall have an initial term of five (5) years commencing on the Effective Date, and shall be renewed automatically for two succeeding terms of five (5) years each unless either Party gives written notice of termination to the other Party at least sixty (60) days prior to the expiration of any term. Nothing in this section shall prohibit or otherwise restrict the City’s ability to terminate this Agreement at any time for convenience or for cause as set forth in Section 3.

**3. TERMINATION.**

**3.1 Termination Without Cause.** Either Party may, at its sole discretion, terminate this Agreement by giving the other Party a 60-day written notice of termination.

**3.2 Termination with Cause.** If the School fails to comply with any provision of this Agreement and fails to correct such noncompliance within five (5) business days of receiving the City's written notice thereof, the City may immediately terminate this Agreement for cause by providing written notice of termination.

**4. FENCING.** The School agrees to erect a permanent chain link fence ("Fence") along the entire length of the southern and western boundaries of the Licensed Area. The Fence shall be installed by August 30,2021

**4.1 Installation.** The School shall install the Fence subject to the following conditions:

- a. No healthy trees may be damaged or removed.
- b. Straight lines shall be maintained where possible. If necessary, the southwest and northwest corners of the Fence may be moved up to five feet from the boundary of the Licensed Area to accommodate a straighter line through the trees.
- c. A gate shall be installed in the southern portion of the Fence to allow access from the existing trailhead.
- d. A gate shall be installed in the western portion of the Fence where the Fence intersects with the existing trail.
- e. As many gates may be installed in the eastern portion of the Fence as the School determines is necessary to meet its needs.

**4.2 Removal.**

**4.2.1 Following Termination by School or by City with Cause.** The School shall remove the Fence in the event the School elects not to renew this Agreement, the School terminates this Agreement without cause as provided in Section 3.1, or the City terminates this Agreement with cause as provided in Section 3.2.

**4.2.2 Following Termination by City without Cause.** The City shall remove the Fence in the event the City elects not to renew this Agreement or terminates this Agreement without cause as provided in Section 3.1. In either event, the City shall collect and deliver all fencing material to the School.

**5. USE.** The School may access and use the Licensed Area solely for the purposes of student recreation, maintenance, or as otherwise permitted under the terms of this Agreement. The School shall have exclusive use of the Licensed Area on days that the School is in session, including mornings and evenings outside regular school hours, and on weekends preceding any week in which the School is in session, except for the breaks and holidays identified in Section 5.1.

**5.1 Breaks and Holidays.** The Licensed Area shall be open to the public during any school break that exceeds four days (such as Christmas, spring break, and summer break) and on national holiday three-day weekends in which the holiday does not fall on a school day (such as Memorial Day and Labor Day).

**5.2 Gates.** The School shall open and close the Fence gates to isolate the Licensed Area from the Park or allow public access in accordance with the terms of this Agreement. All gates on the western side of the Fence shall be closed while school is in session and opened during the breaks and holidays identified in Section 5.1.

**5.3 Prohibited Uses.** The School shall not permit any unreasonable odors, smoke, dust, noise or vibrations to emanate from the Licensed Area, take any other action which would constitute a nuisance or disturb the use and enjoyment of the Park by the public, or allow the Licensed Area to be used for any unlawful purpose.

**6. MAINTENANCE.** The School shall, at its sole expense, maintain the Licensed Area in Usable Condition during the term of this Agreement. "Usable condition" means well-kept and free from hazards. The School shall also be responsible for pruning trees as needed to keep them healthy and removing dead trees. No existing tree in good condition shall be removed without written permission from the City. All damage or injury to the Licensed Area caused by or resulting from misuse or negligent conduct or omission of the School, shall be repaired, at the School's sole cost and expense, by the School to the City's reasonable satisfaction. Nothing in this Agreement shall be construed to prevent the City from entering the Licensed Area at any time for the purpose of inspection and carrying out emergency maintenance the City determines, at the City's sole discretion, to be necessary.

**7. IMPROVEMENTS.** Other than the fence described in Section 4, the School may not make any improvement to the Licensed Area without prior written approval from the City, which approval may be withheld in the City's sole discretion.

**8. INSURANCE.**

**8.1** The School shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with its use of the Licensed Area while school is in session or any claims for injuries or damage to property arising at any time during the term of this Agreement due to the presence of the Fence.

**8.2** The School's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the School to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**8.3** The School shall, at minimum, obtain insurance coverage of the following types and policy limits:

<b>General Liability</b>	<b>\$2,000,000</b>	<b>each occurrence</b>
<b>General Liability</b>	<b>\$2,000,000</b>	<b>annual aggregate</b>
<b>Worker's Compensation</b>	<b>Statutory benefits</b>	

**8.4** The City shall be listed as additional insured on the School's General Liability policy. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

**8.5** The School shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before any use of the Licensed Area. The School shall provide the City with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

**8.6** If the School maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of General and Excess or Umbrella liability maintained by the School, irrespective of whether such limits maintained by the School are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the School.

**12.7** Failure on the part of the School to maintain insurance as required shall constitute a material breach of this Agreement, upon which the City may, after giving five (5) business days' notice to the City to correct the breach, immediately terminate the Agreement or, at its sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be reimbursed to the City on demand.

