



Robert A. Carmichael | Attorney
Bob@CarmichaelClark.com

To: Whatcom County Council
From: Robert Carmichael, Lynden City Attorney
Date: April 7, 2025
Subject: Proposed New Countywide Planning Policy #7

At the Whatcom County Council Committee of the Whole meeting on March 25, the Council considered draft Countywide Planning Policies recommended by the Planning Commission. The Council and County staff also discussed the following proposed policy, which was not among those recommended by the Planning Commission:

Proposed New Policy #7: Cities and Counties shall demonstrate compliance with the GMA relating to surface and groundwater resources prior to allocation of population and employment for their respective UGAs. This new countywide planning policy aims to ensure that cities and the county can accommodate their planned population and employment allocations. (N. Water Quality and Quantity, p. C-22 of the Countywide Planning Policy Update).

County and city staff raised numerous concerns, including that the Proposed Policy was unclear about what specific steps a city must take to demonstrate that it had sufficient water resources to support growth. One council member countered that cities should be able to provide some form of planning document demonstrating their capacity to meet growing water demands. Finally, it was suggested that they needed to hear directly from the cities. Lynden's name was specifically mentioned.

The purpose of this memorandum is to provide that response from the City of Lynden, so the County Council makes an informed decision on the Proposed Policy.

1. Cities demonstrate water resource availability and GMA compliance in Water System Plans.

The planning document sought by one council member currently exists. Each city, including Lynden, must have an approved Comprehensive Water System Plan (Water System Plan), demonstrating sufficient capacity to meet the demand of its present and future population. Every ten years, all water purveyors serving 1,000 or more connections (or meeting certain other criteria) in Whatcom County are required to produce a Water System Plan. WAC 246-290-100. One of the express purposes of the Water System Plan is to demonstrate "how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans." WAC 246-290-100(1)(b). To meet this purpose, purveyors engage in an exhaustive analysis of dozens of factors. For purveyors with over 1,000 connections, this includes analysis of "[d]esignated land use, zoning, population, and water demand" for at least twenty years. WAC 246-290-100(4)(b)(iii). This must be compared to an included water rights self-assessment. WAC 246-290-100(4)(f)(iv). The Water System Plan must be approved by the local government and the Washington State Department of Health (DOH). WAC 246-290-100(7), (9). Pursuant to an interagency Memorandum of Understanding (MOU), the Department of Ecology submits comments on the planning documents, including the water rights section. DOH requires public water systems to respond to Ecology's comments pertaining to water rights and watershed planning. See Exhibit A hereto.

The result of the Water System Plan Process is that, as suggested by the Proposed Policy, every ten years, a city compares its existing and planned future population and employment allocations to its water system capacity, including water rights, to determine whether it can accommodate planned growth.

2. Lynden has adequate water supply and is a local leader in creative water solutions.

It has been stated or implied, sometimes even rhetorically by Lynden officials, that Lynden does not have sufficient water rights to meet its current and future populations. Respectfully, this is not accurate. Lynden's Water System Plan developed in 2019 was approved by the Washington State Department of Health (DOH) in 2020. See Signed Approval Exhibit B hereto. Chapter 3 of Lynden's approved Water System Plan demonstrates its compatibility with land use policies, including the Growth Management Act (GMA), the City of Lynden Comprehensive Plan, the Whatcom County Comprehensive Plan, and the Whatcom County Coordinated Water System Plan. The Lynden Water System Plan was further confirmed as consistent with adopted local plans and development regulations by Whatcom County Planning and Development Services in 2019 as part of DOH's approval process pursuant to WAC 246-290-108. See Local Government Consistency Determination Form, attached as Exhibit C hereto. Lynden's approved Water System Plan, including the Water Rights Self-Assessment (Chapter 6, Appendix J), is attached as Exhibit D hereto. The water rights assessment in the Lynden Water System Plan shows sufficient water rights to serve the existing and future population for the planning period. Lynden will draft a new water system plan in 2029, for approval in 2030, consistent with the mandated 10-year cycle.

Statements sometimes made that Lynden has insufficient water rights stem from a longstanding disagreement, dating back to the development of its 1999 Water System Plan, when Lynden and the Department of Ecology disagreed on the annual quantity of the city's water rights (Lynden's instantaneous water rights were never in dispute). This disagreement over the annual quantity (Qa) of Lynden's water rights became a live legal dispute that both parties considered litigating. Lynden's position became even stronger (in its opinion) following passage of the state Municipal Water Law in 2003. Instead of litigating, following several years of negotiation, Lynden and the Department of Ecology reached an agreement to put aside their differing interpretations of Lynden's water right QA, and instead focus on potential water resource solutions. This agreement, recorded as the 2004 Memorandum of Agreement ("MOA"), remains in effect to this day. See Exhibit E hereto. Pursuant to the MOA, Lynden and Ecology meet quarterly to discuss potential new sources of water. This ongoing relationship between Lynden and Ecology has led to innovative water solutions, including:

- **Darigold COW Water:** Darigold operates a powered milk factory in Lynden. Milk trucked into the Darigold facility is dehydrated into powdered milk for packaging and sale. The principle byproduct of powdered milk is water in the form of condensate of whey ("COW"). Lynden purchased this "COW" water from Darigold and constructed a water line to discharge said water into the Nooksack River near Lynden's water intake. As "developed" or "foreign" water, this water is not included in Lynden's water rights portfolio, but it is nevertheless considered a legal source of water by Ecology for Lynden's municipal supply. Darigold is currently discharging approximately 369 acre-feet per year of COW water into the Nooksack River near Lynden's intake. See Darigold Wholesale Water Agreement attached at Exhibit F hereto.
- **Kamm Creek:** In 2016, Lynden purchased a well and water rights from Meadowbrook Water Association in the Kamm Creek watershed. Lynden pumps water from the former Northwood well, into Kamm Creek where it flows to the Nooksack River and eventually is withdrawn at Lynden's water intake. See Assignment of Meadowbrook Water Association Water Right attached as Exhibit G hereto.

Lynden continues to work with the Department of Ecology to provide water for itself and the greater Nooksack basin in times of low flow. One exciting future project is based on Managed Aquifer Recharge.

- **Managed Aquifer Recharge (“MAR”)** Funded by an Ecology grant, Lynden is currently exploring Managed Aquifer Recharge (“MAR”). This will involve pumping water directly upland from a fork of the Nooksack River in the wet season, allowing it to percolate into an aquifer adjacent to the river that will drain as groundwater seepage into the river in low flow summer months. This method of supplementing river flows in the dry season has been successful in eastern Washington. See Exhibit G.

Even without the above projects, it is Lynden’s opinion based on its existing “pumps and pipes” certificated water rights as recognized in the 2003 Municipal Water Law, and as discussed in its approved Water System Plan, that it has ample water rights to accommodate its growth for the entire 20-year GMA planning period and beyond.

3. The policy calls on the County to perform an act of water rights adjudication.

If the existing planning documents in an approved Water System Plan are not sufficient demonstration of water resource availability, this policy would seem to require a quasi-judicial determination of the cities’ water rights. Does the County Council have the time and expertise, let alone authority, to make quasi-judicial determinations of the water rights of all the cities in Whatcom County? A formal process to determine the validity and scope of water rights is already underway in Whatcom County Superior Court. The adjudication process underway is mandated by statute as the only legally sanctioned avenue for determining water rights. Municipalities should not be burdened with a newly created process for review of their water rights at the county level outside the context of the ongoing adjudication proceedings. Such an effort by the County Council would be duplicative, confusing, infringe on the role of the Superior Court, and would almost certainly be legally challenged and overturned.

Conclusion

Lynden is not “out of water” as some commenters have suggested. While Proposed Policy #7 seeks to ensure that growth occurs only where adequate water resources exist, it fails to acknowledge the robust planning requirements already imposed by state law. Cities like Lynden already demonstrate the ability to meet future demand through comprehensive planning and collaborative, innovative solutions. The City of Lynden has sufficient water rights for its growth through the planning period and continues to work constructively with Ecology to secure additional sources.

Final Note: Conduct at Whatcom County public meetings raises Public Records Act concern.

Finally, we are increasingly concerned by conduct observed at both the Planning Commission and Council levels that threatens the integrity of your public process. During open sessions, both Commissioners and Councilmembers acknowledged receiving private text messages from individuals during the meeting on the subject matter of the meeting—messages that are neither disclosed to the public nor made part of the official record. These text (or email) communications are public records under the Public Records Act and must be treated accordingly. As public records, all of these texts or emails received related to the subject matter of the meeting must be preserved as required under the Public Records Act and are subject to public disclosure. We strongly encourage all decision-makers to consult with the Whatcom County Prosecutor to ensure compliance with Public Records Act obligations.



MEMORANDUM OF UNDERSTANDING

between

STATE OF WASHINGTON

DEPARTMENT OF HEALTH

and

DEPARTMENT OF ECOLOGY

Related to the

COORDINATION BETWEEN PLANNING, ENGINEERING, PUBLIC HEALTH AND SAFETY PROCESSES, AND WATER RESOURCES

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by and between the DEPARTMENT OF HEALTH (DOH) and the DEPARTMENT OF ECOLOGY (Ecology). This Memorandum of Understanding supersedes and replaces the following previous or contemporaneous agreements between the parties:

- October 6, 1992: Review Coordination Process (original MOU)
- July 1, 1994: Letter of Agreement
- December 20, 1994: Revision to the original MOU by Appendix
- June 14, 1999: Revision to original MOU by Appendix
- February 11, 2002: Update of the June 14, 1999 Appendix
- May 7, 2007: Update to the revised MOU

THEREFORE, IT IS MUTUALLY AGREED THAT:

Authority

This MOU is made and entered into by DOH and Ecology under the authority granted by chapters 18.104, 43.20, 43.21A, 43.27A, 43.70, 70.116, 70.119A, 90.03, 90.14, 90.22, 90.44, 90.54, and 90.82 RCW.

Purpose and Scope

The purpose of this MOU is to facilitate coordination and cooperation between DOH and Ecology on water resource needs, including implementing the municipal water law (Second Engrossed Second Substitute House Bill 1338 of 2003. This includes planning, engineering, and public health and safety matters relating to water systems and water resources. In some instances, additional coordination may be necessary to protect public health and safety, the environment, or meet statutory requirements. The accompanying Joint Review Procedures for Planning and Engineering Documents describes the implementation details for the roles and responsibilities for each agency contained in this MOU.

Agency Roles and Responsibilities Related to the MOU

DOH and Ecology ("the agencies") have different roles and responsibilities when it comes to implementing the municipal water law. DOH is responsible for ensuring safe and reliable drinking water for the people of Washington State under chapters 70.119A and 43.20 RCW. DOH reviews and approves planning and engineering documents for water systems. Ecology administers Washington State's water resource program, including water rights administration under chapters 90.03 and 90.44 RCW and watershed planning under chapter 90.54 RCW and chapter 90.82 RCW.

Some of these roles and responsibilities are implemented jointly by the agencies, some with separate but related responsibilities, and some are individual responsibilities specific to DOH or Ecology.

For details on the implementation of the roles and responsibilities see the Joint Review Procedures.¹

Shared Responsibilities	
1. Interagency Coordination Liaison: Each agency will designate an interagency coordination liaison. The liaisons will coordinate on any emerging statewide water resources issue affecting water systems and assist with consistency and coordination between regions in implementation. The liaisons will act as the subject matter experts regarding this MOU for their agency. The liaisons will also coordinate joint procedures, outreach, training, and attend coordination meetings.	
2. Coordination Meetings: The agencies will consult at a minimum semi-annually at the regional office level to: <ul style="list-style-type: none">• Coordinate water system planning and watershed planning to identify if additional coordination is needed.• Review a list of water systems required to update their water system plan in the coming year and new water system plans compiled by DOH, including those closely tied to grant and loan applications at the coordination meeting; and Ecology will help identify water system plans of interest for close coordination during the comment process.• Identify or coordinate training on topics such as the Municipal Water Law, water rights, and water system planning.	
Coordinated Responsibilities	
Department of Health Responsibilities	Department of Ecology Responsibilities
3. Commenting on Documents: DOH will provide Ecology with the following documents for review and comment:	3. Commenting on Documents: Ecology will determine as early as possible if resources allow for review, and if so, will submit comments on planning documents (e.g., water right self-assessment) within 60 days and engineering

¹ https://doh.wa.gov/sites/default/files/legacy/Documents/4200//mou_proc.pdf

Coordinated Responsibilities	
Department of Health Responsibilities	Department of Ecology Responsibilities
<ul style="list-style-type: none"> • Water system plans • Small water system management programs • Source approval projects • Proposals to increase water system approved connections • New water system approvals • Intertie proposals <p>DOH will <i>require</i> public water systems to respond to Ecology's comments pertaining to water rights and watershed planning. DOH will encourage water systems to work with Ecology through the resolution process. DOH will provide the decision to approve or reject to Ecology and the water system.</p>	<p>documents within 30 days. Comments on planning or engineering documents will be sent to the water system and to DOH. Comments will focus on water rights and watershed consistency issues. Ecology may provide comments on other water resources related topics where there is a statutory requirement.</p>
<p>4. Not Inconsistent Review: DOH will determine whether the planning and engineering documents are "not inconsistent" with <i>local plans and regulations</i> for purposes of modifying a municipal water supplier's water rights place of use to the service area under RCW 90.03.386(2).</p>	<p>4. Not Inconsistent Review: Ecology will determine whether planning and engineering documents are "not inconsistent" with any <i>watershed plan</i> approved under chapter 90.82 RCW or adopted under chapter 90.54 RCW for purposes of modifying a municipal water supplier's water rights place of use to the service area under RCW 90.03.386(2).</p>
<p>5. Plan Compliance Determination: Under RCW 90.03.386(2) and 90.03.570, DOH determines a municipal water supplier's compliance with its approved water system plan or small water system management program regarding <i>the following elements</i>:</p> <ul style="list-style-type: none"> • Plan approval date • Water use efficiency • Service area identification • Local government consistency • Water systems with 1,000 or more connections – reclaimed water evaluation <p>Compliance with these elements will be determined when approving water system plans, small water system management programs, engineering documents that affect one of the above listed elements. DOH will also determine compliance with the above listed elements upon receipt of any verifiable reasonable concern from any external source.</p>	<p>5. Plan Compliance Determination: Under RCW 90.03.386(2) and 90.03.570, Ecology determines a municipal water supplier's compliance with its approved water system plan or small water system management program regarding <i>water rights</i>.</p> <p>Compliance will be determined when reviewing water system plans, small water system management programs, engineering documents related to water rights, requests to change water rights to municipal water supply purpose rights. Ecology will also determine compliance upon receipt of any verifiable reasonable concern from any external source.</p>
<p>6. Municipal Water Supply Purposes Determination: DOH will provide Ecology access</p>	<p>6. Municipal Water Supply Purposes Determination: Ecology will make evaluations as</p>

Coordinated Responsibilities	
Department of Health Responsibilities	Department of Ecology Responsibilities
to water system data (population and connections) to use when determining whether a water system is a municipal water supplier and other data as available and appropriate.	to what water rights are considered to be for municipal water supply purposes under RCW 90.03.015 and provide those evaluations to DOH and the water system.
7. Failing Water Systems: DOH will determine if a water system is failing under RCW 90.03.580, WAC 173-152-050 and notify Ecology.	7. Failing Water Systems: Ecology will expedite the review of water right applications or transfers for water systems determined to be failing by DOH, in accordance with RCW 90.03.580 and WAC 173-152-050.
DOH Individual Responsibilities	
8. Appealable Actions: DOH will support appealable actions taken by Ecology against water systems when evaluating the water system's capacity. When there is insufficient capacity or a limited place of use, DOH will make every effort available to work with Ecology to find solutions and maintain existing connections.	
9. Service Area Maps: DOH will work with local entities to maintain service area maps for municipal water suppliers who expand their place of use under RCW 90.03.386(2).	
Ecology Individual Responsibilities	
10. Watershed Planning Consultation: Ecology will consult with and request comments from DOH when developing or updating water resources or watershed planning rules affecting water systems.	
11. Water Use Efficiency: Ecology will use water use efficiency plans developed under chapter 246-290 WAC and other water system data available in DOH's planning and engineering documents when making water right decisions. For water rights decisions, if a water use efficiency plan has not been approved by DOH, Ecology may request a water use efficiency plan be developed that is consistent with DOH's rules and guidance. For certain water right decisions, water rights may be conditioned on water use efficiency requirements more stringent than chapter 246-290 WAC. In those situations, Ecology will consult with DOH and explain the rationale.	

