

REAL ESTATE CONVEYANCE AGREEMENT

DATE: _____, 2013

This Real Estate Conveyance Agreement (« Agreement ») is entered into by and between The CITY OF MARYSVILLE, a municipal corporation of the State of Washington, (“City”) and MARYSVILLE SCHOOL DISTRICT NO. 25 (“District”) as of the day stated above.

RECITALS

WHEREAS, the District owns certain unimproved real property, commonly known as Snohomish County tax parcel no. 300527-004-019-00, which real property is legally described on Exhibit A attached hereto (the « Property »);

WHEREAS, the Property contains significant wetlands and is largely undevelopable ;

WHEREAS, the District currently uses the Property for its environmental studies curriculum, and desires to continue to utilize the Property for such purposes;

WHEREAS, the Property has important ecological benefits to the citizens of the City of Marysville;

WHEREAS, the District incurs significant annual maintenance costs for the Property, which it desires to avoid in the future;

WHEREAS, the City currently maintains utility systems on and beneath the Property and roads adjacent to the Property and is better situated to handle necessary maintenance of the Property;

WHEREAS, the City is interested in maintaining the Property and the wetlands for purposes consistent with its municipal functions;

WHEREAS, the District wishes to convey the Property to the City and the City wishes to acquire the Property from the District; and

WHEREAS, this Agreement between Parties is made pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, to permit the continuing use of the Property by District and allow City and District to exercise their powers jointly and thereby maximize their abilities to provide services and facilities that will best fulfill common needs and achieve common goals.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, the foregoing recitals and the mutual covenants herein contained, Buyer and Seller hereby agree as follows:

AGREEMENT

The City agrees to acquire, and the District agrees to convey, the Property on the following terms:

1. **CONSIDERATION:** There shall be no monetary consideration paid by City to District for this conveyance. The mutual agreements and covenants contained herein and in the ATTACHMENT 1 deed and the ATTACHMENT 2 interlocal agreement are the sole consideration for this transaction.

2. **CONDITION OF TITLE:** Title to the property is to be free of all encumbrances or defects except for those exceptions set out in Exhibit B attached hereto. District shall discharge any additional encumbrances prior to closing.

(City and District authorize Closing Agent to insert, over their signatures, the legal description of the property and/or to correct the legal description entered.)

3. **UTILITIES:** District warrants that, to the best of the District's knowledge, the Property is not connected to any utilities.

4. **WAIVER OF DISCLOSURE UNDER RCW 64.06:** Pursuant to RCW 64.06.010, City hereby expressly waives City's rights to disclosures under RCW 64.06, including the right of rescission.

5. **TITLE INSURANCE:** City may elect to purchase title insurance for this transaction in City's sole discretion. If City so elects, City shall select the title insurer, and this transaction shall be contingent upon title being insurable subject only to such exceptions as may be acceptable to City, in City's sole discretion.

6. **CONDITION OF PROPERTY:**

- (a) Hazardous Substances: District represents and warrants that, to the best of District's knowledge, it is not aware of any soils or groundwater contamination of the property by hazardous substances. For purposes of this paragraph, the definition of the term "hazardous substances" shall be those used in applicable state and federal regulations, provided that the definition of the term "hazardous substance" shall include petroleum and related byproducts and hydrocarbons.
- (b) Reports and Surveys: Prior to closing District agrees to provide City with any and all engineering studies, soils studies, environmental reviews, surveys, reports, investigations and other non-privileged documents in its possession concerning the condition of the subject property. City may terminate this transaction in the event it determines that the subject property is unsuitable as a result of any information so disclosed, in City's sole discretion.
- (c) As-Is : Except for the specific representations and warranties by the District set forth in this Agreement, the Property is to be conveyed to the City in its current « as-is » condition, with all faults, and the District makes no representation or warranty, express or implied, concerning the suitability, habitability or fitness of the Property for any purposes whatsoever.

7. **TITLE CONVEYANCE:** District shall convey title to City by Quit Claim Deed at closing, subject only to the exceptions noted in paragraphs 2 and 5 above. The Deed shall be in the form attached hereto as **ATTACHMENT 1**.

