

RESOLUTION NO. 966

**A RESOLUTION OF THE CITY OF LYNDEN AUTHORIZING
THE SALE OF SURPLUS PROPERTY**

WHEREAS, the City of Lynden purchased stormwater discharge rights for public utility purposes from several property owners within the original West Lynden Regional Facility Assessment Area in 2008; and

WHEREAS, the City of Lynden paid \$113,932.68 for all of the above discharge rights in 2008; and

WHEREAS, on February 21, 2017, the City Council of the City of Lynden resolved that the discharge rights and stormwater capacity within the West Lynden Regional Facility and use of its conveyance systems commensurate with approximately 13.92 acres of land is surplus property; and

WHEREAS, City staff verified that the surplus property is more precisely the discharge rights and stormwater capacity within the West Lynden Regional Facility and use of its conveyance systems commensurate with 12.35 acres of land given that the land contains a stream and stream buffer; and

WHEREAS, the City desires to sell the above described surplus property to a property owner within the same drainage basin (Duffner Ditch) as the West Lynden Regional Facility for the common benefit; and

WHEREAS, the City held a public hearing on March 6, 2017, prior to sale of the above described surplus property; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lynden as follows:

Section 1: The Mayor of the City of Lynden is authorized to sell for fair market value or a pro-rata amount, through acceptance of bids or direct for sale with prospective purchaser(s), or a combination thereof, all or a portion of the rights to discharge stormwater commensurate with approximately 12.35 acres of land, to the City's stormwater management system and presently the West Lynden Regional Facility and its conveyance systems ("Discharge Rights") in accordance with an agreement in substantially the same form as the attached Exhibit A; and

Section 2: The fair market value of all of the Discharge Rights is \$117,546.23. If a portion of the Discharge Rights is sold, it shall be sold at a pro-rata amount of the fair market value for all of the Discharge Rights.

Section 3: BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section 4: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

Section 5: This Resolution shall be in full force and effect immediately.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, 7 IN FAVOR
0 AGAINST, AND SIGNED BY THE MAYOR THIS 6 DAY OF march,
2017.



MAYOR SCOTT KORTHUIS

ATTEST:



CITY CLERK PAMELA BROWN

APPROVED AS TO FORM:



CITY ATTORNEY BOB CARMICHAEL

RETURN TO:

CITY OF LYNDEN
300 4th Street
LYNDEN, WA 98264

DOCUMENT TITLE:

STORMWATER DISCHARGE AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENTS:

AFN # 2080902015
AFN # 2080902016
AFN # 2080902017
AFN # 2080902018

GRANTOR:

City of Lynden, a Washington municipal corporation

GRANTEE:

<>

ABBREVIATED LEGAL DESCRIPTION:

<> Lynden, WA
Full legal description at page _____ hereto

ASSESSOR'S TAX PARCEL NUMBER(S):

<>

<>

STORMWATER DISCHARGE AGREEMENT

This Stormwater Discharge Agreement (hereinafter "Agreement") is made and entered into this ____ day of _____, 2017, between the City of Lynden, a Washington Municipal Corporation, (hereinafter "City") and <property owner(s)> (collectively <>).

WHEREAS, the City is the owner of a regional stormwater facility, the West Lynden Regional Facility, located in Lynden, Whatcom County, Washington, which is located on real property more particularly described in Exhibit A attached hereto together with related stormwater pipes and appurtenances and depicted on Exhibit B attached hereto, (referred to herein as "Stormwater Pond");

WHEREAS, the pertinent associated Stormwater Pond conveyances are located within real property more particularly **described in Exhibit <>**; and

WHEREAS, in 2006, pursuant to Ordinance 1256, the City created LID No. 4 and the benefited area for the Stormwater Pond and its associated conveyances. The City confirmed the final assessment roll and converted LID No.4 to a ULID in 2008. Thereafter, properties within the benefited area ("U.L.I.D. boundary") were assessed; and

WHEREAS, <Property Owner> is the owner of a parcel of real property located in Whatcom County, Washington, which is more particularly described in Exhibit <> attached hereto (the "<Property Owner> Property");

WHEREAS, <Property Owner> Property is not located within the U.L.I.D. boundary and was not assessed for the Stormwater Pond and its associated conveyances but, it is within the same stormwater drainage basin as the Stormwater Pond and its stormwater may be discharged to the Stormwater Pond; and

WHEREAS, the City determined it has excess capacity in the Stormwater Pond available for stormwater discharge use by others in an amount equivalent to the stormwater discharge rights purchased in 2008, declared this surplus property and now desires to sell the surplus property to a property owner within the same drainage basin (Duffner Ditch) as the Stormwater Pond; and

WHEREAS, the City and <Property Owner> agreed that the <Property Owner> will purchase <amount> of the above described surplus property so that it may discharge stormwater at a rate and water quality volume approved by the City to the Stormwater Pond and its associated conveyances or the City's stormwater management system; and

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

NOW, THEREFORE, in consideration of the mutual covenants and restrictions contained herein, the Parties agree as follows:

1. Discharge Right Transfer. The City hereby agrees to grant and convey to the <Property Owner> all right and interest to discharge stormwater generated from <> square feet of land at a rate and

water quality volume approved by the City to the City's stormwater management system which presently includes the Stormwater Pond and its conveyances ("Discharge Rights"); The <Property Owner> may not discharge stormwater prior to City approval to connect or in excess of the above amounts, to the City's stormwater management system.