General Coordination and Applicability

Ecology and DOH have developed the following list of guidance documents in order to implement this MOU. Staff will consider these guidance documents as operating procedures. When modifying documents that affect both agencies, both agencies must agree to the changes.

1. Joint Review Procedures for Planning and Engineering Documents² (DOH and Ecology):
 - List of documents on which DOH and Ecology coordinate review (DOH and Ecology).
 - Ecology and DOH Transmittal Letter Templates (DOH and Ecology).
 - Ecology's Review Checklist for Plans (Ecology).
 - Water Right Disclaimer for Planning and Engineering Document Approval Letters (DOH).
2. Water Rights Self-Assessment Form³ (DOH and Ecology).
3. Service Area Fact Sheet⁴ (DOH and Ecology).

² https://doh.wa.gov/sites/default/files/legacy/Documents/4200//mou_proc.pdf

³ <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdoh.wa.gov%2Fsites%2Fdefault%2Ffiles%2Flegacy%2FDocuments%2FPubs%2F331-372-F.docx&wdOrigin=BROWSELINK>

⁴ <https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs/331-432.pdf>

4. Determining and Documenting who is a Municipal Water Supplier and What Water Rights Qualify as Rights for Municipal Water Supply Purposes⁵ (DOH and Ecology).
5. Determining and Documenting who is a Municipal Water Supplier and What Water Rights Qualify as Rights for Municipal Water Supply Procedures (DOH and Ecology).
6. Local Government Consistency Checklist⁶ (DOH).
7. Watershed Planning Consistency Procedure and Checklist (Ecology).
8. Ecology's Review Prioritization for Planning and Engineering Documents (Ecology).
9. Ecology's Review Checklist for Source Approval⁷ (Ecology).

General Provisions

This MOU shall take effect and be fully implemented by both agencies when signed by both parties, and shall be effective through June 30, 2029. This MOU may be amended or terminated at any time by written approval by Ecology's Water Resources Manager and DOH's Office of Drinking Water's Director.

MOU Management

The interagency coordination liaisons for Ecology and DOH will be responsible for and will be the contact person for all communications regarding the performance of this MOU. Either Ecology or DOH may change its liaison by giving written notice to the other party.

The Liaison for Ecology is:	The Liaison for DOH is:
Austin Melcher austin.melcher@ecy.wa.gov (425) 213-4709	John Freitag John.Freitag@doh.wa.gov (564) 669-4455

All Writings Contained Herein

This MOU contains all the terms and conditions agreed upon by DOH and Ecology. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this MOU.

Department of Ecology

Ria Berns
Ria Berns (Aug 6, 2024 08:49 PDT)

Ria Berns

Program Manager, Water Resources Program

Date:

08/06/2024

Department of Health

John L. Webber

WA Department of Health Contracts Office

DOH Contract Specialist III

Date:

08/06/2024

⁵ <https://apps.wa.gov/ecology/docs/WaterRights/wrwebpdf/pol2030.pdf>

⁶ <https://doh.wa.gov/community-and-environment/drinking-water/water-system-design-and-planning/municipal-water-law>

⁷ See Appendix D of the Joint Review Procedures:

https://doh.wa.gov/sites/default/files/legacy/Documents/4200//mou_proc.pdf

DOH GVS29574-0

Ver. 07/26/2024.



State of Washington

DEPARTMENT OF HEALTH

NORTHWEST DRINKING WATER REGIONAL OPERATIONS

20425 72nd Avenue South, Suite 310 • Kent Washington 98032-2388

RECEIVED

JAN 21 2020

Public Works Dept.

January 15, 2020

STEVE BANHAM, P.E.
PUBLIC WORKS DIRECTOR
CITY OF LYNDEN
300 4TH STREET
LYNDEN WA 98264-1997

RE: Lynden, City of, ID# 49150
Whatcom County
Water System Plan-2018
Submittal #18-1004

Dear Mr. Banham:

The City of Lynden's Water System Plan (WSP) which was received in this office on October 4, 2018 with a subsequent submittal on November 6, 2019, has been reviewed and in accordance with the provisions of WAC 246-290-100, is hereby APPROVED.

Approval of this WSP is valid as it relates to current standards outlined in Washington Administrative Code (WAC) 246-290 revised January 2017, WAC 246-293 revised September, 1997 and is subject to the qualifications herein. Future revisions in the rules and statutes may be more stringent and require facility modification or corrective action. An approved update of this WSP is required on or before **January 15, 2030**, unless ODW requests an update or plan amendment pursuant to WAC 246-290-100(9).

APPROVED NUMBER OF CONNECTIONS

The analysis provided in this WSP shows the water system has sufficient capacity to meet the growth projections during this planning period. Lynden's water system can support an **"unspecified"** designation for its approved number of connections. A specific number of approved connections will not be applied at this time. Development may occur in compliance with the schedule and information provided in this WSP. This designation may be rescinded (and replaced with a specified number of approved connections) if ODW determines that the WSP is no longer representative of system activities.

LOCAL GOVERNMENT CONSISTENCY

This document meets local government consistency requirements for WSP approval pursuant to RCW 90.03.386 and RCW 43.20.

SERVICE AREA AND DUTY TO SERVE

Pursuant to RCW 90.03.386(2), the service area identified in this WSP service area map may now represent an expanded "place of use" for this system's water rights. Changes in service area should be made through a WSP amendment.



Lynden has a duty to provide new water service within its retail service area. This WSP includes service policies to describe how your system plans to provide new service within your retail service area.

CONSTRUCTION WAIVERS

Standard Construction Specifications for distribution main extensions in this WSP are approved. Consistent with WAC 246-290-125(2), this system may proceed with the installation of distribution main extensions provided this system completes and keeps on file the enclosed construction completion report form in accordance with WAC 246-290-125(2) and WAC 246-290-120(5) and makes it available for review upon request by ODW.

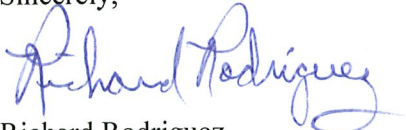
WATER RESOURCES

Below is the general regulatory language that applies to all water system approvals:

The department's review of your water system plan will not confer or guarantee any right to a specific quantity of water. The approved number of service connections is based on your representation of available water quantity. If the Washington Department of Ecology, a local planning agency, or other authority responsible for determining water rights and water system adequacy determines that you have use of less water than you represented, the number of approved connections may be reduced commensurate with the actual amount of water and your legal right to use it.

Thank you for your cooperation. Whatcom County is being notified of the terms and requirements of this approval and the determination of the approved number of connections. If you have any questions or wish to check our records, you may contact either of us at the numbers listed below.

Sincerely,



Richard Rodriguez
WSDOH Regional Planner
253 395-6771



Laura McLaughlin, P.E.
WSDOH Regional Engineer
253 395-6764

Encl: Construction Completion Report

cc: Ria Birns, WSDOE-NWRO
Matt Aamot, Whatcom County Planning & Development
Whatcom County Health Dept.
Ingrid Salmon, Regional Coliform Program
Michele Campbell, P.E., RH2 Engineers

Local Government Consistency Determination Form

Water System Name: City of Lynden PWS ID: 491504

Planning/Engineering Document Title: Water System Plan Plan Date: October 2019

Local Government with Jurisdiction Conducting Review: Whatcom County

Before the Department of Health (DOH) approves a planning or engineering submittal under Section 100 or Section 110, the local government must review the documentation the municipal water supplier provides to prove the submittal is consistent with **local comprehensive plans, land use plans and development regulations** (WAC 246-290-108). Submittals under Section 105 require a local consistency determination if the municipal water supplier requests a water right place-of-use expansion. The review must address the elements identified below as they relate to water service.

By signing this form, the local government reviewer confirms the document under review is consistent with applicable local plans and regulations. If the local government reviewer identifies an inconsistency, he or she should include the citation from the applicable comprehensive plan or development regulation and explain how to resolve the inconsistency, or confirm that the inconsistency is not applicable by marking N/A. See more instructions on reverse.

Local Government Consistency Statement	For use by water system	For use by local government
	Identify the page(s) in submittal	Yes or Not Applicable
a) The water system service area is consistent with the adopted <u>land use and zoning</u> within the service area.	Fig 2-3 & 3-1	Yes
b) The <u>growth projection</u> used to forecast water demand is consistent with the adopted city or county's population growth projections. If a different growth projection is used, provide an explanation of the alternative growth projection and methodology.	Pages 3-6 to 3-8	Yes
c) For <u>cities and towns that provide water service</u> : All water service area policies of the city or town described in the plan conform to all relevant <u>utility service extension ordinances</u> .	Pages 5-3 to 5-4, App. R	Not Applicable
d) <u>Service area policies</u> for new service connections conform to the adopted local plans and adopted development regulations of all cities and counties with jurisdiction over the service area.	Pages 5-1 to 5-4, App. R	Yes
e) <u>Other relevant elements</u> related to water supply are addressed in the water system plan, if applicable. This may include Coordinated Water System Plans, Regional Wastewater Plans, Reclaimed Water Plans, Groundwater Management Area Plans, and the Capital Facilities Element of local comprehensive plans.	Pages 3-1 to 3-3	Yes

I certify that the above statements are true to the best of my knowledge and that these specific elements are consistent with adopted local plans and development regulations.



Signature

11-13-19

Date

Mark Personius, Whatcom County Planning & Development Services

Printed Name, Title, & Jurisdiction

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is entered into by and between the Washington State Department of Ecology ("Ecology") and the City of Lynden ("Lynden") in consideration of the mutual promises and covenants contained herein.

ARTICLE 1. PURPOSE AND INTENT

Lynden and Ecology desire to work together to develop a water supply strategy for Lynden that provides water for current and future growth as projected in Lynden's historical and existing municipal Water Supply Plan and its Comprehensive Plan adopted under the Growth Management Act. The purpose of this MOA is to provide a cooperative framework within which Ecology and Lynden can together explore and execute the water supply strategy intended to achieve water supply solutions and to avoid disputes over differing interpretations of Lynden's existing water rights. The purpose and objective of this water supply strategy will be to provide sufficient water supply for Lynden's next 20 years growth, and at a minimum to provide water sufficient to meet near-term growth. The Parties acknowledge that they may have differences in interpreting Lynden's existing water rights and that this MOA does not seek to resolve such differences. Instead, this MOA provides a plan designed to obtain a reliable water supply for Lynden which both Parties agree are sufficient to meet its current and future growth obligations, and to do so in a mutually cooperative environment.

ARTICLE 2. BACKGROUND

In entering into this agreement, the Parties acknowledge the following background:

- The City of Lynden requires approximately 7.13 cubic feet per second ("cfs") and 2400 acre-feet per year ("afy") of water to meet current demand. As projected in its current Water Supply Plan, Lynden will require approximately 16.30 cfs and 5490 afy for 20-year's growth.
- In 1999, Lynden developed its current Water Supply Plan for the State Department of Health. At this time, Ecology reviewed Lynden's water rights and concluded that Lynden was exceeding the annual quantity limitation of its rights.

- In 1999, to maintain the status quo while resolving the water supply issue, Lynden imposed a subdivision moratorium which has remained in effect until now. The Parties disagree as to the status of Lynden's current water rights.
- Lynden has taken substantial conservation efforts over the past several years to limit its water use. These efforts, in addition to imposing the moratorium, include: (1) block rate utility billing for water use; (2) two raises in water rates to encourage conservation; (3) a surcharge on water delivered outside Lynden's normal service area; (4) testing the City's entire water system for leaks and repairing those leaks; (5) a program of odd-even day lawn sprinkling during summer months; and (6) reducing the frequency of fire hydrant flushing. Lynden intends to continue to aggressively pursue conservation measures.
- The moratorium has led to economic hardship for the City of Lynden, including a skewed housing market with few remaining lots available for development.
- The Parties recognize that Lynden is a growing community and that it will continue to grow consistent with its urban growth plan and the Growth Management Act.
- The Parties recognize that conservation efforts alone will not address Lynden's long-term water needs and that, under any interpretation of Lynden's current water rights, additional water is still needed to meet the 20-year projected demand.
- Because of the Parties' interest in pursuing and achieving a Long-Term Solution to Lynden's water supply needs, the Parties agree that the benefits of pursuing a long-term solution as outlined in this MOA outweigh pursuing litigation to resolve differing interpretations of Lynden's water rights.
- Lynden is near completion in construction of a \$10,000,000 upgrade to its wastewater treatment facility to comply with state and federal requirements. The City has also embarked on a \$6,000,000 water tank and infrastructure upgrade. Both of these projects are necessary for Lynden to provide water and wastewater treatment to its citizens. Lynden's debt repayment schedule on these improvements and upgrades anticipate new development to pay for the share of these costs directly related to projected population increases as required by the Growth Management Act. The continuation of the subdivision moratorium would cause an undue burden on existing rate payers who would have to pay these growth-related expenses without the expanded rate base that growth would provide.

**IN CONSIDERATION OF THE ABOVE UNDERSTANDING OF THE
PARTIES, ECOLOGY AND LYNDEN AGREE AS FOLLOWS:**

ARTICLE 3. DEFINITIONS

- 3.1 "Growth Management Act." Chapter 36.70A. RCW.
- 3.2 "Long-Term Solution." A reliable water supply solution that provides Lynden with the ability to meet current and projected future growth demands for the next twenty (20) years as set forth in its approved comprehensive plan adopted pursuant to the Growth Management Act and its water system plan.
- 3.3 "Party" or "Parties." Ecology and/or Lynden individually or together.
- 3.4 "Subdivision(s)." Subdivisions, short subdivisions, or planned residential developments.
- 3.5 "Health MOU". The Memorandum of Understanding between Ecology and Health allowing for Ecology's review of water rights in connection with supply plans submitted to Health for approval.

ARTICLE 4. ACTIONS

There are several options to research and pursue for Lynden's Long-Term Solution. These include obtaining a new water right, purchasing and transferring an existing water right(s), and obtaining water from other municipal utilities. The goal of the Parties is to have the Long-Term Solution in time for it to be incorporated in the final approval of Lynden's 2006 water system plan.

The Parties recognize that a primary potential Long-Term Solution to Lynden's water rights issues is to obtain water from Bellingham ("Bellingham Option"). The Bellingham Option was considered in a white paper dated May 24, 2000. This white paper was prepared by Ecology for Lynden and discussed the water rights issues and water supply options. Lynden has had an ongoing series of discussions with Bellingham regarding its potential acquisition of water. Bellingham and Lynden commissioned a joint report by RH2 Engineering, Inc. entitled, "City of Lynden Water Source Options Feasibility Report," completed in April 2003. This report identifies acquisition of water from Bellingham as the primary Long-Term Solution to Lynden's water right issues. Ecology and Lynden understand that Bellingham's participation as a willing partner in pursuit of the Bellingham Option under this MOA is vital. Therefore, Ecology and Lynden are committed to working with Bellingham

to arrive at a mutually agreeable water supply plan for all entities, realizing that Bellingham has the right to approve or disapprove of any proposed action pertaining to its water rights. Lynden and Ecology's efforts in this regard are provided below in paragraph 4.1.2.

