

RETURN TO:

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DOCUMENT TITLE:

Access and Utility Easement

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTOR:

CMF FARMING PROPERTIES, L.L.C., a Washington limited liability company

GRANTEE:

CITY OF LYNDEN, a municipal corporation

ABBREVIATED LEGAL DESCRIPTION (Full Legal Descriptions on Pages 1-2):

Ptn. SE SE, S23, T40N, R2E

ASSESSOR'S TAX PARCEL NUMBER(S):

400223 466067 0000

400223 515031 0000

**ACCESS AND UTILITY EASEMENT
CITY OF LYNDEN, WASHINGTON**

THE UNDERSIGNED, CMF FARMING PROPERTIES, L.L.C., a Washington limited liability company, its successors and assigns, (hereinafter referred to as "GRANTOR") for the public benefit, hereby conveys and grants to the CITY OF LYNDEN, a municipal corporation, its successors and assigns (hereinafter referred to as the "CITY"), from the following described property (hereinafter referred to as "Grantor's Property"):

Assessor's Parcel Number: 400223 466067 0000

The Southeast quarter of the Southeast quarter of Section 23, Township 40 North, Range 2 East of W.M., less roads.

EXCEPT: The West 350 feet of the South 1245 feet of said Southeast quarter of the Southeast quarter of said Section 23.

EXCEPT: Beginning at the Southeast corner of Section 23, Township 40 North, Range 2 East of W.M., Whatcom County, Washington; thence North 1200 feet; thence West 363 feet; thence South 1200 feet; thence East 363 feet to the point of beginning. Less roads. Containing 20 acres more or less.

Situate in Whatcom County, Washington.

Assessor's Parcel Number: 400223 515031 0000

Beginning 600 feet North of the Southeast corner of Section 23, Township 40 North, Range 2 East of W.M.; thence West 363 feet; thence South 600 feet; thence East 363 feet; thence North 600 feet to the point of beginning. Less roads. Containing 5 acres.

Situate in Whatcom County, Washington.

A permanent, non-exclusive access and utility easement (hereinafter referred to as "Easement") over, across, along, in, upon and under the portion of property (hereinafter referred to as "Easement Area") described on Exhibit A and depicted on Exhibit B attached hereto, both fully incorporated herein by reference.

The CITY shall have the right, without prior institution of any suit or proceeding at law, to enter upon said Easement Area for the purpose of constructing, operating, maintaining, improving, removing, repairing, replacing and using one (1) underground water line, together with all underground connections and underground appurtenances thereto (the "Facility"), and together with the right of reasonable ingress to and egress from the Easement Area over the Grantor's Property for the foregoing purposes in the event that access is not reasonably feasible directly from the public road right-of-way. The CITY shall not install or locate within the Easement Area any above-ground infrastructure, including but not limited to, hydrants, meters and boxes. All utility pipes shall be located no more than five (5) feet from the southern outside edge of the Easement Area to avoid creating an unnecessary burden on the Grantor's Property. Also, all utility pipes shall have a minimum of three (3) feet of cover.

The GRANTOR, by executing this Easement Agreement, and the CITY by accepting and recording this Easement Agreement, do hereby mutually covenant and agree as follows:

1. The CITY shall, if either the Grantor's Property or Easement Area is disturbed by the operation, improvement, maintenance, removal, repair, replacement or use of the Facility, restore the surface of the Grantor's Property or Easement Area as nearly as possible to the condition in which it existed at the commencement of said operation, improvement, maintenance, removal, repair, replacement, use or other disturbance. In the event grass is disturbed, the CITY'S obligation to restore shall be limited to re-seeding disturbed grass. In the event vegetation such as plants, shrubs, or trees are disturbed, the CITY'S restoration obligation shall be deemed satisfied if it replaces the disturbed plants, shrubs, or trees with smaller or younger plants. The CITY is not required to replace disturbed grass, plants, shrubs, trees or other vegetation with the same species or variety as what was disturbed, but will make reasonable efforts to do so. In addition, the restoration of the soil in its original layers shall occur to ensure all topsoil is preserved on the Grantor's Property. Notwithstanding the foregoing, there shall be a special restoration obligation with respect to disturbances to berry plants on Grantor's Property growing *outside* the Easement

Area: in such cases the CITY shall replace said berry plants with similarly mature berry plants or, if replacement is not feasible, the CITY shall provide compensation to GRANTOR for the loss of the plant maturity. Disturbances to berry plants growing *within* the Easement Area are not subject to this special restoration obligation, provided that the City takes reasonable steps to minimize the disturbance to any berry plants.

Further, the CITY shall take all reasonable precautions and efforts to avoid unreasonable interference or obstruction of Grantor's Property while operating and maintaining the water line within the Easement Area, specifically including but not limited to, minimizing the creation of dust that could coat any plants growing on the Grantor's Property.