2. Consideration. In exchange for the grant and covenant setforth above, the <Property Owner> shall pay the City <> for the Discharge Rights. This payment shall not excuse the <Property Owner> from payment of the general facility capital improvement fee charged or any other fees or charges associated with the issuance of building permits for new construction or additions to existing buildings. Furthermore, the <Property Owner>, its successors and assigns are liable for monthly stormwater charges established by City resolution in accordance with LMC 13.24.050 now or as hereinafter amended.

3. Default. <Property Owner> shall be in violation of the discharge limitation setforth in the covenant contained in Section <> if the total amount of stormwater discharge from its properties exceed the Discharge Rights purchased unless the <Property Owner> can demonstrate that the <Property Owner> has obtained all required local, state or federal permits or approvals for handling that portion of the stormwater discharge from the <Property Owner's Property> that exceeds the Discharge Rights purchased.

4. No Impairment of City Regulatory Discretion. Nothing in this Agreement shall limit the City's authority to control, regulate or charge for use of its stormwater utility pursuant to current LMC 13.24 now or hereinafter amended or future City ordinances, so long as such discretion is exercised consistent with the terms of this Agreement. A complete application for development filed on or before 12/31/17 will vest to the stormwater regulations in place at the time of filing, so long as construction commences before 1/1/23. Complete applications filed on or after 1/1/18 or for which construction has not commenced by 1/1/23, must comply with the new stormwater regulations to be adopted by the City in 2017. The Stormwater Pond is designed for enhanced treatment per the 2001 Stormwater Management Manual for Western Washington. Additional onsite owner supplied treatment may be required if site specific controls are required by current adopted regulations.

5. Notices. Notices, demands, and correspondence to City and <Property Owner> shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the Parties as designated. The Parties hereto may, from time to time, advise the other of new addresses for such notices, demands, or correspondence.

Property Owner:

<>

City:

City of Lynden
300 Fourth Street
Lynden, WA 98264

6. Binding Effect. This Agreement and the covenants, restrictions and grant herein shall inure to the benefit of the Parties, their heirs, successors and assigns. This Agreement and the covenants and restrictions herein are intended to and shall be a perpetual covenant running with the land and be appurtenant to the **properties described in Exhibits A and <>**.

7. Amendments. This Agreement may be changed, modified, or amended only by written agreement executed by the Parties hereto.

8. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and any action to enforce its terms shall be brought in Whatcom County Superior Court.

9. Dispute Resolution. All claims, disputes and other matters in question between Developer and City shall, in the first instance, be subject to a non-binding mediation proceeding. Either Party may notify the other, by certified mail, of the existence of a claim or dispute. If such claim or dispute cannot promptly be resolved by the Parties, <Property Owner> shall promptly contact the Judicial Arbitration and Mediation Service, Inc., or any other recognized mediation service agreed to by the Parties, to arrange for the engagement and appointment of a mediator for the purpose of assisting the parties to amicably resolve the claim or dispute. The cost of the mediator shall be borne equally by the Parties. Mediation shall take place within sixty (60) days following issuance of the written notice of a claim or dispute. The Parties shall cooperate fully with the appointed mediator's attempt to resolve the claim or dispute, and also agree that a lawsuit may not be commenced, by either Party, until at least one (1) mediation session has taken place. This mediation provision may be asserted by either Party as grounds for staying any legal action filed in court.

10. No Third Party Beneficiaries. This Agreement is between the City and <Property Owner> and is not intended to be for the direct or indirect benefit of any third parties. The City and <Property Owner> hereby declare their intent that this Agreement shall not give rise to any third party enforcement right of any kind.

11. Severability. If any section, subsection, sentence, clause, or phrase in this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. Effective Date. This Agreement shall be effective on the date last signed by a signatory hereof.

13. Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the Parties. No understanding, verbal or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the Parties hereto.

14. Time of the Essence. Time is of the essence with respect to each and every term of this Agreement.

15. Authority to Bind. The individuals signing this Agreement have full authority to execute same and bind the Party on whose behalf they have signed.

IN WITNESS, WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

PROPERTY OWNER:

<>

GRANTEE:

City of Lynden

By: <>

Its: <>

Date: _____

By: SCOTT KORTHUIS

Its: Mayor

Date: _____

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that <> is the person who appeared before me, and said person is a MEMBER and acknowledged that he signed this instrument, freely and voluntarily, on behalf of the <>, for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2017.

Print Name: _____

NOTARY PUBLIC in and for the State of

Washington.

My Commission expires _____.

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 is the MAYOR and acknowledged that he signed this instrument, freely and voluntarily, on behalf of the CITY OF LYNDEN for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2017.

Print Name: _____

NOTARY PUBLIC in and for the State of

Washington.

My Commission expires _____.