Lynden's other options for a Long-Term Solution include obtaining a new water right under pending water right applications, the transfer and change of other existing water rights, and the use of reclaimed water. Some of these options may be elements of the "Bellingham Option" described above. To the extent these options are not elements of the "Bellingham Option," Lynden and Ecology will pursue these options as described below in paragraph 4.1.3.

4.1 Action Items

4.1.1 The Parties will meet in January 2004 for the first of the quarterly meetings provided in Article 5, Management. In addition to the tasks identified below, an important purpose of the January 2004 meeting is to discuss planning and implementation of the following:

- a communication strategy;
- contacting and informing tribal governments;
- contacting and informing WRIA participants;
- evaluation of funding alternatives;
- meeting(s) with other parties;
- identification, evaluation, and pursuit of other options as needed or desired.

4.1.2 The Bellingham Option will be evaluated as the priority option for the first nine (9) months of this MOA. A detailed description of the Bellingham Option and a final document should be presented to Bellingham for its consideration and approval no later than one (1) year from the date of this MOA.

- Working with Bellingham, Ecology and Lynden will identify options and paths for achieving the Bellingham Option.
- In January 2004, Lynden and Ecology will meet to review the options identified and to identify tasks and establish timeframes.

- Ecology will schedule a meeting with Bellingham and Lynden within the first quarter of 2004.
- Ecology and Lynden will seek to have information gathered and cost and feasibility analysis completed on the Bellingham Option by July 2004.
- Lynden and Ecology will seek to have any further studies and analysis of the Bellingham Option completed in September to November 2004.

4.1.3 Alternative Long-Term Solutions shall be identified and pursued.

- In the January 2004 meeting, Lynden and Ecology will develop alternative options to the Long-Term Solution and will develop a schedule for collecting the information regarding each alternative.
- The alternative options include:
 - a. further consideration of Lynden's water rights;
 - b. reclamation as direct supply and/or for mitigation;
 - c. processing existing applications, including consideration of mitigation water from other sources and Lynden's discharge of water from its treatment plant;
 - d. identification and implementation of potential water right transfers as direct supply and/or for mitigation;
 - e. new groundwater rights for direct supply and/or for mitigation;
 - f. other mitigation options.

These options may be explored and implemented at any time, including concurrently with the Bellingham Option.

- At each of the quarterly meetings, as provided in Article 5, Management, Lynden and Ecology will assess the information collected regarding the alternative options.

- Should the Bellingham Option prove infeasible, Lynden and Ecology will pursue the alternative options in a priority that will be determined based on the assessment of the information collected regarding each alternative option.

4.1.4 Lynden will prepare a report summarizing its previous conservation measures and achievements and will continue to explore additional conservation measures.

4.1.5 Upon execution of this MOA, Ecology will submit a letter to the Washington Department of Health substantially in conformance with Exhibit A. Based upon communications with the Department of Health ("DOH"), the Parties fully expect that this letter will result in removal of the four specific water rights-related conditions placed on Lynden's water system plan approval. In the event that removal of said conditions is not immediately forthcoming, Ecology will work with DOH and Lynden in an attempt to resolve any remaining issues and accomplish this objective.

4.2 Guiding Principles

4.2.1 Ecology and Lynden will together pursue the most promising option(s) to achieve a Long-Term solution to Lynden's existing water rights issues. In determining which options are most promising, the Parties will consider the following nonexclusive list of factors: likelihood of success and feasibility; quantities and instantaneous flow made available; effect on in-stream flows; effect on other right holders; cost of delivery; and time required to achieve solution.

4.2.2 Ecology and Lynden will, as a priority, seek to work with Bellingham as a primary long-term source of water for Lynden.

4.2.3 In working with Bellingham, the Parties will consider options available for using Bellingham's water supply, including without limitation, a direct supply from Bellingham's system, conveyance of Bellingham water through the Nooksack River to Lynden's existing diversion point, and delivery of mitigation water for a new water right issued to Lynden.

4.2.4 The Parties will systematically evaluate and actively explore alternative means of delivering water, cost of delivery, mitigation uses, flow enhancement potential, and benefits to third parties.

- 4.2.5 Nothing herein limits the Parties from reassessing priorities or exploring any and all other options, including options not presently contemplated.
- 4.2.6 Upon agreeing on a Long-Term Solution and obtaining the necessary commitments from any other entities to implement the solution, the Parties shall implement the solution as necessary to obtain all necessary final decisions and commitments. These may include and require approval from the Lynden City Council and Ecology processing and approving any necessary water right applications subject to the laws and rules that apply to the processing of water right applications.
- 4.2.7 The Parties shared goal is to finalize and complete a Long-Term Solution in time for the final approval of Lynden's 2006 water system plan, and the Parties intend to make the effort required to achieve this goal. However, failure to achieve a Long-Term Solution within this time period will not result in automatic termination of this MOA. This MOA shall continue in effect until terminated in accordance with Article 6.

ARTICLE 5. MANAGEMENT

Lynden and Ecology shall commit their staff and legal counsel to developing the options toward reaching a Long-Term Solution to Lynden's existing water rights issues. It is intended that to the extent feasible, staff and legal counsel for the Parties shall work together effectively, efficiently, and in good faith to coordinate planning, strategy and execute mutual decisions. Lynden and Ecology will meet quarterly during the term of this MOA, or more frequently if necessary. At quarterly meetings, Lynden will provide updated reports of its water consumption and identify desired resource commitments needed from Ecology. In carrying out this MOA, Ecology will work with Lynden in applying for any available funds to pursue and/or implement a final Long-Term Solution. Otherwise, each Party shall bear its own staff, attorney, and consultant costs.

ARTICLE 6. DISPUTE RESOLUTION - TERMINATION

- 6.1 Any dispute arising out of the terms and conditions of this MOA shall first be subject to the following process. 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 6.1, "promptly" shall mean within fourteen (14) calendar days of a Party requesting a meeting to resolve a dispute. If within sixty (60) days after such meeting the Parties have not succeeded in resolving the dispute, notice of termination may be issued by

either Party in accordance with Section 6.2. Following termination, any remaining disputes arising out of the terms and conditions of this MOA may be resolved in accordance with Section 7.7 herein.

- 6.2 This MOA shall remain in effect until the Parties mutually agree in writing that its purpose has been achieved or until it is terminated by either Party. This MOA may be terminated by either Party for unresolved disputes as provided in Section 6.1 or if it becomes apparent that securing the objectives of this MOA as expressed in Article 1, are not reasonably feasible. Notice of any termination shall be in writing and shall be effective thirty (30) days following receipt.

ARTICLE 7. GENERAL PROVISIONS

- 7.1 For so long as this MOA is in effect, Ecology will not exercise its discretion to take water right enforcement/legal action against Lynden nor shall it recommend denial or conditioning of any Lynden water system plan on grounds of insufficient water rights. Nothing herein shall prevent the Parties from jointly initiating litigation by mutual agreement to resolve discrete issues.
- 7.2 To the extent permitted by law, each Party shall indemnify, defend and hold the other Party, its officers, agents and employees harmless from all suits, claims or liabilities of any nature, including attorney fees, costs and expenses, for or on account of injuries or damages sustained by any person or property resulting from the negligent acts or omissions of and to the extent harm is caused by the first Party, its agents or employees in connection with the first Party's performance under this MOA.
- 7.3 All notices and other communications required or permitted to be given by this MOA must be in writing and must be given and will be deemed received if and when either hand delivered, faxed or mailed to:

CITY OF LYNDEN

City Administrator
City of Lynden
323 Front Street
Lynden, WA 98264

DEPARTMENT OF ECOLOGY

Manager – Bellingham Field Office
Washington Department of Ecology
1204 Railroad Avenue
Bellingham, WA 98225

or to such other address as the Parties hereto may from time-to-time designate in writing and deliver in a like manner. Facsimile transmission of any signed original document and retransmission of

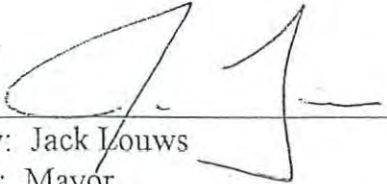
any signed facsimile transmission shall be the same as delivery of an original document.

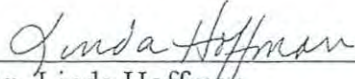
- 7.4 Failure of either Party at any time to require performance of any provision of this MOA shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this MOA constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
- 7.5 If any term or provision of this MOA or the application thereof to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this MOA and the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this MOA shall be valid and enforceable to the fullest extent permitted by law.
- 7.6 The laws of the State of Washington shall govern any disputes arising under this MOA.
- 7.7 Subject to section 6.1 herein, any disputes arising out of the terms and conditions of the terminated MOA may be adjudicated. Any legal cause of action shall be adjudicated in the Superior Court for Whatcom County, Washington, unless otherwise agreed.
- 7.8 This MOA constitutes the entire agreement between Ecology and Lynden as to the matters contained herein. This MOA may be modified in writing only, upon mutual agreement of the Parties.

Dated this 28th day of January, 2004.

CITY OF LYNDEN

DEPARTMENT OF ECOLOGY


By: Jack Louws
Its: Mayor


By: Linda Hoffman
Its: Interim Director

Approved as to form:

Robert A. Cell
City Attorney

[illegible]

I certify that I know or have satisfactory evidence that Jack Louws 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 Lynden to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated this 20th day of January, 2004.



Kathleen M. Delgado
Print Name: KATHLEEN M. DELGADO
NOTARY PUBLIC in and for the
State of Washington.
My commission expires: 06-27-07

STATE OF WASHINGTON)
) ss.
COUNTY OF *Thurston*)

I certify that I know or have satisfactory evidence that Linda Hoffman is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Interim Director of the Washington State Department of Ecology to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated this 15th day of January, 2004.



Lorna Mendez-Correa
Print Name: Lorna Mendez-Correa
NOTARY PUBLIC in and for the
State of Washington.
My commission expires: 9-17-07

Bob Carmichael

From: Steve Banham <BanhamS@LYNDENWA.ORG>
Sent: Friday, March 15, 2019 3:38 PM
To: Bob Carmichael
Cc: Mark Sandal; Michele Campbell; Laura Burford
Subject: Darigold Water Wholesale Water Purchase and Sale
Attachments: Fully Executed Darigold Wholesale Wtr Agrmt 5-16-17.pdf

Bob,

We plan to include a copy of the Purchase and Sale Agreement with Darigold for Wholesale Water as an appendix in the Water System Plan Update. I've attached a copy just to make sure we are on the same page with what should be included and have your concurrence.

Steve Banham, P.E.

Public Works Director

City of Lynden, 300 4th Street, Lynden, WA 98264

Office: (360) 354-3446 <> Direct: (360) 255-5512 <> Cell: (360) 815-5728 <> Email: banhams@lyndenwa.org <> website: www.lyndenwa.org

My incoming and outgoing email messages are subject to public disclosure requirements

Our Vision: Cultivating Exceptional Service for Our Extraordinary Community

We Value: Community – Communication – Teamwork – Integrity – Excellence

AGREEMENT FOR WHOLESALE PURCHASE AND SALE OF INDUSTRIAL CONDENSATE WATER

This Agreement for the wholesale purchase and supply of Industrial Condensate Water ("Agreement") between Darigold, Inc. ("Darigold"), a Washington corporation doing business in the State of Washington, and the City of Lynden ("City"), a municipal corporation organized under the laws of the State of Washington, is effective this 16, day of May, 2017 ("Effective Date").

ARTICLE 1. RECITALS

- 1.01** The purpose of this Agreement is to set the terms of the City's acquisition of Industrial Condensate Water from Darigold and to improve wastewater conveyance and discharge facilities.
- 1.02** The Parties intend that this Agreement allow for Darigold's continued ability to discharge Industrial Condensate Water without materially increased costs and with mitigation of risks.
- 1.03** This Agreement benefits the City with an additional source of municipal water supply.
- 1.04** This Agreement benefits Darigold by enhancing water quality protection for existing discharges from the Darigold Facility and improving Darigold's ability to manage such discharges.
- 1.05** By virtue of this Agreement, Darigold will secure rights for its Darigold Facility to use an additional line and discharge point for Industrial Condensate Water, and a new separate line and discharge point for its stormwater presently discharged via the Existing Line, each line to be maintained and operated by the City.
- 1.06** This Agreement is entered into by the Parties in consideration of the mutual benefits and burdens set forth herein.
- 1.07** The foregoing recitals are a material part of this Agreement.

ARTICLE 2. GENERAL PROJECT DESCRIPTION

2.01 Foreign Water Transmission Main. The City will construct a new foreign water transmission line ("Foreign Water Transmission Main") that connects to the Existing Line southerly of the intersection of Judson Alley and 3rd Street ("Point of Connection") and discharges at an outfall into the Nooksack River. The State funding which the City intends to use to construct the Foreign Water Transmission Main requires that the City retain ownership thereof for at least ten (10) years from the date of receipt of final payment. Transfer of any or all of the Foreign Water Transmission Main during that period would require approval by the State Department of Commerce. The intended location of the Foreign Water Transmission Main is depicted in white as "New Foreign Water Transmission Main" on Exhibit A. The final specific route and outfall location shall be determined and more particularly described by the City following engineering design.

2.02 New Segment of Existing Line. The City will construct a new segment of the Existing Line ("New Segment of Existing Line") that connects to the Foreign Water Transmission Main at the Line Junction and extends westerly in Riverview Road to the Existing Line as shown on Exhibit A, which

discharges to the Existing City Outfall Line. The State funding which the City intends to use to construct the New Segment of Existing Line requires that the City retain ownership thereof for at least ten (10) years from the date of receipt of final payment. Transfer of any or all of the New Segment of the Existing Line during that period would require approval by the State Department of Commerce. The intended location of the New Segment of Existing Line is depicted in yellow as "New Segment of Existing Line" on Exhibit A. The New Segment of Existing Line shall be located in the Riverview Road right-of-way.

2.03 License – Foreign Water Transmission Main, New Segment of Existing Line, and Existing City Outfall Line. The City grants Darigold a license to use the Foreign Water Transmission Main and separate licenses to use the New Segment of Existing Line and Existing City Outfall Line, for Industrial Condensate Water discharge from the Darigold Facility, under the terms set forth herein. The licenses commence following completion of the Foreign Water Transmission Main and the New Segment of Existing Line and their connection to the Existing Line, prior to being utilized for transport of Industrial Condensate Water. The license for the Foreign Water Transmission shall remain in place for so long as this Agreement or any extension thereof remains in effect. The license for the New Segment of Existing Line shall be perpetual. The license for the Existing City Outfall Line is subject to Section 11.01 herein.

2.04 New Stormwater Pipe – Connection to City Stormwater Utility. Darigold will be a connected customer of the City stormwater utility, subject to Chapter 13.24 of the Lynden Municipal Code, now and as hereafter amended, and by this Agreement shall be deemed approved for any City stormwater connection permit necessary for the connection and use described herein. The City will construct a new stormwater pipe ("New Stormwater Pipe") for the purpose of collecting stormwater which currently discharges from Darigold's Facility to its Existing Line. The New Stormwater Pipe will only collect stormwater which currently discharges to the Existing Line from a single location and will extend northerly in Depot Road to an existing 12" stormwater pipe ("Existing 12" Pipe") with an existing outfall to Fishtrap Creek, as shown on Exhibit A. The City shall own and operate the New Stormwater Pipe as part of the City's stormwater utility. The specific location for collection of stormwater from the Darigold Facility shall be within City right-of-way as determined by the City.

ARTICLE 3. AGREEMENT

Darigold agrees to sell and the City agrees to purchase a wholesale supply of Industrial Condensate Water according to the following terms and conditions. The following exhibits attached hereto are hereby fully incorporated herein as terms of this Agreement: Exhibit A – Aerial Photograph Depicting Pipeline Routes; Exhibit B – Wastewater Treatment Facility Site Plan; Exhibit C – Easement Relocation Agreement; and Exhibit D – City Ordinance No. 1520 Granting Darigold a Non-Exclusive Franchise for Use of Public Right of Way.