2. The CITY shall protect and save harmless GRANTOR from and against any and all claims, demands, loss, damage, expense and liability of every kind and description and for any damage to or loss or destruction of property suffered by GRANTOR, or by any persons, firms, or corporations, arising as a result of the CITY'S negligent acts and omissions in the maintenance of the Facility; provided, however, that this hold harmless provision shall not apply to GRANTOR'S negligence, or to any damage or injury resulting from a violation of Paragraph 5 herein.

3. The GRANTOR warrants that the GRANTOR has good title to the Grantor's Property and Easement Area and warrants the CITY title to, and quiet enjoyment of, the Easement conveyed hereby.

4. All right, title and interest which may be used and enjoyed without interfering with the easement rights conveyed are reserved to the GRANTOR.

5. The CITY understands that the GRANTOR is conducting farming activity on the Grantor's Property that involves digging, tunneling and other forms of construction activity, which could include but not be limited to the installation of underground irrigation lines and the installation of posts. These activities will continue within the Easement Area and on Grantor's Property. In an effort not to damage or disturb the Facility, unearth or undermine the Facility or endanger the lateral support to the Facility, the CITY will mark or flag the water line so that the location is clearly known.

6. In the event the Facility is interfering with GRANTOR's use of Grantor's Property and GRANTOR wishes to relocate the Facility to a new location on Grantor's Property, GRANTOR may do so only after obtaining the CITY's approval of the relocation in general and of the proposed new location in particular. Relocation of the Facility shall be at GRANTOR's sole cost and expense. Further, prior to relocation, GRANTOR shall prepare and record an addendum to this Easement Agreement containing a new legal description reflecting the new location of the Facility. All costs incurred in preparing and recording said addendum shall be borne by GRANTOR.

7. All routine and non-emergency work and activities within the Easement Area by the CITY shall be coordinated during the farming off-season to limit the impact to the GRANTOR'S operations. Said coordination may be conducted by telephone (at a number provided by GRANTOR) and shall take place by contacting the GRANTOR and arranging a mutually

agreeable date, time and duration for the work and activities. Provided, the CITY shall have the right to immediately access the Easement Area at any time and in any season for emergency maintenance purposes without prior notice to GRANTOR. The CITY shall, however, endeavor to notify GRANTOR of any emergency maintenance activity as soon as reasonably practicable.

8. Should either party hereto, or their heirs, successors or assigns, institute suit to enforce any covenant or right granted herein, the prevailing party shall recover its costs of litigation, including a reasonable attorney's fee.

9. This Easement Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Easement Agreement shall be in the Superior Court for Whatcom County, State of Washington.

10. The covenants contained herein are intended to and shall run with the land and shall benefit and bind the parties and their respective heirs, successors and assigns.

11. Should any provision of this Easement Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

12. The CITY shall pay any recording fees related to this Easement Agreement. Each party shall be solely responsible for their own attorney's fees related to the preparation of this Easement Agreement.

13. Nothing contained in this Easement Agreement grants a dedication of any portion of real property to the general public, except as may be specifically provided herein. This Easement Agreement shall be for the benefit of the City water utility.

14. The Easement shall commence upon the recording of this Easement Agreement with the Whatcom County Auditor.

15. The CITY shall at all times exercise its rights herein in accordance with the requirements (as from time-to-time amended) of all applicable statutes, laws, orders, rules, and regulations of any public authority have jurisdiction, including its own.

16. This Easement Agreement may be amended or terminated only by mutual written agreement of the parties.

17. This Easement Agreement may consist of two or more separately ratified counterparts, each of which constitutes a duplicate original of this Easement Agreement.

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

19. This Easement 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 Easement Agreement shall be considered a part of this Easement Agreement unless expressly incorporated herein in writing.

20. Any notice, declaration, demand or communication to be given by a party to this Easement Agreement to the other, except for communication by telephone per Paragraph 7 herein, shall be in writing and transmitted to the other party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

To GRANTOR:

CMF Farming Properties, L.L.C.
Attn: Matt Maberry
697 Loomis Trail Road
Lynden, WA 98264

To CITY:

City of Lynden
Attn: Steve Banham
300 4th Street
Lynden, WA 98264

Dated this _____ day of _____, 2020.

GRANTOR:

CMF Farming Properties, L.L.C.

CITY:

City of Lynden

By: _____
Its: _____

By: _____
Its: _____

STATE OF WASHINGTON }
 }
COUNTY OF WHATCOM } ss.

On this ____ day of _____, 2020, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ the _____ of **CMF FARMING PROPERTIES, L.L.C.**, a Washington limited liability company, who acknowledged that he was authorized to execute this document on behalf of the company and acknowledged said instrument to be the free and voluntary act and deed of the company for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.

SEAL

{Notary Signature}
Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON }
 }
COUNTY OF WHATCOM } ss.

On this ____ day of _____, 2020, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of the **CITY OF LYNDEN**, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

SEAL

{Notary Signature}
Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

EXHIBIT A
Description

EXHIBIT B
Depiction