

After recording return document to:

City of Lynden
300 4th Street
Lynden, WA 98264
Attn: Public Works Department

Document Title: Mitigation Monitoring Easement

Related Documents:

Grantor:

Grantee: City of Lynden

Abbreviated Legal:

Tax Parcel No.:

Project:

MITIGATION MONITORING EASEMENT

THIS MITIGATION MONITORING EASEMENT (“Easement”) is made this _____ day of _____, 20____, by and between _____ (“Grantor”) and **City of Lynden**, a Washington municipal corporation (“Grantee”).

RECITALS

WHEREAS, use of the term “Grantee” herein shall include its employees, contractors, and agents; and

WHEREAS, Grantor is the owner in fee simple of that certain real property (hereinafter the “Protected Property”) in Whatcom County, Washington, legally described in **Exhibit A** and depicted on **Exhibit B**, which are attached hereto and incorporated herein by this reference; and

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WHEREAS, as a requirement for the development undertaken under permit number(s) _____ (“the Project”), Grantor must preserve the Protected Property in its natural state and enhance its natural, scenic, educational, and/or recreational values as described in the critical area mitigation plan associated with the Project (“Mitigation Plan”), which is on file with the City _____ Department; and

WHEREAS, the Project occurred on the real property legally described at **Exhibit C** hereto (“Developed Property”);

NOW, THEREFORE, in consideration of the promises and conditions herein, Grantor and Grantee hereby covenant and agree as follows:

GRANT OF EASEMENT

1. Grant of Easement. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants, conveys, and warrants to Grantee this Mitigation Monitoring Easement over the Protected Property.

2. Access. For a period of _____ years following execution hereof, Grantee shall have the right to enter the Protected Property for the purpose of monitoring the state of the Protected Property, including but not limited to mitigation plantings, plant management, restoration, and monitoring to the extent Grantee deems necessary to comply with federal, state, and City permit requirements. Grantee may access the Protected Property by crossing the Developed Property in the area designated on Exhibit B.

- a. For the purpose of making a general inspection to assure compliance with the Mitigation Plan, Grantee may enter upon the Protected Property at a mutually agreeable time and upon prior written notice to the Grantor.
- b. Grantee may enter upon and inspect the Protected Property immediately and without notice if there is reason to believe that a violation of the Mitigation Plan, Critical Areas Ordinance (Lynden Municipal Code Chapter 16.16, as amended), other City ordinance, or state or federal law is occurring.
- c. Grantee may cross the Developed Property and enter the Protected Property with whatever tools, machinery, equipment and vehicles Grantee in its sole discretion deems necessary.

3. Injunction and Restoration. In addition to its authority under the Critical Areas Ordinance, this Easement grants to Grantee the rights to enjoin any activity on, or use of, the Protected Property which is inconsistent with the Mitigation Plan or this Easement, including trespasses by members of the public, and to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof.

4. Enforcement. Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction,

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to recover damages to which it may be entitled for violation of the terms of this Easement or any injury to the Protected Property, and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

5. Costs of Enforcement. In the event Grantee must enforce the terms of this Easement, the costs of restoration and Grantee's reasonable enforcement expenses, including attorney's fees, shall be borne by Grantor or those of its heirs, successors, or assigns, against whom a judgment is entered.

6. Nonwaiver of Breach. Enforcement of the terms of this Easement shall be at the discretion of the Grantee and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term of any Grantee's right under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

7. Warranty. The Grantor warrants that it has good title to the Protected Property and the Developed Property and warrants the Grantee title to, and quiet enjoyment of, this Easement.

8. Not a Public Dedication. Nothing contained in this Easement grants a dedication of any portion of real property to the general public or for any public use. No other right, privilege, or immunity of any party shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.

9. Indemnification.

- a. Grantor shall protect and hold harmless Grantee 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 Grantee, or by any persons, firms, or corporations, arising as a result of the Grantor's negligent acts and omissions related to Grantee's accessing and monitoring the Protected Property; provided, however, that this hold harmless provision shall not apply to Grantee's negligence.
- b. Grantee shall protect and hold 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 Grantee's negligent acts and omissions related to Grantee's accessing and monitoring the Protected Property; provided, however, that this hold harmless provision shall not apply to Grantor's negligence or conditions related to Grantor's failure to perform mitigation on the Protected Property per the Mitigation Plan.

10. Run with the Land. This Easement shall constitute covenants running with the land, and shall be binding on the undersigned and all successors, assignees, devisees, or transferees of Grantor or

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Grantee and shall in all respects attach to the individual properties legally described in this Easement.

11. Amendment or Termination. This Easement may be amended or terminated only by mutual written agreement of the Parties.

12. Recording. Grantee shall record this Easement in the official records of Whatcom County, Washington.

13. Controlling Law and Venue. The laws of the State of Washington shall govern the interpretation and performance of this Easement. Venue shall be the Superior Court of Whatcom County, Washington.

14. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument on the date first above written.

GRANTOR

By: _____
Its: _____

By: _____
Its: _____

Accepted by City of Lynden

Approved as to form:

By: _____
Mayor
Date: _____

By: _____
Printed Name: _____
Title: City Attorney
Date: _____

MITIGATION MONITORING EASEMENT

STATE OF WASHINGTON }
 }
County of Whatcom } **SS.**

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

DATED: _____

Name (typed or printed): _____
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON }
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County of Whatcom } **SS.**

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