ARTICLE 4. DEFINITIONS

4.01 "Amend" or "Amendment" when used in connection with a Discharge Permit in this Agreement shall mean an amendment, minor modification, file notation, letter of authorization, revision, or any formal or informal change authorizing a new or additional discharge point.

4.02 "Available Industrial Condensate Water" shall mean all Industrial Condensate Water which is not subject to the following reservation of right to discharge through the Existing Line and Existing City Outfall Line. Darigold reserves the right to discharge Industrial Condensate Water through the Existing Line and Existing City Outfall Line as reasonably necessary for the ownership or operation of the Darigold Facility, *e.g.*, for reasons relating to plant operations, NPDES permitting, or demonstrating the Existing Line and Existing City Outfall Line as active discharge facilities as to Darigold.

4.03 "Calendar Year" shall mean from January 1 through December 31 of a single year.

4.04 "City's Water Intake" or "Water Intake" shall mean the location at which the City currently withdraws water from the Nooksack River for treatment and use in the City's municipal water supply.

4.05 "Confidential Information" shall mean without limitation technical and research data, technical information relating to the Darigold Facility or its facility's processes, business plans, financial data, legal advice, attorney work product, factual analyses, draft reports, expert opinions, reports of interviews and public records which may be exempt from disclosure under Chapter 42.56 RCW ("Public Records Act").

4.06 "Contract Demand" shall mean up to a maximum of 100% of all Available Industrial Condensate Water produced at the Darigold Facility on an annual basis for each and every year in which this Agreement or any extension thereof, is in effect.

4.07 "Darigold Facility" shall mean the Darigold plant located at 8424 Depot Road in Lynden, Washington, on the following described real property: The North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, Section 20 Township 40 North, Range 3 East W.M. Situate in Whatcom County, Washington.

4.08 "Discharge Permit" shall mean an approved industrial or stormwater NPDES permit including any Amendment thereto, which is acceptable to Darigold, authorizing discharge into the Nooksack River, its tributaries, or a surface water body connected therewith.

4.09 "Ecology" shall mean the Washington State Department of Ecology.

4.10 "Existing City Outfall Line" shall mean the City owned line or a replacement thereof at substantially the same location that begins at a connection to the Existing Line at the manhole identified in Exhibit B, and runs adjacent to the City Wastewater Plant to discharge into the Nooksack River. The Existing City Outfall Line is identified in blue on Exhibit A and carries effluent from the City Wastewater Treatment Plant and the non-sanitary discharge from the Darigold Facility.

4.11 "Existing Line" shall mean the existing pipeline currently used to transport Industrial Condensate Water and storm water from the Darigold Facility. The Existing Line runs from the Darigold Facility in a southerly direction in the 3rd Street right-of-way, and beyond, before turning in a southwesterly direction and eventually to a manhole at the City Waste Water Treatment Plant at the location depicted on Exhibit B, where it connects to the Existing City Outfall Line. The term "Existing Line" shall include any relocation or replacement thereof which maintains its current connection from the Darigold Facility to the Existing City Outfall Line. The location of the Existing Line is depicted in red

on Exhibit A. That portion of the Existing Line southerly of the manhole located at the intersection of 3rd Street and Judson Street Alley will be replaced by the Foreign Water Transmission Main. That portion of the Existing Line noted on Exhibit A as "To Be Abandoned," will be abandoned in place and replaced by the New Segment of Existing Line as shown on Exhibit A.

4.12 "Existing 12" Pipe" shall mean the currently existing 12" City stormwater pipe located in Depot Road right-of-way, discharging into Fishtrap Creek, as shown by dark green line on Exhibit A.

4.13 "Foreign Water" for purposes of this Agreement shall mean new water which is developed as a byproduct of processing cow milk into powdered milk at the Darigold Facility.

4.14 "Foreign Water Transmission Main" shall mean a new water main line and appurtenances, owned and operated by the City, which transport Industrial Condensate Water from the Point of Connection to an outfall into the Nooksack River. The general route of the Foreign Water Transmission Main is depicted in white on Exhibit A. The location of the outfall for the Foreign Water Transmission Main shall be in the sole discretion of the City.

4.15 "Hazardous Materials" shall mean any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government due to its potential harm to the health, safety or welfare of humans or the environment.

4.16 "Industrial Condensate Water" shall mean the non-sanitary sewerage discharge flow generated by the Darigold Facility processes in the normal course of business, as determined in Darigold's sole discretion, and is the Foreign Water produced at the Darigold Facility.

4.17 "Line Junction" shall mean the junction between the Foreign Water Transmission Main and the New Segment of Existing Line, depicted on Exhibit A.

4.18 "Line Valve" shall mean the valve, mechanism, or physical apparatus at the Line Junction which directs flow to either the Foreign Water Transmission Main or the Existing City Outfall Line.

4.19 "New Segment of Existing Line" shall mean a new line, owned and operated by the City, which connects to the Foreign Water Transmission Main at the Line Junction and extends westerly in Riverview Road right-of-way to the Existing Line, as shown on Exhibit A. The New Segment of Existing Line relocates and replaces a portion of the Existing Line to be abandoned in place, and discharges to the Existing City Outfall Line. The intended location of the New Segment of Existing Line is depicted in yellow as "New Segment of Existing Line" on Exhibit A.

4.20 "New Stormwater Pipe" shall mean a new City owned and operated stormwater pipe that collects stormwater from the Darigold Facility at a single location determined by the City in the Depot Road right-of-way and extends northerly in Depot Road right-of-way to connect with an Existing 12" Pipe and an existing stormwater outfall at Fishtrap Creek, as shown on Exhibit A. The New Stormwater Pipe is only intended to accommodate stormwater from the Darigold Facility currently being discharged down the Existing Line.

4.21 "NPDES permit" shall mean a discharge permit issued pursuant to the National Pollutant Discharge Elimination System.

4.22 "Party" or "Parties" shall mean the City and/or Darigold.

4.23 "Point of Connection" shall mean the northernmost point of connection made between the Foreign Water Transmission Main and the Existing Line at the actual location it is made, which will be at a manhole in the intersection of Judson Alley and 3rd Street in the City of Lynden, generally depicted in Exhibit A.

4.24 "Point of Delivery" shall mean the geographical location at which Darigold will deliver Industrial Condensate Water to the City pursuant to the terms of this Agreement. Unless changed by subsequent amendment, the Point of Delivery shall be the terminus of the Foreign Water Transmission Main above its outfall.

4.25 "Regulatory Approval(s)" shall mean any and all approvals or permits from a federal, state, or local governmental agency, including any administrative or judicial appeals/litigation thereon, which are required to lawfully allow for the purchase and supply of Industrial Condensate Water from Darigold to the City under the terms set forth herein. The Parties understand and agree that this wholesale purchase and supply of Industrial Condensate Water is not a water right transfer and therefore does not require approval from Washington State Department of Ecology for a transfer or change of a water right.

4.26 "Water Meter" shall mean the existing water meter installed and maintained by Darigold, located at the Darigold Facility, which measures the quantity of Industrial Condensate Water leaving the Darigold Facility and entering the Foreign Water Transmission Main. The Water Meter shall be located so as to measure only Industrial Condensate Water produced at the Darigold Facility, not stormwater or water from any other source.

4.27 "Water Rights" shall mean any and all permit applications, claims, permits, or certificates authorizing non-foreign water use pursuant to Title 90 RCW and administered by the Washington State Department of Ecology, now or in the future.

ARTICLE 5. PURCHASE AND SALE OF INDUSTRIAL CONDENSATE WATER

5.01 Darigold shall annually sell to the City Available Industrial Condensate Water produced at the Darigold Facility according to the terms and conditions herein.

5.02 The City shall annually purchase from Darigold Available Industrial Condensate Water, subject to the terms and conditions herein.

5.03 The purchase and sale of Available Industrial Condensate Water pursuant to this Agreement shall be considered a bulk conveyance of Foreign Water, as personal property, from Darigold to Lynden at the Point of Delivery. This Agreement does not involve the transfer of Water Rights.

ARTICLE 6. CONTRACT DEMAND

6.01 Darigold shall supply the City with its entire Contract Demand for Available Industrial Condensate Water each and every year in which this Agreement or any extension thereof is in effect, subject to the terms herein.

ARTICLE 7. CONDITIONS OF TRANSFER AND VOLUME- DARIGOLD

7.01 To meet its obligation in Section 6.01, Darigold shall furnish all Available Industrial Condensate Water to the City on an annual/daily basis at the Point of Delivery.

7.02 Darigold shall amend its current Discharge Permit for Industrial Condensate Water to authorize an additional discharge location via the Foreign Water Transmission Main. Darigold shall maintain said Discharge Permit in good standing so that its current and future ability to discharge Industrial Condensate Water via the Existing Line and Existing City Outfall Line is not materially limited or terminated. Darigold shall hold the amended Discharge Permit for Industrial Condensate Water in its own name and shall utilize the Foreign Water Transmission Main for its discharge of all Available Industrial Condensate Water, subject to the reservation of rights in Section 4.01 of this Agreement.

7.04 On a monthly basis, Darigold shall provide the City with a report including daily volumes of Industrial Condensate Water passing through the Water Meter. The City shall be granted access and have a right to inspect and test the Water Meter not less than annually, at its own expense, by providing Darigold with thirty (30) days prior written notice. Any written Water Meter test results obtained by the City shall promptly be made available to Darigold.

7.05 Darigold confirms its intent, as of the Effective Date, to discharge Industrial Condensate Water through the Foreign Water Transmission Main.

7.05.01 Within 30 days of the Effective Date of this Agreement, Darigold shall request from Ecology an Amendment in the form of a minor modification to its Discharge Permit for Industrial Condensate Water authorizing discharge of Industrial Condensate Water from the Darigold Facility to the Nooksack River via the Foreign Water Transmission Main ("Foreign Water Transmission Main Discharge"). Darigold shall pursue obtaining approval of said Discharge Permit Amendment with all reasonable dispatch as time is of the essence.

7.05.02 Immediately following the Effective Date of this Agreement and prior to Darigold obtaining an Amendment to its Discharge Permit for Industrial Condensate Water authorizing the Foreign Water Transmission Main Discharge, the City may in its discretion commence planning, right-of-way acquisition, engineering, design, public bidding, and actual construction ("Full Construction Work") for the Line Valve, New Segment of Existing Line, and that portion of Foreign Water Transmission Main from the Line Junction east to Hannegan Road.

7.05.03 Immediately following the Effective Date of this Agreement and prior to Darigold obtaining an Amendment to its Discharge Permit for Industrial Condensate Water authorizing the Foreign Water Transmission Main Discharge, the City may in its discretion commence planning, right-of-

way acquisition, engineering, design, and the public bidding process ("Pre-Construction Work") for that portion of Foreign Water Transmission Main from the Point of Connection to the Line Junction and from its most northerly point in the Hannegan Road right-of-way southerly to its discharge at the Nooksack River. The City will not commence Full Construction Work on the Foreign Water Transmission Main from the Point of Connection to the Line Junction and from its northerly point in the Hannegan Road right-of-way southerly to its discharge at the Nooksack River until after Darigold obtains an Amendment to its Discharge Permit authorizing the Foreign Water Transmission Main discharge.

7.05.04 The City assumes all risk of loss related to commencement of such Pre-Construction Work and Full Construction Work described in this section 7.05 prior to Darigold obtaining an Amendment to its Discharge Permit for Industrial Condensate Water authorizing the Foreign Water Transmission Main Discharge, and shall indemnify and hold Darigold harmless from any claim or cause of action arising from the City's commencement of Pre-Construction Work or Full Construction Work prior to Darigold obtaining an Amendment to its Discharge Permit for Industrial Condensate Water authorizing the Foreign Water Transmission Main Discharge.

7.05.05 Within three (3) business days of receiving an Amendment to its Discharge Permit for Industrial Condensate Water authorizing its Foreign Water Transmission Main Discharge, Darigold shall send written notice to the City of same, following which the City may complete Full Construction Work on the entire Foreign Water Transmission Main, along with the Line Valve and New Segment of Existing Line.

7.05.06 Beginning within 30 days after Darigold secures an Amendment to its Discharge Permit for the Foreign Water Transmission Main Discharge and after completion of construction of the Foreign Water Transmission Main, the New Segment of Existing Line, and Line Valve installation, Darigold will provide for such discharge as a standard operating procedure at the Darigold Facility, subject to the reservation of right in Section 4.01 of this Agreement, and so long as necessary Regulatory Approvals are in place and the New Stormwater Pipe is available to accommodate stormwater discharge from the Darigold Facility in accordance with this Agreement.

7.06 A Line Valve will be installed at the Line Junction. Its standard default position shall direct all Industrial Condensate Water from the Darigold Facility down the Foreign Water Transmission Main. The City anticipates shutting down its water treatment plant approximately 3 times per year. During water treatment plant shutdowns the City may in its discretion, following prior notice to Darigold, direct all Industrial Condensate flow to the Existing City Outfall Line for the duration of the shutdown. Upon restarting its water treatment plant, the City shall redirect any such diverted flow to the Foreign Water Transmission Main and so notify Darigold.

7.07 The City shall be responsible for operating the Line Valve, however, Darigold shall be provided the means of operating the Line Valve to direct Industrial Condensate Water under the terms and conditions set forth herein.

7.07.01 Pursuant to its reservation of right in Section 4.01, Darigold may notify and direct the City to adjust the Line Valve to send Foreign Water to the Existing City Outfall Line. The City shall, within 48 hours, comply with such request and so notify Darigold. In the event

Darigold is not notified by the City that it has directed Foreign Water to the Existing City Outfall Line within 72 hours of Darigold's request to do so, Darigold may adjust the Line Valve itself to direct Foreign Water to the Existing City Outfall Line and shall notify the City upon doing so.

7.07.02 Following any direction of Foreign Water to the Existing City Outfall, at the request of the City, Darigold shall within 48 hours meet and confer with the City for the purpose of explaining why it was necessary to direct Foreign Water to the Existing City Outfall Line and to establish when such flow may be redirected to the Foreign Water Transmission Main. All such flow shall be returned to the Foreign Water Transmission Main as soon as possible, consistent with the reservation of right in Section 4.01.

7.07.03 All notifications required by this Section shall conform to Section 18.03; except that, upon written approval of both parties, a regular schedule of Line Valve adjustments may be implemented for any agreed upon period of time, in which case the notifications required herein shall not be necessary for so long as such agreed schedule is in effect and followed. The parties may also agree to identify points of contact for purposes of telephone communications.

7.07.04 In the event of a bona fide emergency, as determined by Darigold, Darigold may adjust the Line Valve on its own to direct all Foreign Water to the Existing City Outfall without prior notice to the City; provided that, Darigold shall immediately notify the City of the action taken and confer with the City within 24 hours to explain the reason for its action and establish when said flow may be returned to the Foreign Water Transmission Main.

7.08 Darigold confirms its intent, as of the Effective Date of this Agreement, to change the discharge outfall location for stormwater from the Darigold Facility presently discharging through the Existing Line and Existing City Outfall Line to the Nooksack River to a new discharge outfall location via the New Stormwater Pipe and the Existing 12" Pipe to Fishtrap Creek.

7.08.01 Within 30 days of the Effective Date of this Agreement, Darigold shall request from Ecology an Amendment in the form of a file notation and confirming letter for its Discharge Permit authorizing stormwater discharge from the Darigold Facility to identify Fishtrap Creek as the new discharge location via the New Stormwater Pipe and Existing 12" Pipe ("Fishtrap Creek Stormwater Discharge"). The stormwater comprising the Fishtrap Creek Stormwater Discharge shall be that stormwater presently being discharged down the Existing Line and Existing City Outfall Line. Darigold shall pursue obtaining approval of said change in discharge location under its Discharge Permit for stormwater with all reasonable dispatch as time is of the essence.