8. **INTERLOCAL AGREEMENT:** As a material consideration of this agreement, the parties shall enter into the "Interlocal Agreement Between the City of Marysville and Marysville School District No. 25 for Use of the Jones Creek Parcel" attached hereto as **ATTACHMENT 2**.

9. **PROPERTY AND PROPERTY RIGHTS INCLUDED:** No personal property or structures located on the property are included in this transaction. The District shall retain ownership of the existing building on the Property after closing. Subject to the restrictions contained in **ATTACHMENT 2** District may remove and replace said building with a structure of similar size and function. The conveyance will include transfer of all District's rights with respect to the fisheries hydraulic project approval permit and all other permits applicable to the Property. District will cooperate with City to secure transfer/assignment of such permit(s), and District will transfer and deliver to City all documentation it may have pertaining to the same.

2014
10. **CLOSING OF SALE:** This sale shall be closed at the office of WEED, GRAAFSTRA AND BENSON, INC., P.S., Closing Agent, not later than January 31, 2013 (hereinafter the "closing deadline"). City and District will, immediately on demand, deposit with Closing Agent all instruments and monies required to complete the purchase in accordance with this agreement. The date of closing shall be the date upon which all appropriate documents are recorded.

If this sale has not closed by the closing deadline, either party may terminate this transaction by written notice to the other, in which event this agreement shall be null, void and unenforceable.

District acknowledges that the firm of WEED, GRAAFSTRA AND BENSON, INC., P.S. is the City Attorney and represents City in this matter.

11. **CLOSING COSTS:** City shall pay all closing costs.

12. **POSSESSION:** City shall be entitled to possession on the date of closing, subject to the rights retained by District.

13. **ATTORNEYS' FEES:** In any proceeding brought to enforce this agreement or to determine the rights of the parties under this agreement, the prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorneys' fees, and all costs and expenses incurred in connection with such a lawsuit, including attorneys' fees, costs, and expenses of any appeal of a judgment. For purposes of this agreement, the prevailing party shall be that party in whose favor final judgment is rendered or who substantially prevails, if both parties are awarded judgment. The term "proceeding" shall mean and include arbitration, administrative, bankruptcy and judicial proceedings including appeals.

14. **NOTICE:** If notice is given pursuant to this agreement, it shall be given to the parties by personal service, or by certified mail, postage prepaid, return receipt requested at the following addresses:

District's name and address:

MARYSVILLE SCHOOL DISTRICT NO. 25
4220 – 80th Street NE
Marysville, WA 98270

Telephone No. (360) 653-0848

With copy to: K&L Gates LLP, Attn : Charles Royce
925 Fourth Avenue, Suite 2900
Seattle, WA 98104

City's name and address:

CITY OF MARYSVILLE
1049 State Avenue
Marysville, WA 98270

Telephone No. (360) 363-8000

With copy to: Grant K. Weed, City Attorney
21 Avenue A
Snohomish, WA 98290

or at such other address as either party designates by written notice to the other party and to the Closing Agent. All notices shall be deemed given on the day such notice is personally served, or on the third day following the day such notice is mailed in accordance with this paragraph.

15. ENTIRE AGREEMENT; TIME; BINDING AGREEMENT: This agreement, with the attachments incorporated herein by reference, constitutes the entire agreement between the parties and there are no verbal agreements, nor will there be any verbal agreements, which modify or amend this agreement. Time is of the essence in this agreement. If any deadline or the time for performance hereunder falls on a Saturday, Sunday or a day that is recognized as a holiday by the State of Washington, then such time shall be deemed extended to the next day that is not a Saturday, Sunday or holiday. This agreement is binding on the parties, their personal representatives and heirs.

16. EQUAL BARGAINING: This agreement has been drafted by the mutual efforts of the parties represented by their respective legal counsel. District and City acknowledge and represent that each of them is fully competent to negotiate and to enter into this agreement with the other and that they have freely entered into it with adequate opportunity for prior consultation with independent legal counsel of their choosing. All terms and provisions shall be given their fair and reasonable interpretation without reference to which party, or its counsel, drafted any particular term or provision in question.