**13. INDEMNIFICATION.** The School agrees to release, indemnify, defend, and hold the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers harmless from any and all claims, demands, actions, and suits arising from, resulting from, or in connection with this Agreement, or the acts, errors or omissions of the School in the performance of this Agreement, except for that portion of the claim caused by the City's sole negligence. The School shall ensure that any contractor hired to provide maintenance services in the Licensed Area under the terms of this Agreement shall agree to defend and indemnify the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers to the same extent and on the same terms and conditions as the School as set forth in this paragraph.

**14. DISPUTE RESOLUTION.** Any dispute arising out of the terms and conditions of this Agreement shall be subject to the following mediation process, as a condition precedent to filing any legal cause of action. If a dispute shall arise, a meeting shall be held promptly between the Parties to attempt in good faith to negotiate a resolution to the dispute. For purposes of this Section 14, "promptly" shall mean within fourteen (14) calendar days of a Party requesting a meeting to resolve a dispute. If within ten (10) days after such meeting the Parties have not succeeded in resolving the dispute, the dispute shall be mediated. Either Party may provide written notice to the other that the dispute shall be submitted to mediation and a mediator shall be selected. In the event that within seven (7) days of receipt of said written notice the Parties are unable to agree on a mediator, either Party may request appointment of a mediator by any Judge of the Whatcom County Superior Court, sitting in Chambers, and the Judge is hereby authorized to select a mediator. Both Parties shall cooperate to assure that mediation occurs in a timely manner and both Parties shall supply all materials provided to the mediator to the other Party at least two (2) days

before mediation. Engaging in mediation shall not affect any claim, right, remedy, or defense of either Party. Should mediation prove unsuccessful, all claims, rights, remedies and defenses of each Party shall be preserved. Mediation shall be terminated upon (a) successful resolution of the dispute; (b) written declaration by the mediator of an impasse between the Parties; or (c) following completion of two or more mediation sessions held on separate days, written declaration by one of the Parties of an impasse. Each Party shall share equally in the fees and expenses associated with mediation, including fees and expenses of the mediator; provided that, each Party shall bear its own costs, including witness fees, and costs, associated with mediation.

**15. FORCE MAJEURE.** Neither Party shall be liable to the other Party for failure or delay in performance of this Agreement due to acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either Party or as otherwise defined by law, provided the delayed Party shall make reasonable efforts to avoid or mitigate such delay and shall promptly notify the other Party in writing of the cause of the delay and its extent.

**16. NOTICE.** In every case where, under any of the provisions of this Agreement or in the opinion of either the City or the School or otherwise, it shall or may become necessary or desirable to make, give, or serve any declaration, demand, or notice of any kind or character or for any purpose whatsoever, the same shall be in writing, and it shall be sufficient to either (1) deliver the same or a copy thereof in person to the City Administrator if given by the School, or to the Superintendent of the School personally, if given by the City; or (2) mail the same or a copy thereof by first class, registered or certified mail, postage prepaid, addressed to the other Party at such address as may have theretofore been designated in writing by such Party, by notice served in the manner herein provided, and until some other address shall have been so designated, the address of the City for the purpose of mailing such notices shall be as follows:

City Administrator  
CITY OF LYNDEN  
300 4<sup>th</sup> Street  
Lynden, Washington 98264

and the address of the School shall be as follows:

Lynden Christian Schools  
417 Lyncs Drive  
Lynden, Washington 98264

**17. APPLICABLE LAW AND VENUE.** This Agreement has been, and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by and between the City and the School, that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity, or judicial proceeding, for the enforcement of this Agreement, or any of the

provisions contained therein, shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

**18. ENTIRE AGREEMENT.** This Agreement contains all of the terms and conditions agreed upon by the parties regarding the Licensed Area. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. This Agreement may only be amended by written agreement of the parties.

**19. ATTORNEY'S FEES.** The Parties agree that in the event a civil action is instituted by either Party to enforce any of the terms and conditions of this Agreement or to obtain damages or other redress for any breach hereof, the prevailing Party shall be entitled to recover from the other Party, in addition to its other remedies, its reasonable attorney's fees in such suit or action and upon any appeal therefrom.

**20. SEVERABILITY.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of the applicable law.

**21. NONWAIVER OF BREACH.** Failure of either Party to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

**22. ASSIGNMENT.** The School shall not assign or sublicense its rights or delegate its duties under this Agreement, whether by operation of law or otherwise.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first written above.

**LYNDEN CHRISTIAN SCHOOL**

**CITY OF LYNDEN**

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Paul Bootsma Superintendant

Date

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Mayor Scott Korthuis

Date

## **EXHIBIT A**

### **Licensed Area**

That portion of the Park (hereby described as Whatcom County Tax Parcel Number 400320 354420 0000) located inside a fenced area described as follows:

Starting at the fence in the northeast corner of the Park, follow the fence ~115' south,

Then follow the fence ~42 feet east,

Then follow the fence ~430 feet south,

Then create a new line heading 100 feet west,

Then create a new line ~545 feet north to the northern fence between LC and the Park,

Then follow the fence 100 feet east back to the start point.

Situate in Whatcom County, Washington.