7.08.02 Immediately following the Effective Date of this Agreement and prior to Darigold obtaining an Amendment to its Discharge Permit for stormwater authorizing the Fishtrap Creek Stormwater Discharge, the City may in its discretion commence planning, engineering, design work and the public bidding process ("Pre-Construction Work") for the New Stormwater Pipe. The City will not commence actual construction of the New Stormwater Pipe until after Darigold obtains an Amendment to its Discharge Permit authorizing the Fishtrap Creek Stormwater Discharge.

7.08.03 Darigold hereby grants to the City a temporary license to enter and access the Darigold Facility for the limited purpose of conducting Pre-Construction Work for the New Stormwater Pipe. City

access to the Darigold Facility under this temporary license shall be coordinated with Darigold at least 48 hours in advance. This temporary license shall terminate upon connection of the Darigold Facility to the New Stormwater Pipe.

7.08.04 The City assumes all risk of loss related to commencement of Pre-Construction Work identified in Sections 7.08.02 and 7.08.03 prior to Darigold obtaining an Amendment to its Discharge Permit authorizing the Fishtrap Creek Stormwater Discharge, and shall indemnify and hold Darigold harmless from any claim or cause of action arising from the City's commencement of Pre-Construction Work prior to Darigold obtaining an Amendment to its Discharge Permit authorizing the Fishtrap Creek Stormwater Discharge or arising from the City's access to the Darigold Facility under the temporary license established in Section 7.08.03.

7.08.05 Within three (3) business days of receiving an Amendment to its Discharge Permit authorizing its Fishtrap Creek Stormwater Discharge, Darigold shall send written notice to the City of same, following which the City may commence construction of the New Stormwater Pipe.

7.08.06 Upon completion of construction of the New Stormwater Pipe and its connection to the Existing 12" Pipe, which shall not be completed until Darigold has secured an Amendment to its Discharge Permit authorizing the Fishtrap Creek Stormwater Discharge, the stormwater discharge from the Darigold Facility will be shifted from the Existing Line and Existing City Outfall Line to the New Stormwater Pipe.

ARTICLE 8. CONDITIONS OF TRANSFER – CITY

8.01 The City shall cooperate with and assist Darigold in amending its current Discharge Permit or obtaining a new Discharge Permit authorizing discharge of all Industrial Condensate Water via the Foreign Water Transmission Main. The City shall further cooperate with and assist Darigold to maintain the Discharge Permit for all Industrial Condensate Water via the Foreign Water Transmission Main in good standing to ensure that its current and future ability to discharge Industrial Condensate Water is not materially limited or terminated. Said Discharge Permit shall be in the name of the Darigold. The City shall have no obligation to assist Darigold with obtaining any new Discharge Permit or renewal of an existing Discharge Permit for stormwater via the New Stormwater Pipe and Existing 12" Pipe.

8.02 Darigold shall be solely responsible for obtaining, amending, and maintaining any required Discharge Permit necessary to accommodate stormwater discharge from the Darigold Facility via the New Stormwater Pipe as described herein.

8.03 The City shall be responsible for all design, construction permitting, construction, installation, and maintenance of any new infrastructure or facilities required to make use of the Industrial Condensate Water including without limitation the Foreign Water Transmission Main, New Segment of Existing Line, Line Valve, and New Stormwater Pipe.

8.04 Concurrent with entry of this Agreement, the Parties shall execute a separate agreement which permanently secures for Darigold a perpetual nonexclusive easement for the New Segment of Existing Line, and shall be in substantial conformance with Exhibit C. The City parties hereby

acknowledge that the City granted to Darigold a non-exclusive right to use the Existing Line in the City right-of-way from the Darigold Facility to the Point of Connection, as set forth in Exhibit D.

8.05 Within 12 months of this Agreement taking effect, the City shall install two fire hydrants in the alley on the south side of the Darigold Facility, west of Depot Road. The parties shall cooperate on hydrant siting and construction, and Darigold will grant any property access or temporary easements reasonably required.

ARTICLE 9. BILLING AND CONSIDERATION

Darigold shall not bill or invoice the City for purchase and supply of Industrial Condensate Water under this Agreement. Total consideration for the City's purchase and Darigold's supply of Industrial Condensate Water is set forth in Article 10 and other provisions herein. There shall be no other consideration due from the City for the purchase of water from Darigold.

ARTICLE 10. COSTS

10.01 The payment of costs associated with the wholesale purchase and sale of Industrial Condensate Water pursuant to this Agreement shall be determined in accordance with this Section.

10.02 The City shall pay all costs associated with the following:

10.02.01 Design, construction, construction permitting, installation, maintenance, and operation of the Foreign Water Transmission Main and its appurtenances, along with of any necessary easement or right-of-way acquisition, including its connection to the Existing Line at the Point of Connection; and

10.02.02 Design, construction, construction permitting, installation, maintenance and operation of the New Segment of Existing Line and its appurtenances, along with any necessary easement or right-of-way acquisition, including its connection to the Foreign Water Transmission Main at the Line Junction and connection to the Existing Line to the west; and

10.02.03 Design, construction, construction permitting, installation, maintenance and operation of the New Stormwater Pipe and its appurtenances, including its connection to the Existing 12" Pipe.

10.02.04 Obtaining necessary Regulatory Approvals to authorize transport of Industrial Condensate Water through the Foreign Water Transmission Main to discharge at its outfall; except as provided in Section 10.03 below.

10.02.05 Design and construction of the Foreign Water Transmission Main is based on 500 gallons per minute of flow corresponding with current and projected Industrial Condensate Water flows. The Foreign Water Transmission Main will not be constructed to accommodate stormwater from the Darigold Facility. The City is not obligated under this Agreement to pay for any necessary future upsizing of the Foreign Water Transmission Main, the Existing City Line, or the Existing City Outfall Line to accommodate increased flows by Darigold.

10.02.06 Any and all additional costs that could be associated with proximity of discharge to the Water Intake and/or use of Industrial Condensate Water to enhance the City's municipal water supply as a drinking water source, so long as mutually agreed by the Parties in advance.

10.02.07 All costs associated with installation of two fire hydrants on Depot Road.

10.03 Darigold shall pay all costs associated with the following:

10.03.01 All ongoing costs of compliance with the Discharge Permit(s) for the Foreign Water Transmission Main and the Existing Line including without limitation any initial or annual fee associated with the Discharge Permit(s) and the cost of treatment related to meeting Discharge Permit limits pertaining to discharge of Industrial Condensate Water; and

10.03.02 All costs incurred in maintaining and reading the Water Meter at the Darigold Facility and supplying the City with the volume data described in Section 7.04.

10.03.03 All costs incurred in the development, production, and treatment of Industrial Condensate Water at the Darigold Facility and the Existing Line up to the Point of Connection, along with all associated maintenance costs; and

10.03.05 All costs of obtaining and maintaining necessary Discharge Permit(s) or amendments to authorize discharge of stormwater from the Darigold Facility and all costs associated with treatment of such stormwater emanating from the Darigold Facility to the limits required by Darigold's Discharge Permit for stormwater.

10.03.06 Applicable monthly service charges for stormwater service as a customer of the City stormwater utility under applicable ordinances and resolutions, subject to change from time to time by the City.

10.03.07 In the event the portion of the Existing Line to be abandoned in place is removed, all costs associated with its removal including land restoration.

10.03.08 In the event the Foreign Water Transmission Main and New Segment of Existing Line described in Section 10.02.02 are conveyed to Darigold at a future date, all costs associated with maintaining and operating the Foreign Water Transmission Main and New Segment of Existing Line from that date forward.

ARTICLE 11. LICENSES GRANTED FOR USE OF FOREIGN WATER TRANSMISSION MAIN AND NEW SEGMENT OF EXISTING LINE

11.01 The City hereby grants a license to Darigold for use of the Foreign Water Transmission Main and the City also hereby grants separate licenses to Darigold for use of the New Segment of Existing Line and the Existing City Outfall Line (each referred to as "License"), subject to the terms herein. The License for use of the Foreign Water Transmission Main shall commence upon completion of construction of the Foreign Water Transmission Main and terminate upon conveyance of the Foreign Water Transmission Main to Darigold or termination of this Agreement. The Foreign Water

Transmission Main shall be used for transmission and discharge of Industrial Condensate Water from the Darigold Facility to its outfall on the Nooksack River. The License for use of the Existing City Outfall Line shall be for transmission and discharge of Industrial Condensate Water, and shall survive for as long as the City owns or operates the Existing City Outfall Line or other wastewater discharge outfall in the Nooksack River in the same vicinity. The License for use of the New Segment of Existing Line shall commence upon completion of construction of the New Segment of Existing Line, shall be a perpetual License for transmission and discharge of Industrial Condensate Water, and shall survive the termination of this Agreement. At any time following ten (10) years from the date of this Agreement, the City may in its discretion convey ownership of the New Segment of the Existing Line by bill of sale to Darigold, and Darigold shall accept same, including all appurtenances thereto. Upon such conveyance, and notwithstanding any other provision herein, Darigold's License to use the New Segment of Existing Line terminates and Darigold shall thereafter be responsible for all Operating Expenses thereof.

11.02 There shall be no payment due for the Licenses granted to Darigold herein. Consideration for the Licenses consists of the mutual benefits and considerations set forth in this Agreement.

11.03 The City shall be solely responsible for securing all easements and rights-of-way necessary for construction, maintenance, operation, and utilization of the Foreign Water Transmission Main. Any easements obtained from private parties for these purposes shall be perpetual, run with the land, and binding upon successors and assigns.

11.04 The City shall be solely responsible for maintenance, repair, and replacement of the Foreign Water Transmission Main, the New Segment of Existing Line, and the Existing City Outfall Line during the term of these Licenses and any extension thereof. The City shall also be responsible for maintenance, repair, and replacement of the New Stormwater Pipe and Existing 12" Pipe as part of the City stormwater utility pursuant to applicable ordinances and resolutions, subject to change from time to time by the City.

11.05 The City shall bear all Operating Expenses related to maintenance, repair, restoration, or replacement of the Foreign Water Transmission Main, New Segment of Existing Line, and the Existing City Outfall Line during the term of the Licenses; except that, in the event the Foreign Water Transmission Main, Line Valve, New Segment of Existing Line, or Existing City Outfall Line is damaged due to the discharge from the Darigold Facility of a substance other than Industrial Condensate Water, Darigold shall be responsible for repair thereof. The City shall bear Operating Expenses related to maintenance, repair, restoration, or replacement of the New Stormwater Pipe and Existing 12" Pipe as part of the City stormwater utility pursuant to applicable ordinances and resolutions, subject to change from time to time by the City. The term "Operating Expenses" shall mean costs and expenses of the maintenance and repair of the Foreign Water Transmission Main, Line Valve, New Segment of Existing Line, Existing City Outfall Line, New Stormwater Pipe, and Existing 12" Pipe, including all supplies, materials, labor and equipment used or related to the operation, repair and maintenance thereof, which the City shall maintain and keep in good condition, reasonable wear and tear excepted, through the term of the applicable Licenses.

11.06 The occurrence of any of the following shall constitute a default and breach of a material term by Darigold:

11.06.01 If without terminating the Agreement as authorized in Article 16 and following notice and opportunity to cure, Darigold ceases to use the Foreign Water Transmission Main for discharge of Available Industrial Condensate Water.

11.06.02 Following notice and opportunity to cure, if Darigold uses the Foreign Water Transmission Main for transport and discharge of any substance other than Industrial Condensate Water.

11.06.03 Failure to perform any other provision of this Agreement within ninety (90) days after written notice from the City. If the default cannot be reasonably cured within ninety (90) days, Darigold shall not be in default if it commences to cure the default within the ninety (90) day period and diligently and in good faith continues to cure the default within a reasonable period of time.

ARTICLE 12. INSURANCE

12.01 Liability Insurance. The City shall, throughout the term of this Agreement and any renewal hereof, at its own expense, keep and maintain in full force and effect, a policy of Commercial General Liability (occurrence form) insurance including contractual liability insuring activities involving the Foreign Water Transmission Main and New Segment of Existing Line, and appurtenances, and for the New Stormwater Pipe and Existing 12" Pipe, and appurtenances, against claims from bodily injury or death or property damage or loss with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. The City shall name Darigold as an additional insured on the policy.

12.02 Casualty Insurance. The City shall obtain and keep in force during the term of this Agreement, at its own expense, a policy or policies of "All Risk" insurance covering loss or damage to the Foreign Water Transmission Main and New Segment of Existing Line, and appurtenances, and for the New Stormwater Pipe and Existing 12" Pipe, and appurtenances, in an amount determined by the City from time to time, providing protection against all perils including fire, theft and vandalism, and such other risks as the City reasonably deems advisable.

ARTICLE 13. HAZARDOUS MATERIAL

13.01 Darigold Obligations. Darigold shall not cause or permit Hazardous Material to be brought upon, kept, or used in or about, or disposed of on or in the Foreign Water Transmission Main, the New Segment of Existing Line, the Existing City Outfall Line, or the real property on which any of the foregoing is located, by Darigold, its agents, employees, contractors or invitees, except in strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. If Darigold breaches the obligations stated in the preceding sentence, then Darigold shall indemnify, defend and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Foreign Water

Transmission Main, New Segment of Existing Line, Existing City Outfall Line, or the real property on which any of the foregoing is located.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Foreign Water Transmission Main, New Segment of Existing Line, Existing City Outfall Line, or the real property on which any of the foregoing is located, by Darigold, its agents, employees, contractors or invitees, results in any unlawful release of Hazardous Material, Darigold shall promptly take all actions, at its sole expense, as are necessary to return the property surrounding the Foreign Water Transmission Main, New Segment of Existing Line, Existing City Outfall Line, or any other property, to the condition existing prior to the release of any such Hazardous Material; provided that the City's approval of such actions shall first be obtained.

13.02 City Obligations. The City shall not cause or permit Hazardous Material to be brought upon, kept, or used in or about, or disposed of on or in the Foreign Water Transmission Main, New Segment of Existing Line, Existing City Outfall Line, or the real property on which any of the foregoing is located, by the City, its agents, employees, contractors or invitees, except in strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. If the City breaches the obligations stated in the preceding sentence, then the City shall indemnify, defend and hold Darigold harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Darigold Facility.

ARTICLE 14. NO WARRANTIES AND REPRESENTATIONS

14.01 Darigold makes no warranty or representation regarding the ability of either party to obtain the Regulatory Approvals or Discharge Permits necessary to accomplish the purposes of this Agreement.

14.02 Darigold makes no warranty or representation that it will not have its right limited or wholly eliminated to transfer Industrial Condensate Water to the City in the manner and for the purposes set forth herein.

14.03 Darigold makes no warranty or representation that it will successfully obtain or maintain its Discharge Permit(s) in a manner sufficient to enable the transfer of Industrial Condensate Water to the City of Lynden as described herein. Darigold shall make commercially reasonable efforts to obtain and maintain necessary Discharge Permit(s), however the failure of Darigold to successfully obtain or maintain its Discharge Permit(s) in said manner shall not give rise to a cause of action for damages of any kind or nature against Darigold by the City.

14.04 Darigold makes no warranty or representation that a specific quantity of Industrial Condensate Water will be furnished to the City in any Calendar Year or during the term of this Agreement.