17. **DEADLINE:** This agreement is void unless executed by both parties by 5:00 p.m. on January 15, 2013. 2014

18. **BROKERS AND FINDERS:** Neither party has had any contact or dealings regarding the property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the transaction contemplated herein. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contract, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for said commission or fee and all costs and expenses (including reasonable attorney's fees) incurred by the other party in defending against the same. The provisions of this paragraph shall survive the closing, or, if closing does not occur pursuant to this agreement, the provisions of this paragraph shall survive any termination of this agreement.

19. **CITY COUNCIL AND SCHOOL BOARD APPROVAL:** The District acknowledges that this agreement does not bind the CITY OF MARYSVILLE until approved by the City Council and executed by the Mayor. The City acknowledges that this agreement does not bind MARYSVILLE SCHOOL DISTRICT NO. 25 until approved by the School Board and executed by the Superintendent.

20. **AUTHORITY TO EXECUTE:** Each party represents and warrants that this agreement is valid and binding, is duly authorized by appropriate action of its governing body, and that the person signing below has authority to bind the respective party to the agreement.

21. **NO MERGER:** The terms, representations, warranties and attorney's fee provisions of this agreement shall not merge in the deed or other conveyance instrument transferring the property to City at closing. The terms, representations, warranties and attorney's fee provisions of this agreement shall survive closing.

DATED October _____, 2013:

DATED November 25, 2013:

CITY OF MARYSVILLE

MARYSVILLE SCHOOL DISTRICT NO. 25

By _____
JON NEHRING, Mayor

By 
DR. BECKY BERG, Superintendent

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL A:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 30 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTH LINE OF SAID SECTION 27 DISTANT EASTERLY ALONG SOUTH LINE 510 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE, FROM SAID POINT OF BEGINNING, PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF SAID SECTION 27, NORTHERLY 330 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF SAID SECTION, EASTERLY 1064 FEET, MORE OR LESS, TO THE INTERSECTION OF A LINE 10 FEET EASTERLY FROM AND PARALLEL WITH THE NORTHERLY PROLONGATION OF THE EAST LINE OF 64TH AVENUE, NORTHEAST; THENCE ALONG SAID LINE SOUTHERLY 330 FEET, MORE OR LESS, TO SAID SOUTH LINE OF SECTION 27; THENCE ALONG SAID SOUTH LINE, WESTERLY 1087 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL B:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 30 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE EAST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 510 FEET; THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 330 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 100 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SUBDIVISION A DISTANCE OF 185 FEET; THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 60 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SECTION 27 A DISTANCE OF 790 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE NORTHERLY PROJECTION OF THE WEST LINE OF 64TH AVENUE NORTHEAST PRODUCED; THENCE SOUTHERLY ALONG SAID PROJECTION A DISTANCE OF 160 FEET, MORE OR LESS TO THE NORTH LINE OF THE SOUTH 330 FEET OF SAID SUBDIVISION; THENCE WEST ALONG THE NORTH LINE OF SAID SOUTH 330 FEET A DISTANCE OF 984 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

EXCEPTIONS TO TITLE

- 1) Easement, including terms and provisions contained therein:
Recording Information: 1602091, March 29, 1963
In Favor of: Town of Marysville
For: Water Line

- 2) 5. Easement, including terms and provisions contained therein:
Recording Information: 1602093, March 29, 1963
In Favor of: Town of Marysville
For: Water Line
Affects: 10 foot wide strip in Parcel A

- 3) Easement, including terms and provisions contained therein:
Recording Information: 2177949, December 22, 1970
In Favor of: Stanley M. Wood
For: ingress, egress and utilities
Affects: East 10 feet of Parcel A

- 4) Easement, including terms and provisions contained therein:
Recording Information: 2177932, December 22, 1970
In Favor of: Stanley W. Wood and Katherine Wood, husband and wife
For: ingress, egress and utilities
Affects: Easterly 10 feet of property herein described

- 5) Easement, including terms and provisions contained therein:
Recording Information: 8511080173
In Favor of: County of Snohomish
For: Drainage

- 6) Easement, including terms and provisions contained therein:
Recording Information: 200906250275
In Favor of: City of Marysville, a municipal corporation
For: Temporary construction

ATTACHMENT 1

After Recording Return to:

City of Marysville
1049 State Avenue
Marysville, WA 98270

QUIT CLAIM DEED

Grantor: MARYSVILLE SCHOOL DISTRICT NO. 25
Grantee: CITY OF MARYSVILLE
Legal Description: Portion of S½ SE¼ 27-30-5, Snohomish County, WA Add'l on P.
5
Tax Parcel: 300527-004-019-00

THE GRANTOR, MARYSVILLE SCHOOL DISTRICT NO. 25 (hereinafter “District”), for and in consideration of the mutual covenants contained herein, conveys and quit claims to the CITY OF MARYSVILLE, a municipal corporation of the State of Washington (hereinafter “City”), the following-described real estate, situated in the County of Snohomish, State of Washington, including any interest therein which Grantor may hereafter acquire:

SEE EXHIBIT A

hereinafter referred to as the “Property”, subject to all matters of record, including, but not limited to, those listed on Exhibit B attached hereto.

This conveyance includes the transfer and/or assignment of all active permits affecting the Property. This conveyance is SUBJECT TO the following terms and conditions:

1. Right of First Refusal. In the event City elects to sell the Property, District shall have the right of first refusal to reacquire the Property for the price of \$1.00 plus the actual documented, unamortized costs of any Improvements (as hereinafter defined) made to the Property by, and at the expense of, the City during the City’s ownership of the Property. As used herein, « Improvements » means physical improvements made to, or constructed on or beneath, the Property with City funds which reasonably increase the fair market value of the Property (such as connections to power and sewer services), but Improvements shall not be deemed to include the cost of replacment or repair of any existing facilities or utilities on or beneath the Property or any improvements made to the Property with funds or grants supplied by third parties. For purposes of calculating the purchase price for the District’s right of first refusal, the cost of any Improvements shall be amortized over the useful life of the Improvements in accordance with generally accepted accounting principles, and the District

shall reimburse the City for the unamortized balance of the value of such Improvements remaining at the time the District exercises its right of first refusal (if any). City shall notify District of its intention to sell the Property and any covenants and/or special use conditions City will impose upon the Property at time of sale or transfer. District shall have sixty (60) days from receipt of such notice to notify City, in writing, of its intention to reacquire the property, subject to City's covenants and/or special use conditions. If District so notifies City, City shall convey title back to District by quit claim deed, subject to the covenants and/or special use conditions imposed by City, within thirty (30) days after receipt of District's notice and payment of the purchase price. City shall pay costs of preparation of the conveyance instrument. District shall pay recording expenses and the title insurance premium if District elects to secure title insurance. If District fails to so notify City, City may proceed to market the Property, but may not sell the property except subject to the covenants and/or special use conditions that were previously declared to District. If City changes any such covenants and/or conditions, City shall notify District, and District shall be entitled to a new right of first refusal as provided above.

2. Existing Structure. This deed does not include conveyance of the structure located upon the Property. District shall continue to own the structure.

DATED this _____ day of _____, 2013.

MARYSVILLE SCHOOL DISTRICT NO. 25

By _____
DR. BECKY BERG, Superintendent

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that DR. BECKY BERG is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Superintendent of MARYSVILLE SCHOOL DISTRICT NO. 25 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2013.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

ACCEPTED: _____, 2013.

CITY OF MARYSVILLE

By _____
JON NEHRING, Mayor

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

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

DATED this _____ day of _____, 2013.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

EXHIBIT A
LEGAL DESCRIPTION

PARCEL A:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 30 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTH LINE OF SAID SECTION 27 DISTANT EASTERLY ALONG SOUTH LINE 510 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION;
THENCE, FROM SAID POINT OF BEGINNING, PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF SAID SECTION 27, NORTHERLY 330 FEET;
THENCE PARALLEL WITH THE SOUTH LINE OF SAID SECTION, EASTERLY 1064 FEET, MORE OR LESS, TO THE INTERSECTION OF A LINE 10 FEET EASTERLY FROM AND PARALLEL WITH THE NORTHERLY PROLONGATION OF THE EAST LINE OF 64TH AVENUE, NORTHEAST;
THENCE ALONG SAID LINE SOUTHERLY 330 FEET, MORE OR LESS, TO SAID SOUTH LINE OF SECTION 27;
THENCE ALONG SAID SOUTH LINE, WESTERLY 1087 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL B:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 30 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EAST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 510 FEET;
THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 330 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 100 FEET;
THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SUBDIVISION A DISTANCE OF 185 FEET;
THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 60 FEET;
THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SECTION 27 A DISTANCE OF 790 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE NORTHERLY PROJECTION OF THE WEST LINE OF 64TH AVENUE NORTHEAST PRODUCED;
THENCE SOUTHERLY ALONG SAID PROJECTION A DISTANCE OF 160 FEET, MORE OR LESS TO THE NORTH LINE OF THE SOUTH 330 FEET OF SAID SUBDIVISION;
THENCE WEST ALONG THE NORTH LINE OF SAID SOUTH 330 FEET A DISTANCE OF 984 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