14.05 Darigold makes no warranty or representation that it holds Water Rights for Industrial Condensate Water.

ARTICLE 15. TERM AND TERMINATION

15.01 Term. Unless earlier terminated as provided in Section 15.02 herein or as otherwise agreed in writing between the Parties, this Agreement shall remain in effect for a term of thirty (30) years. Upon expiration of the initial thirty (30) year term, this Agreement shall automatically renew for two (2) additional periods of thirty (30) years each unless a notice of nonrenewal is provided in writing by one party to the other at least three (3) years prior to expiration of the term. Thereafter, this Agreement shall automatically renew on an annual basis until terminated by either party with One Hundred Eighty (180) days prior notice.

15.02 Termination.

15.02.01 Without Cause.

Darigold: Darigold may terminate this Agreement at any time in the event of closure or relocation of the Darigold Facility outside the City and discontinued use of the Foreign Water Transmission Main, without prior notice to the City. A reduction in production of Available Industrial Condensate Water at the Darigold Facility shall not be cause for termination by Darigold. Darigold may also terminate this Agreement in order to reuse all Available Industrial Condensate Water at the Darigold Facility; provided that, Darigold shall provide not less than one (1) year prior notice to the City of its intent to terminate for purpose of developing reuse. In the event Darigold in its sole discretion decides to re-use a portion of but less than all Available Industrial Condensate Water, it shall not terminate this Agreement but shall provide the same one (1) year prior notice to the City of its intent to re-use a specified portion of Available Industrial Condensate Water at the Darigold Facility. During the one (1) year time period following notice to the City that it intends to re-use all or part of Available Industrial Condensate at the Darigold Facility, Darigold shall consult with the City in good faith pertaining to development of reuse options.

City: Prior to completion of construction of the Foreign Water Transmission Main and issuance of a Discharge Permit authorizing its use, or prior to construction of the New Stormwater Pipe, the City may terminate this Agreement by providing ten (10) days prior written notice to Darigold in the event any state or local funding for the Foreign Water Transmission Main or New Stormwater Pipe is delayed or withdrawn or in the event the City determines in its sole discretion that the costs associated with construction and permitting of the Foreign Water Transmission Main or New Stormwater Pipe are beyond its means. The City may also terminate this Agreement within one (1) year of receiving notice from Darigold that it has decided to re-use a portion of Available Industrial Condensate Water at the Darigold Facility.

Both Parties: The Parties may mutually agree to terminate this Agreement if all Regulatory Approvals and Discharge Permit(s) authorizing construction and operation of the Foreign Water Transmission Main or necessary for fulfillment of the purposes of the Agreement are not in place within five (5) years from the date of this Agreement. Either Party may terminate this Agreement in the event a provision is determined invalid or unenforceable, pursuant to Article 18.05.

15.02.02 With Cause. Either party may terminate this Agreement for the breach of a material term in this Agreement by providing ninety (90) days prior written notice to the other party. Said other party shall have the opportunity to substantially cure the breach within said ninety (90) day notice period and if the alleged breach is substantially cured in that time the Agreement shall not terminate.

ARTICLE 16. EFFECT OF TERMINATION AND EXPIRATION OF AGREEMENT

16.01 Prior to Expiration of Third Thirty (30) Year Term. Upon termination of this Agreement with or without cause prior to expiration of the third thirty (30) year term (90 years from date of this Agreement), Darigold may discharge Industrial Condensate Water and stormwater pursuant to its Discharge Permit for the Existing Line including the New Segment of Existing Line, and shall have no further right or obligation to utilize the Foreign Water Transmission Main under this Agreement.

16.02 Following Third Thirty (30) Year Term. Upon termination of this Agreement with or without cause after the third thirty (30) year term (90 years from date of this Agreement), Darigold may at its option and consistent with its Discharge Permits continue to discharge Industrial Condensate Water through the Foreign Water Transmission Main. Should Darigold opt to continue its discharge of Industrial Condensate Water through the Foreign Water Transmission Main following such termination, it shall so notify the City in writing, following which the City shall convey ownership to Darigold, along with any necessary right-of-way franchises and private easement interests, and Darigold shall accept said conveyance of ownership of the Foreign Water Transmission Main and its appurtenances, by bill of sale or such other means of transfer acceptable to the Parties. Upon ownership of the Foreign Water Transmission Main and its appurtenances being vested in Darigold, the City shall no longer have any remaining obligations for the Foreign Water Transmission Main under Article 8 or Section 10.02.

ARTICLE 17. INDEMNIFICATION

17.01 The City shall indemnify, defend and hold Darigold, its officers, agents and employees harmless from all suits, claims or liabilities of any nature, including attorney fees, costs and expenses, in the following circumstances:

17.01.01 For or on account of injuries or damages sustained by any person or property or for injunctive relief, resulting or arising from the negligent acts or omissions of and to the extent harm is caused by the City, its agents or employees in connection with performance of City obligations this Agreement.

17.01.02 For or on account of injuries or damages sustained by any person or property or for injunctive relief, resulting or arising from the change in the discharge point for Industrial Condensate Water under this Agreement.

17.01.03 For or on account of any challenge to the legality of this Agreement or the City's right to use the Industrial Condensate Water supplied pursuant to this Agreement as part of its municipal water supply.

17.01.04 For or on account of injuries or damages sustained by any person or property or for injunctive relief related to the City's actual use of Industrial Condensate Water as part of its municipal water supply.

17.01.05 For or on account of any appeal, challenge, or other litigation regarding the City's procurement, contracting, or construction of improvements or facilities pursuant to the Agreement or regarding a Darigold Discharge Permit relating to the City's actual use of Industrial Condensate Water as part of its municipal water supply.

If suit in respect to the above is filed and judgment is rendered or settlement made requiring payment of damages by the Darigold, its officers, agents or employees, the City shall pay the same.

17.02 Darigold shall indemnify, defend and hold the City, its officers, agents and employees harmless from all suits, claims or liabilities of any nature, including attorney fees, costs and expenses, in the following circumstances:

17.02.01 For or on account of injuries or damages sustained by any person or property or for injunctive relief, resulting or arising from the negligent acts or omissions of and to the extent harm is caused by the Darigold, its agents or employees in connection with the performance of Darigold obligations under this Agreement.

17.02.02 For or on account of injuries or damages sustained by any person or property or for injunctive relief, resulting or arising from Darigold obtaining an NPDES permit for the Existing Line or the Foreign Water Transmission Main.

17.02.03 For or on account of injuries or damages sustained by any person or property or for injunctive relief, resulting or arising from Darigold failing to meet discharge requirements in its NPDES permit for the Existing Line or the Foreign Water Transmission Main.

If suit in respect to the above is filed and judgment is rendered or settlement made requiring payment of damages by the City, its officers, agents or employees, Darigold shall pay the same.

ARTICLE 18. ADMINISTRATION; OTHER PROVISIONS

18.01 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 18.01, "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.

18.02 Confidential Information. Any Confidential Information received by one Party from the other Party shall be used only in furtherance of the Parties mutual interest under this Agreement. To the extent permitted by law, no such information shall be supplied, directly or indirectly, to any person not a Party to this Agreement, and such information shall not be used for any other purposes without the prior written consent of the Party who provided the information. In the event the City receives a Public Records Act request pertaining to the Darigold Facility or the subject of this Agreement, the City will promptly notify Darigold and provide Darigold with a copy of any such written request. If the City determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, the City will notify Darigold in writing of the date that such records will be released to the requestor, which shall be no fewer than five (5) working days from the date of such notice, unless Darigold obtains a court order enjoining that disclosure. If Darigold fails to obtain a court order enjoining disclosure, the City will release the requested information on the date specified. If any Confidential Information is disclosed by a Party in violation of the terms set forth in this Agreement, including disclosure to an unauthorized person, such disclosure shall not constitute a waiver of any other Party's right to an exemption under public disclosure laws, attorney-client or work-product privilege, or other applicable privileges, or of any of its rights under this Agreement. No negligent or unintentional disclosure to any unauthorized person shall waive any Party's right to an exemption under public disclosure laws, attorney-client or work-product privilege, or other applicable privilege, or any of its rights under this Agreement.

18.03 Notice. All notices and other communications required or permitted to be given by this Agreement must be in writing and must be given and will be deemed received if and when either hand delivered, faxed or mailed to:

City of Lynden
Public Works Department
City Hall
300 4th Street
Lynden, WA 98264
Phone: (360) 354-3446
After Normal Business Hours (360) 815-5755

Darigold
ATTN: Vice President: Operations
PO BOX 34377
Seattle, WA 98124-1377

with a copy to:
Darigold, Inc.
ATTN: General Legal Counsel
PO BOX 34377
Seattle, WA 98124-1377

or to such other address as the Parties hereto may from time-to-time designate in writing and deliver in a like manner. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document. Notice shall be deemed to

be communicated three (3) business days from the time of mailing, if mailed, or from time of service, if personally served, as provided in this Section. If any notice is transmitted by facsimile transmission, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via personal delivery or first class mail. For purposes of Section 7.07, however, notice regarding Line Valve adjustment may be provided by telephone.

18.04 Time of Essence. Time is of the essence of for each provision of this Agreement.

18.05 Severability. If any term of the Agreement or the application thereof to any person, entity, or circumstance shall to any extent be determined to be invalid or unenforceable, then either Party shall have a right to terminate this Agreement upon thirty (30) days prior written notice to the other, so long as the written notice is provided within ninety (90) days of the determination of invalidity or unenforceability of one or more provisions. If no written notice of termination is provided by either Party within ninety (90) days of said determination, the remainder of this Agreement and each and every other term herein shall be valid and enforceable to the fullest extent permitted by law. In the event written notice of termination is provided hereunder, the Parties agree to use the thirty (30) days prior to termination becoming effective, to mutually consider potential modifications to the Agreement.

18.06 Nonwaiver of Breach. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any 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.

18.07 Assignment and Subletting. Neither Party shall assign, encumber, or sublease all or part of its interest in this Agreement, including the License, without first obtaining the written consent of the other Party.

18.08 Governing Law and Venue. The laws of the State of Washington shall govern any disputes arising under this Agreement. Adjudication of any legal dispute shall be in the Superior Court for Whatcom County, Washington, unless otherwise agreed.

18.09 Force Majeure. Neither Party shall be liable for any failure to perform any part of this Agreement due to circumstances beyond a Party's reasonable control, including, but not limited to, flood, fire, wind, lightning, quarantine, war, sabotage, act of a public, foreign or domestic enemy, earthquake, civil disturbance, restraint by court order, or restraint by other governmental authority for insufficient or inadequate Regulatory Approval(s) or Discharge Permit(s). The Party claiming force majeure under this provision shall provide the other Party such prompt notice of the force majeure condition(s) as is reasonably necessary under the circumstances. The obligations of a Party asserting a force majeure condition(s) under this Agreement shall be suspended to such a degree and for such a period as is reasonable under the circumstances; provided that the Party asserting the force majeure condition(s) works in good faith to remedy the condition(s) with all reasonable dispatch, to the extent it is within its control.

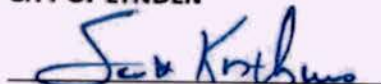
18.10 Remedies for Breach. This Agreement shall be enforceable by and through injunctive relief and the remedy of specific performance. The Parties shall not be liable to one another for damages for breach of contract or for their negligent acts or omissions pursuant to this Agreement, except in the case of intentional misconduct or indemnification pursuant to Article 17.

18.11 Binding upon Successors and Assigns. This Agreement may be recorded by either Party and shall be binding upon the successors and assigns of each Party.

18.12 No Third Party Beneficiaries. The rights and obligations of this Agreement pertain only to the Parties hereto and the Parties hereby expressly agree their mutual intent is to create no rights for third party beneficiaries. No provision herein shall give rise to a right, benefit, or obligation for any third party.

18.13 Entire Agreement. This Agreement constitutes the entire agreement between the City and the Darigold as to the matters contained herein. No oral or written statements made by either Party prior to or following entry of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing. This Agreement may be modified in writing only, upon mutual agreement of the Parties.

CITY OF LYNDEN



By: Scott Korthuis

Its: Mayor

Date: May 16, 2017

DARIGOLD, INC.



By: John Kenley

Its: Vice President: Legal – Northwest Dairy
Association & Darigold, Inc.

Date: May 16, 2017

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 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 LYNDEN to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SIGNED this 16 day of May, 2017.



Pamela D. Brown
NOTARY PUBLIC for the State of Washington.
Commission expires: 9/4/2017

COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that JOHN KENLEY 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 VICE PRESIDENT: LEGAL – NORTHWEST DAIRY ASSOCIATION & DARIGOLD, INC. of DARIGOLD INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SIGNED this 16 day of May, 2017.



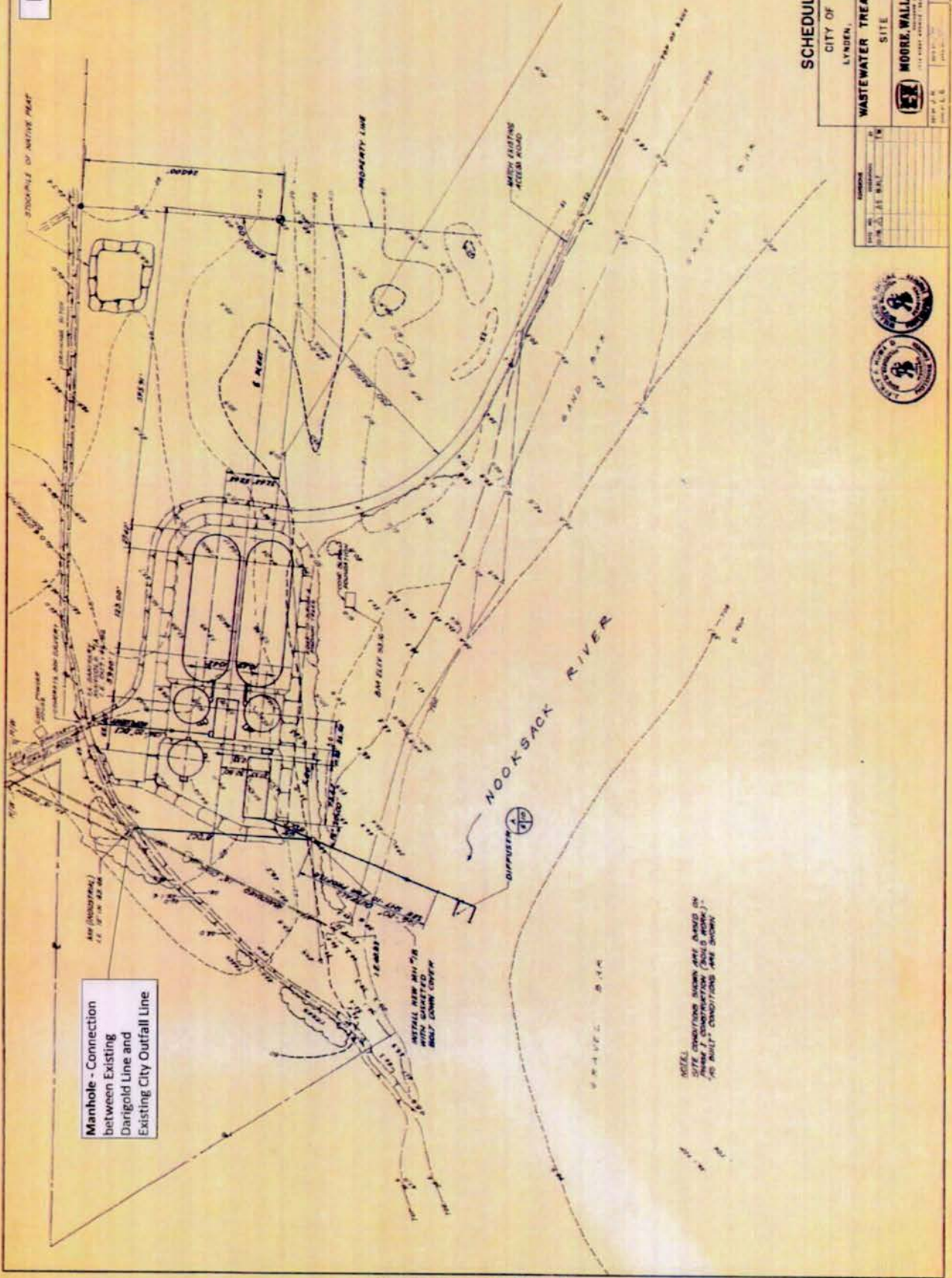
Michael L. Carter
NOTARY PUBLIC for the State of Washington.
Commission expires: June 12 2018

Exhibit A



Pipeline Routes

Exhibit B



CITY OF LYNDEN	
LYNDEN, WASHINGTON	
WASTEWATER TREATMENT FACILITY	
SITE PLAN	
MOORE, WALLACE & KENNEDY, INC.	
1111 1ST AVE. SE. LYNDEN, WA 99225	
PHONE (509) 835-1111	
FAX (509) 835-1112	
E-MAIL: MOK@MOKWALLACEKENNEDY.COM	
WWW.MOKWALLACEKENNEDY.COM	

NO.	1
DATE	10/1/00
BY	WAL
CHECKED	WAL
APPROVED	WAL
FILED	WAL

After recording return to:

Carmichael Clark
Attention: Robert A. Carmichael
PO Box 5226
Bellingham WA 98227

EXHIBIT C

Document Title:

EASEMENT RELOCATION AGREEMENT

Reference # of Related Documents:

360724; 450605

Grantors:

City of Lynden, a Washington municipal corporation
Darigold, Inc., a Washington corporation
Janstar Holdings, LLC, a Washington limited liability company

Grantee:

City of Lynden, a Washington municipal corporation
Darigold, Inc., a Washington corporation
Janstar Holdings, LLC, a Washington limited liability company

Abbreviated legal description:

Ptn SW $\frac{1}{4}$ NE $\frac{1}{4}$ & NW $\frac{1}{4}$ SE $\frac{1}{4}$, S20 T40N R3E
Ptn Lots A, B & C, B.D.C. LLA AF# 2070304692
(Full legal at page ____)

Tax parcel numbers:

400320 366239 0000
400320 343220 0000

EASEMENT RELOCATION AGREEMENT

This EASEMENT RELOCATION AGREEMENT ("Agreement") is entered into on the ____ day of _____, 2017 ("Effective Date"), by and between the City of Lynden ("City"), a Washington municipal corporation, and Darigold, Inc. ("Darigold"), a Washington corporation, and Janstar Holdings, LLC ("Janstar"), a Washington limited liability company. The City, Darigold and Janstar shall be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, Janstar is the sole owner in fee simple of the real property legally described as follows:

See Exhibit A hereto.

Commonly known as 303 Judson Street (Parcel No. 400320 366239 0000) and 409 Judson Street (Parcel No. 400320 343220 0000) (collectively "Janstar Properties"); and

WHEREAS, Darigold has a facility for production of condensed milk products located at 8424 Depot Road, Lynden, Washington ("Darigold Facility"); and

WHEREAS, Darigold uses an existing line for the purpose of carrying industrial condensate ("Foreign Water") and stormwater discharge running from the Darigold Facility to an existing City outfall near the City wastewater treatment facility ("Existing Line"), a segment of which crosses the Janstar Properties; and

WHEREAS, Darigold holds an existing easement across the Janstar Properties for the purpose of accommodating a segment of the Existing Line ("Existing Darigold Easement"); and

WHEREAS, the Existing Darigold Easement across the Janstar Properties is set forth in two documents recorded at Whatcom County Auditor File Nos. 360724 and 450605; and

WHEREAS, the City wishes to construct a new water transmission line to transport industrial condensate, also known as Foreign Water, and storm water, from the Darigold Facility to the Nooksack River ("Foreign Water Transition Main"); and

WHEREAS, Janstar will grant a utility easement to the City and Darigold along the eastern twenty feet (20') of the Janstar Properties ("Easement No. 1") for purposes of accommodating the Foreign Water Transition Main as depicted in Exhibit B ("New City-Darigold Easement"); and

WHEREAS, Janstar will also grant a utility easement to the City and Darigold along the southern portion of the Janstar Properties ("Easement No. 2") for the purpose of accommodating a new segment of the Existing Line ("New Segment of Existing Line"), as depicted in Exhibit B; and

WHEREAS, the City will grant to Darigold any necessary licenses to use the Foreign Water Transition Main and New Segment of Existing Line for the collection and transportation of industrial condensate water and stormwater by separate agreement; and

WHEREAS, following construction of the Foreign Water Transition Main and the New Segment of Existing Line, Darigold will extinguish the Existing Darigold Easement as defined herein; and

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

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

I. AGREEMENT

- 1.1 Janstar Grant of Easement No. 1.** Janstar, for good and valuable consideration arising from mutual commitments herein, does by these presents grant and convey unto the City and Darigold:

An underground perpetual, non-exclusive easement, for the placement, installation, construction, operation, maintenance, improvement, replacement, and repair of a utility line to accommodate industrial condensate and storm water discharges, including without limitation the Foreign Water Transmission Main, with the necessary and usual appurtenances including manholes, through and across the Janstar Properties, as depicted on Exhibit B and described on Exhibit C ("Easement No. 1"). All lines shall be buried to a minimum depth of three (3) feet.

1.1.1. Purpose. Easement No. 1 granted herein shall provide the City and Darigold, their agents and contractors with the perpetual right to enter upon Easement No. 1 without incurring any legal obligation or liability therefore unless acting negligently or with intentional misconduct, for all City and Darigold utility purposes specified in Section 1.1. including, without limitation, the placement, installation, construction, operation, maintenance, improvement, replacement, and repair of the industrial condensate and storm water discharge line.

1.1.2. Restoration of Easement Area. The City and Darigold covenant that all construction and other work done by the City and Darigold in Easement No. 1 shall be performed with only reasonably necessary damage to the surface area. The City and Darigold shall restore landscaping reasonably close the condition existing prior to the commencement of the work.

1.1.3. Removal of Obstructions. Janstar shall retain the right to use that portion of the Janstar Properties within Easement No. 1, so long as said use does not interfere with the City and Darigold's use of said easement in accordance with this Agreement and so long as no permanent building or structures are erected on said Easement No. 1. Further, Janstar shall not dig, tunnel, or conduct other forms of construction activity on Easement No. 1, which would disturb or damage the industrial condensate and storm water utility line located therein, unearth or undermine any such utility, or endanger the lateral support thereof. The City and Darigold shall have the right to remove any building, structure, concrete, paving, decking or other improvement of any kind which is erected or placed on Easement No. 1 and which interferes with the City and/or Darigold's use of the easement granted herein, at the sole expense of Janstar. The City and Darigold shall have the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction and maintenance of Easement No. 1, without liability to Janstar.

1.1.4. Obligation Among Grantees. The City shall construct and for at least ten (10) years or more will be the owner of the Foreign Water Transmission Main. Construction of the Foreign Water Transmission Main and all associated costs including reasonable land restoration shall be at the sole expense of the City. Reasonable land restoration costs shall be limited to grass reseeding and replacing small plants of nominal expense. For so long as the Foreign Water Transmission Main is located, owned, and operated by the City within Easement No. 1, the City shall be responsible for all maintenance and operating costs of the Foreign Water Transmission Main, along with any necessary costs associated with restoration, removal of obstructions, or other necessary expenses reasonably related to Easement No. 1.

1.2 Janstar Grant of Easement No. 2. Janstar, for good and valuable consideration arising from mutual commitments herein, does by these presents grant and convey unto the City and Darigold:

A perpetual, non-exclusive twenty-foot (20') wide easement, for the placement, installation, construction, operation, maintenance, improvement, replacement, and repair of a utility line to accommodate industrial condensate and storm water discharges, including without limitation the New Segment of Existing Line, with the necessary and usual appurtenances including manholes, through, and across a southerly portion of the Janstar Properties, as depicted on Exhibit B and described on Exhibit D-1 and Exhibit D-2 ("Easement No. 2"). All lines shall be buried to a minimum depth of three (3) feet.1.2.1.

Purpose. Easement No. 2 granted herein shall provide the City and Darigold, their agents and contractors with the perpetual right to enter upon Easement No. 2 without incurring any legal obligation or liability therefore unless acting negligently or with intentional misconduct, for all City and Darigold utility purposes specified in Section 1.2 including, without limitation, the placement, installation, construction, operation, maintenance, improvement, replacement, and repair of the industrial condensate and storm water discharge line.

1.2.2. Restoration of Easement Area. The City and Darigold covenant that all construction and other work done in Easement No. 2 shall be performed with only reasonably necessary damage to the surface area. The City and Darigold shall restore landscaping and surface area reasonably close to the condition existing prior to the commencement of the work. In no event shall Darigold perform construction or other work in Easement No. 2 which interferes with the vehicular traffic without the prior written consent of the City, which consent shall not be unreasonably withheld.

1.2.3. Removal of Obstructions. Janstar shall not dig, tunnel, or conduct other forms of construction activity in Easement No. 2, which would disturb or damage any utility located therein, unearth or undermine any such utility, or endanger the lateral support thereof. The City and Darigold shall have the right to remove any building or structure which is erected or placed on the Easement No. 2 and which interferes with the City and/or Darigold's use of the easement granted herein, at the sole expense of Janstar. The City and Darigold shall have the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction and maintenance of Easement No. 1, without liability to Janstar.

1.2.4 Obligation Among Grantees. The City shall construct and for at least ten (10) years or more will be the owner the New Segment of Existing Line. Construction of the New Segment of Existing Line and all associated costs including land restoration shall be at the sole expense of the City. For so long as the New Segment of Existing Line is owned, and operated by the City within Easement No. 2, the City shall be responsible for all maintenance and operating costs of the New Segment of Existing Line, along with any necessary costs associated with restoration, removal of obstructions, or other necessary expenses reasonably related to Easement No. 2. In the event the City conveys the New Segment of Existing Line to Darigold, Darigold shall be responsible for all maintenance and operating costs of the New Segment of Existing Line, along with any necessary costs associated with restoration, removal of obstructions, or other necessary expenses reasonably related to Easement No. 2.

1.3 Extinguishment of Existing Darigold Easement. The following recorded documents established an easement across the Janstar Properties, together referred to herein as "Existing Darigold Easement":

1.3.1 Easement for underground drain pipe, dated April 24, 1929 and recorded at Auditor File No. 360724, records of Whatcom County, Washington.

1.3.2 Agreement for use of drain pipe, dated October 10, 1935 and recorded at Auditor File No. 450605, records of Whatcom County, Washington.

Following (a) execution and recording of this Agreement; and (b) completion of construction and connection of the New Foreign Water Transmission Main and New Segment of Existing Line, the Existing Darigold Easement shall be automatically terminated and all of Darigold's right, title, and interest in the Existing Darigold Easement will be extinguished and Janstar shall have the right to remove all existing pipes or lines of Darigold situated in the Existing Darigold Easement. Upon such automatic extinguishment of the Existing Darigold Easement, Darigold shall at the request of Janstar, execute an affidavit or declaration acknowledging the completion of construction and connection of the New Foreign Water Transmission Main and new Segment of Existing Line and extinguishment of the Existing Darigold Easement.

- 1.4 Temporary Construction Easement.** Janstar, for good and valuable consideration arising from mutual commitments herein, does by these presents grant and convey unto the City (the "Temporary Construction Easement"):

A One Hundred Foot (100') (the "Temporary Construction Easement Area") Temporary Construction Easement, for the placement, installation, and construction, of the Foreign Water Transmission Main and New Segment of Existing Line, at the location on the Janstar Properties depicted on Exhibit B and described on Exhibit E, Exhibit E-1 and Exhibit E-2.

1.4.1. Purpose. The Temporary Construction Easement granted herein shall provide the City, their agents and contractors with the right to enter the Janstar Properties in the Temporary Construction Easement Area without incurring any legal obligation or liability therefore unless acting with negligence or intentional misconduct for all purposes associated with pipeline construction including without limitation, ingress and egress, surveying, digging and excavation, storage of soils, vehicles, and equipment, and related activities.

1.4.2. Restoration of Temporary Construction Easement Area. The City covenants that all construction and other work done by the City in the Temporary Construction Easement shall be performed with only reasonably necessary damage to the surface area and no permanent improvements will remain in the Temporary Construction Easement. The City shall restore landscaping and any other improvements as reasonably close to its condition prior to the commencement of the work.

1.4.3 Termination. The Temporary Construction Easement shall begin upon commencement of construction and terminate upon completion of construction and restoration activities.

II. MISCELLANEOUS PROVISIONS

- 2.1 Run with the Land.** This Agreement entered into by the Parties shall be deemed to touch and concern the land, and shall, therefore, run with the land in perpetuity. The rights and obligations of the Parties shall inure to the benefit of and be binding upon their heirs, successors and assigns.
- 2.2 Indemnity.** Each Party expressly agrees to appear, defend, indemnify and hold harmless the other Parties and those persons who were, are now, or shall be contractors, subcontractors, employees

or agents thereof, from and against any and all claims, losses, liabilities, judgments and expenses (including reasonable attorneys' fees) arising wholly or partially out of any negligent act, action, omission or default on their part, or by their contractors, subcontractors, employees and agents, which pertain to the use of an easement granted herein; except that, each Party's indemnification and hold harmless obligation shall be proportionally reduced by any negligent act, omission, or default on the part of another Party, its contractors, subcontractors, employees or agents.

- 2.3 Nonwaiver of Breach.** Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any 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.
- 2.4 Binding Effect.** All rights and obligations of the Parties shall inure for the benefit of and be binding upon their respective successors and assigns.
- 2.5 Notices.** Notices under this Agreement shall be delivered in writing and by facsimile or U.S. mail to the Parties at the following addresses and information. All such notices, requests, demands and other communications shall, (i) when mailed, be effective two days after mailing or, if earlier, upon receipt at the address prescribed in this Agreement; (ii) when delivered by hand, be effective upon receipt at the address set forth below; (iii) when delivered by facsimile transmission, be effective upon confirmation of receipt at the number set forth below; and (iv) when delivered by guaranteed overnight delivery, be effective one business day after delivery to a guaranteed overnight delivery service using the address prescribed by this Agreement. Any Party may change its respective address by delivering a notice of such change in accordance with this provision. Courtesy copies of any notices issued pursuant to this Agreement shall be provided to counsel of record for each party, but failure to do so shall not constitute a basis to allege failure or inadequacy of notice under this Agreement.

FOR CITY:
City of Lynden
Attn: Mayor
P.O. Box 650
Lynden, WA 98264

FOR DARIGOLD:
Darigold, Inc.
Attn: General Counsel
PO BOX 34377
Seattle, WA 98124-1377

FOR JANSTAR:
Janstar Holdings LLC
Attn: Blake Starkenburg
PO Box 801
Lynden, WA 98264

With a copy to:

Darigold, Inc.
ATTN: Vice President: Operations
PO BOX 34377
Seattle, WA 98124-1377

- 2.6 Severability.** Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect unless the provision stricken is one which would have caused a Party to this Agreement to not execute the Agreement in the absence of such provision. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

- 2.7 Survival.** The terms and obligations set forth in this Agreement shall survive and remain in full force and effect following execution of documents.
- 2.8 Governing Law and Venue.** The laws of the State of Washington shall govern any disputes arising under this Agreement. Any disputes shall be adjudicated in the Superior Court for Whatcom County, Washington, unless otherwise agreed.
- 2.9 Attorney's Fees.** In the event either Party shall institute suit to enforce any rights hereunder, the prevailing party shall be entitled to court costs and reasonable attorney's fees against the losing party.
- 2.10 Complete Agreement.** This Agreement constitutes the entire agreement between the Parties. There are no other oral understandings or agreements. This Agreement may be modified or amended in writing only, on the mutual agreement of the Parties.
- 2.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

CITY OF LYNDEN

DARIGOLD, INC.