EXCEPTIONS

- 1) Easement, including terms and provisions contained therein:
Recording Information: 1602091, March 29, 1963
In Favor of: Town of Marysville
For: Water Line

- 2) 5. Easement, including terms and provisions contained therein:
Recording Information: 1602093, March 29, 1963
In Favor of: Town of Marysville
For: Water Line
Affects: 10 foot wide strip in Parcel A

- 3) Easement, including terms and provisions contained therein:
Recording Information: 2177949, December 22, 1970
In Favor of: Stanley M. Wood
For: ingress, egress and utilities
Affects: East 10 feet of Parcel A

- 4) Easement, including terms and provisions contained therein:
Recording Information: 2177932, December 22, 1970
In Favor of: Stanley W. Wood and Katherine Wood, husband and wife
For: ingress, egress and utilities
Affects: Easterly 10 feet of property herein described

- 5) Easement, including terms and provisions contained therein:
Recording Information: 8511080173
In Favor of: County of Snohomish
For: Drainage

- 6) Easement, including terms and provisions contained therein:
Recording Information: 200906250275
In Favor of: City of Marysville, a municipal corporation
For: Temporary construction

ATTACHMENT 2
INTERLOCAL AGREEMENT

M-13-039/Jones Creek PSA 10.31.13
20199A23PD==Jones Creek PSA 10-31-13 MVSD

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**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF MARYSVILLE AND
MARYSVILLE SCHOOL DISTRICT NO. 25
FOR USE OF THE JONES CREEK PARCEL**

This Interlocal Agreement, effective _____, 2013, is entered into between MARYSVILLE SCHOOL DISTRICT NO. 25, a Washington municipal corporation, herein after referred to as “District” and the CITY OF MARYSVILLE, a Washington municipal corporation, herein after referred to as “City”, pursuant to the authority granted by Chapter 39.34 RCW.

WHEREAS, District has conveyed the following-described property to the City:

SEE EXHIBIT A

Snohomish County tax parcel 300527-004-019-00

hereinafter the “Property”; and

WHEREAS, District desires to continue to utilize the Property for its environmental studies curriculum; and

WHEREAS, this Agreement between Parties is made pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, to permit the continuing use of the Property by District and allow City and District to exercise their powers jointly and thereby maximize their abilities to provide services and facilities that will best fulfill common needs and achieve common goals.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, District and City agree as follows:

Existing Structure. District’s conveyance of the Property to City did not include an existing shelter structure (hereinafter the “Shelter”). District continues to own the Shelter. District shall have the right to keep the Shelter on the Property, and to utilize the Shelter for Marysville School District educational purposes. District shall have the right and obligation to repair and maintain the Shelter in good, safe, attractive condition and to remove the Shelter at any time that the Shelter deteriorates either structurally or in appearance or becomes unsafe or otherwise jeopardizes public safety. At District’s option, District may replace the building with a Shelter of the same type and size in the same location, or in a different location subject to City approval, in City’s sole discretion. District shall secure any and all required permits and applicable governmental approvals prior to engaging in any such activity and shall conduct such activities in strict accordance with such permits and all applicable codes, regulations and statutes. District shall have a right of entry for said purposes. All District’s activities respecting the Shelter, including, but not limited to, its use by students, teachers, employees or volunteers, and shelter replacement, shall be at District’s sole risk and expense.

Educational Use. District shall have the nonexclusive use of the Property for the purposes of environmental studies and field trips. All maintenance of the site specific to the field trips will be the responsibility of the District, including maintenance of any trails used in District's activities. District shall be solely responsible for the activities, safety and welfare of its staff, employees, teachers, students and volunteers when engaged in such activities.

Stream Relocation. District acknowledges that City may relocate Jones Creek in a new stream alignment, with modified channel width or widths, at any time in City's sole discretion, subject only to applicable permitting requirements. The City agrees it will preserve reasonable access to the Property for the District and its employees, students and agents in the event of any relocation of the stream. Subject to the preceding sentence, District agrees that it will not object or in any way impede such plans.

Termination of District Activities. The activities under Sections 1 and 2 above may continue so long as the condition and use of the Property remain unchanged, but shall terminate at any time the condition and/or City's use of the Property changes in any manner such that maintaining the Shelter on the Property or use of the Property for environmental studies becomes unfeasible, jeopardizes the public safety, or unduly interferes with City's reasonable use of the Property. Termination of District's use shall be effective upon 90 days written notice from City to District, which notice, at the discretion of City, may be recorded in the records of the Snohomish County Auditor and shall be effective without further notice or action on the part of City. If District has not removed the Shelter from the Property by the effective date of termination, the Shelter shall become the property of City and may be removed, destroyed or maintained by City at its discretion.

Expenses of District Activities. City shall have no liability whatsoever for any expenses incurred as a result of District's activities under paragraphs 1 and 2 or any other activity of District upon the Property. All expenses incurred thereby shall be the sole obligation of District. District shall have no authority to incur any debt or obligation on City's behalf. District shall allow no liens or encumbrances to attach to the Property as a result of District's activities on the Property, and in the event thereof, shall promptly pay the same and cause the Property to be released therefrom. District agrees to protect, hold harmless, indemnify, and defend, at its own expense, the City from any loss, claim or suit arising out of any lien, charge or encumbrance attaching to the Property as a result of District's activities.

District Personnel. All staff, employees, teachers, volunteers, independent contractors, engineers, consultants and workers of any type or nature, and all contractors and subcontractors employed by District to perform any activity on the Property shall be the staff, employees, teachers, volunteers, independent contractors, engineers, consultants, contractors and subcontractors of the District, and City shall have no liability or responsibility whatsoever with respect to such persons or entities.

Personal Property. District, its staff, employees, teachers, students, volunteers, contractors and subcontractors, shall be solely responsible for securing its or their equipment, materials and other property. Any equipment, materials or other property stored at the Property, including District's Shelter located thereon, shall be at the sole risk of District and its staff, employees, teachers, students, volunteers, contractors and subcontractors. Except for damage caused by the intentional misconduct of the City or City's sole negligence, City shall have no liability whatsoever for damage to said property or Shelter from vandalism, theft, the elements, flood or any other cause.

Hazardous Substances. District shall take all necessary precautions to prevent the discharge of any hazardous substance as a consequence of District's activities. The definition of the term "hazardous substance" shall be those used in applicable state and federal regulations, provided that the definition of the term "hazardous substance" shall include pesticides, herbicides, petroleum and related byproducts, and hydrocarbons.

Indemnity. District agrees to defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with District's activities upon the Property and under this Interlocal Agreement, including claims for injury, death or property damage, and for environmental liability and cleanup, except for injuries, death or damages caused by the intentional misconduct or sole negligence of the City.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the District or its staff, employees, teachers, volunteers, contractors or subcontractors and the City, its officers, officials, employees, and volunteers, the District's liability hereunder shall be only to the extent of the District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the District's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. Nothing contained in this section shall be construed to create a liability or a right of indemnification by any third party. The provisions of this section shall survive the expiration or termination of the activities permitted hereunder with respect to any event occurring prior to such expiration or termination.

The City shall protect, save harmless, indemnify and defend, at its own expense, the District, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of or relating to the intentional misconduct or sole negligence of the City.

Insurance.

City shall maintain public liability insurance for the protection of the public. City is a member and insured through the Washington Cities Insurance Authority (WCIA – pool) and shall maintain its membership throughout the term of this Agreement. Such insurance shall not be reduced or canceled without forty-five (45) days written notice from City to District. Reduction or cancellation of the insurance shall render this Agreement void. City shall provide District proof of insurance with either a letter or certificate of insurance from WCIA verifying City as a member. At the request of District, a copy of the insuring agreement will be provided. City will not be required to provide casualty insurance for any structure or shelter on the Property owned by District.

District shall maintain public liability insurance for the protection of the public. District is a member of and insured through Cities Insurance Association of Washington and shall maintain its insurance/ membership throughout the term of this Agreement. Such insurance shall not be reduced or canceled without forty-five (45) days written notice from District to City. Reduction or cancellation of the insurance shall render this Agreement void. District shall provide City proof of insurance with either a letter or certificate of insurance from Cities Insurance Association of Washington verifying District as a member. Proof of insurance shall be approved by City prior to District providing any services under the terms of this Agreement. At the request of City, a copy of the policy will be provided.

District insurance shall be considered primary for the purposes of this agreement.

Attorney's Fees and Costs. In any proceeding brought to interpret or enforce the agreements contained in this conveyance or to determine the rights of the parties hereunder, the prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorneys' fees, and all costs and expenses incurred in connection with such proceeding, including attorneys' fees, costs, and expenses of any appeal of a judgment. For purposes of this agreement, the prevailing party shall be that party in whose favor final judgment is rendered or who substantially prevails, if both parties are awarded judgment. The term "proceeding" shall mean and include arbitration, administrative, bankruptcy and judicial proceedings including appeals.

Third Party Beneficiary Status. The parties agree that this agreement shall not confer third-party beneficiary status on any non-party to this agreement.

Severability. If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provision and/or the application of the provisions to other persons or circumstances shall not be affected.

Approval and Filing. Each party shall approve this Agreement pursuant to the laws of the governing body of said party. The attested signature of the officials identified below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed with the Snohomish County Auditor's office pursuant to RCW 39.34.040 or listed/posted on City's and/or District's website.

Entire Agreement. This Agreement, including any exhibits and documents referenced herein, constitutes the entire agreement between the parties, and supersedes all agreements and proposals, oral or written, between the parties.

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the date indicated below.

DATED _____, 2013:

CITY OF City

By _____
JON NEHRING, Mayor

Attest:

APRIL O'BRIEN, Deputy City Clerk

Approved as to form:

GRANT K. WEED. WSBA 11243
Attorney for the City of Marysville

DATED November 25, 2013:

City SCHOOL DISTRICT NO. 25

By 
DR. BECKY BERG, Superintendent

Attest:

EXHIBIT A

LEGAL DESCRIPTION

PARCEL A:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 30 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTH LINE OF SAID SECTION 27 DISTANT EASTERLY ALONG SOUTH LINE 510 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION;
THENCE, FROM SAID POINT OF BEGINNING, PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF SAID SECTION 27, NORTHERLY 330 FEET;
THENCE PARALLEL WITH THE SOUTH LINE OF SAID SECTION, EASTERLY 1064 FEET, MORE OR LESS, TO THE INTERSECTION OF A LINE 10 FEET EASTERLY FROM AND PARALLEL WITH THE NORTHERLY PROLONGATION OF THE EAST LINE OF 64TH AVENUE, NORTHEAST;
THENCE ALONG SAID LINE SOUTHERLY 330 FEET, MORE OR LESS, TO SAID SOUTH LINE OF SECTION 27;
THENCE ALONG SAID SOUTH LINE, WESTERLY 1087 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL B:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 30 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EAST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 510 FEET;
THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 330 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 100 FEET;
THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SUBDIVISION A DISTANCE OF 185 FEET;
THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 60 FEET;
THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SECTION 27 A DISTANCE OF 790 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE NORTHERLY PROJECTION OF THE WEST LINE OF 64TH AVENUE NORTHEAST PRODUCED;
THENCE SOUTHERLY ALONG SAID PROJECTION A DISTANCE OF 160 FEET, MORE OR LESS TO THE NORTH LINE OF THE SOUTH 330 FEET OF SAID SUBDIVISION;
THENCE WEST ALONG THE NORTH LINE OF SAID SOUTH 330 FEET A DISTANCE OF 984 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

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