By: Scott Korthuis

Its: Mayor

Date: _____

By: John Kenley

Its: Vice President: Legal – Northwest Dairy
Association & Darigold, Inc.

Date: _____

JANSTAR HOLDINGS, LLC

By: Blake Starkenburg

Its: Member

STATE OF WASHINGTON)
) ss.
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 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 LYNDEN to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SIGNED this ____ day of _____, 2017.

NOTARY PUBLIC for the State of Washington.
Commission expires: _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that JOHN KENLEY 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 VICE PRESIDENT: LEGAL – NORTHWEST DAIRY ASSOCIATION & DARIGOLD, INC. of DARIGOLD INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SIGNED this ____ day of _____, 2017.

NOTARY PUBLIC for the State of Washington.
Commission expires: _____.

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL A:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

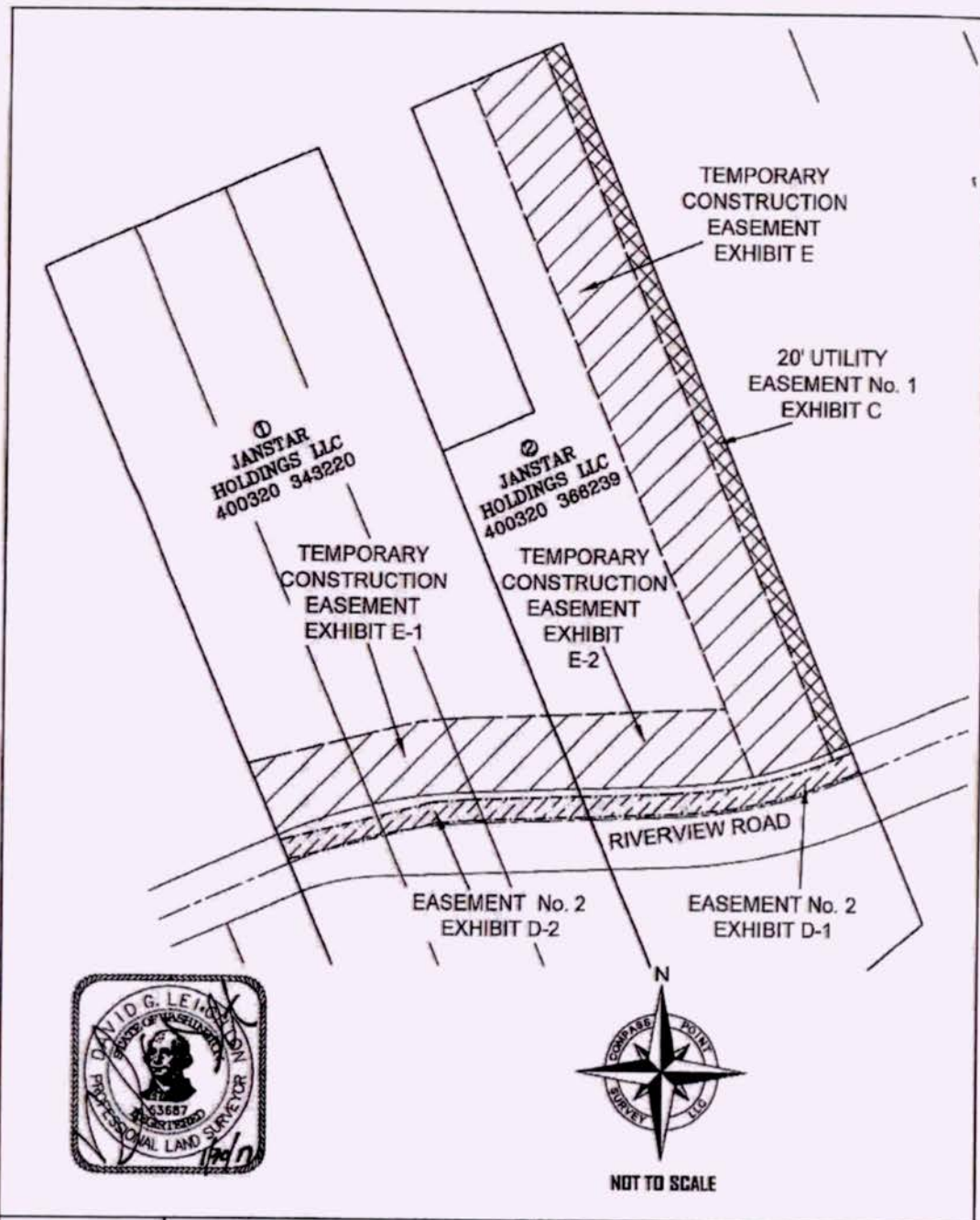
BEGINNING AT A POINT ON THE EASTERLY LINE OF THIRD STREET PRODUCED IN THE TOWN OF LYNDEN, 160 FEET SOUTH OF THE SOUTH LINE OF FRONT STREET; THENCE SOUTHERLY AT RIGHT ANGLES WITH FRONT STREET, 935 TO THE CENTER LINE OF OPEN DITCH; THENCE SOUTHWESTERLY ALONG THE CENTER LINE OF OPEN DITCH, 281.25 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO FRONT STREET, A DISTANCE OF 1023.38 FEET, MORE OR LESS, TO THE SOUTH LINE OF ALLEY; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID ALLEY TO THE PLACE OF BEGINNING. EXCEPT THE WEST 100 FEET OF THE NORTH 315 FEET THEREOF AS CONVEYED BY DEED RECORDED UNDER 1286910, AND EXCEPT THE SOUTH 5 FEET OF THE NORTH 320 FEET OF THE WEST 100 FEET THEREOF, AS CONVEYED BY DEED RECORDED UNDER 1466237. ALL EXCEPT RIGHT OF WAY FOR JUDSON STREET.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

LOTS A, B AND C, AS DELINEATED ON THE FACE OF B.D.C. LOT LINE ADJUSTMENT, ACCORDING TO THE PLAT THEREOF, RECORDED MARCH 30, 2007, UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2070304692.

SITUATE IN WHATCOM COUNTY, WASHINGTON.



DRAWN BY: DL

CHECKED BY: DE

DATE: 10/12/16

REV: 11/08/16

REV: 1/28/17

EXHIBIT B MAP

WITHIN THE NW 1/4, SE 1/4, AND THE SW 1/4,
NE 1/4, SECTION 20, TOWNSHIP 40 NORTH,
RANGE 3 EAST OF W.M.
WHATCOM COUNTY, WASHINGTON



COMPASS POINT
SURVEY, LLC

523 FRONT STREET, LYNDEN, WA 98264
PH. 360-354-8320 FAX. 360-354-8321

EXHIBIT "C"
EASEMENT No. 1 LOCATED WITHIN
TPN 400320 366239 0000

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., WHATCOM COUNTY, WA DESCRIBED AS FOLLOWS:

THE EASTERLY 20.00 FEET OF THAT PORTION OF LAND DESCRIBED IN AUDITOR'S FILE NUMBER 2120900868, RECORDS OF SAID COUNTY LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP MARKING THE MOST NORTHERLY CORNER OF PARCEL F AS SHOWN IN RIVERVIEW LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2120102778, RECORDS OF SAID COUNTY; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL F SOUTH 23°29'04" EAST 60.00 FEET TO A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 66°31'10" EAST 3.57 FEET TO THE P.C. OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 172.27 FEET AND A CENTRAL ANGLE OF 21°23'49"; THENCE ALONG SAID CURVE 64.33 FEET TO THE P.T.; THENCE NORTH 87°55'00" EAST 243.85 FEET TO THE EASTERLY BOUNDARY OF LOT C AS SHOWN IN B.D.C. LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2070304692, SAID RECORDS; THENCE ALONG SAID EASTERLY BOUNDARY OF LOT C NORTH 23°10'29" WEST 76.65 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 87°55'44" EAST 88.87 FEET TO THE P.C. OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 477.50 FEET AND A CENTRAL ANGLE OF 20°52'38"; THENCE ALONG SAID CURVE 173.99 FEET TO THE P.T.; THENCE NORTH 67°03'06" EAST 12.69 FEET TO THE WESTERLY BOUNDARY OF LOT 3, BRATT/DAVIDSON SHORT PLAT RECORDED AT AUDITOR'S FILE NUMBER 2070403246, RECORDS OF SAID COUNTY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

REVISED on 11/07/2016



EXHIBIT D

ORDINANCE NO. 1520

**AN ORDINANCE IN THE MATTER OF GRANTING A NON-EXCLUSIVE
FRANCHISE TO DARIGOLD INC., FOR THREE - THIRTY YEAR TERMS,
PURSUANT TO STATE LAW, FOR USE OF PUBLIC RIGHT OF WAY
WITHIN THE CITY OF LYNDEN, WASHINGTON**

WHEREAS, Darigold ("Franchisee") uses a water discharge pipeline ("Water Line") for discharging industrial condensate and stormwater from Darigold's Facility located on Depot Road in Lynden, WA (the "Depot Road Facility"); and

WHEREAS, the Water Line runs from the Darigold Facility down the City's Depot and Third Street Rights of Way, Lynden, WA; and

WHEREAS, the Franchisee requested that the City of Lynden grant it a franchise to operate, maintain, repair, replace, improve, and remove, the existing installed Water Line within the City's Depot and Third Street Rights of Way, for purposes of discharging industrial condensate and storm water; and

WHEREAS, the City has the authority pursuant to RCW 35A.47.040 to grant the Franchisee's request, and is willing to grant the rights subject to certain terms and conditions; and

WHEREAS, the parties desire to enter into an agreement authorizing the Franchisee to use the City's Depot and Third Street Rights-of-Way and specifying the terms and conditions under which said use may be made; and

WHEREAS, this ordinance was introduced before the Lynden City Council on the 3rd day of January, 2017 in accord with Washington law; and

WHEREAS, this ordinance shall be published once in a newspaper of general circulation within the City of Lynden before becoming effective; and

WHEREAS, it appears to the Lynden City Council that it is in the public interest to grant the franchise for three (3) - thirty (30) year terms;

NOW, THEREFORE, THE CITY AND THE FRANCHISEE AGREE AS FOLLOWS:

Section 1. Authority Granted.

The City hereby grants to the Franchisee, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, the non-exclusive right, privilege and authority to operate, maintain, repair, replace, improve, and remove, an existing private Water Line for purpose of discharging industrial condensate water and stormwater from the Darigold Facility, across, over, through or along the City's Depot and Third Streets Right-of-Way. The precise location of the Water Line authorized pursuant to this Franchise shall be at its

current existing location as of the date of this ordinance or as subsequently relocated and approved by the City Public Works Department, which shall have sole discretion in determining the location of replacement Water Line.

The term of this Franchise shall be for a period of three (3) - thirty (30) year terms from the date the last party signs the same, unless sooner terminated as provided below. Upon the expiration of the initial thirty (30) year term, this Franchise shall automatically renew for two (2) additional periods of thirty (30) years each unless a notice of nonrenewal is provided in writing by one party to the other at least three (3) years prior to expiration of the term. The Franchise term may thereafter be extended for one or more additional terms not to exceed thirty (30) years each, upon mutual agreement of the City and Franchisee.

Section 2. Non-Exclusive Grant.

The City of Lynden, in granting this Franchise, does not waive any rights which it has now or may hereafter acquire with respect to City streets, rights-of-way or other City property and this Franchise shall not be construed to deprive the City of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City streets, rights-of-way or other City property covered by this Franchise. This Franchise shall be subject to the power of eminent domain and in any proceeding under eminent domain, the Franchise itself shall have no value. Such Franchise shall in no way prevent or prohibit the City from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties of every type and description.

Section 3. Construction Standards.

(a) All future construction, installation, maintenance, repair, relocation, and removal work along and under City streets or rights-of-way or other City property outside the corporate limits of any incorporated town shall be subject to the approval and pass the inspection of the Director of Public Works and shall conform to all applicable City and State codes or regulations pertaining to pipeline construction and placement in City streets or rights-of-way including without limitation proper bedding and backfill of the pipeline, and the City expressly reserves the right to prescribe how and where any replacement of the Water Line shall be installed and may from time to time, upon reasonable notice, require the removal and replacement thereof in the public interest, at the expense of the franchise holder (Franchisee). Such removal and replacement shall not be unreasonably required.

(b) During any period of construction or maintenance, all surface structures shall be erected and used in such places and positions within said public rights-of-way and other public properties so as to interfere as little as possible with the free passage of vehicle and pedestrian traffic and the free use of the adjoining property, and the Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington.

(c) All construction, installation, maintenance, repair, relocation, and removal work associated with the Water Line performed above, along or within the City Right of Way subject to this Franchise shall be done in a manner as to not to interfere with the construction and maintenance of other utility's lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures located therein, nor change the drainage flow therein, nor interfere with the grading or improvement of such City roads or rights of way.

(d) Whenever the Franchisee shall excavate in any public right-of-way, or shall commence any work within the right-of-way not requiring excavation, for the purpose of operating, maintaining, repairing, replacing, improving, or removing the Water Line within the City Right-of-Way, it shall apply to the City for a permit to do so, and in addition, shall give the City at least three (3) working days' notice of the Franchisee's intent to commence work in the public right-of-way. The Franchisee shall pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public right-of-way without a permit, except as otherwise provided in this Franchise.

Section 4. Permit Application and Approval Required.

(a) Prior to commencement of any re-construction, replacement, or relocation of the Water Line, Franchisee shall first file with the City its application for permit to do such work, and obtain City approval thereof. The application for permit shall include all plans and specifications showing the position and location of such Water Line sought to be laid or installed at that time, showing its relative position to existing City streets, rights-of-way or other City property upon plans drawn to scale, hereinafter collectively referred to as the "map of definite location."

(b) The Water Line shall be laid in exact conformity with said map of definite location, except in instances in which deviation may be allowed thereafter in writing by the Director of Public Works pursuant to application by Franchisee. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turn-outs and road obstruction, etc. No such construction shall be commenced without the Franchisee first securing a written permit from the City, including approval endorsed on one set of plans and specifications returned to the Franchisee. All such work related to pipeline construction, placement, installation, and road restoration, shall be subject to the approval of and shall pass the inspection of the Director of Public Works. The Franchisee shall pay all actual and necessary costs of and expenses incurred in the examination, inspection and approval of such work on account of granting said permits. All work by the Franchisee in any area covered by this Franchise and as described in this Section shall be performed in accordance with City Development and Design Standards pertaining to pipeline construction, placement, installation (including proper bedding and backfill), and road right-of-way restoration, and Franchisee shall be responsible for obtaining any additional city or other governmental permits required for said work.

(c) Applications for permits shall be accompanied by specifications for the restoration of the City street, rights-of-way or other City property to the same condition it was prior to such breaking of the soil, and such specifications must be approved by the Director of Public Works before such breaking of the soil is commenced. Provided, that the Director of Public Works may require a performance bond in the sum sufficient to guarantee that such City streets, rights-of-

way or other City property shall be restored to the same condition as they were prior to the breaking of the soil or to current standard, whichever is more stringent. All work by Franchisee authorized pursuant to this Franchise shall be in conformance with the Americans with Disabilities Act ("ADA"). Said bond shall be in addition to any other such requirements contained herein.

Section 5. Restoration after Construction.

The Franchisee shall, after construction, relocation, maintenance, removal or repair of the Water Line within the City Right-of-Way, restore the surface of the Right-of-Way and any other City facilities which may be disturbed by the work, to at least the same condition the Right-of-Way or facility was in immediately prior to any such construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Right-of-Way or other affected area at its sole cost and expense. All work by the Franchisee pursuant to this Section shall be performed in accordance with City Development and Design Standards.

Section 6. Construction – Public Safety and Inconvenience.

All work done under this Franchise shall be done in a thorough and workmanlike manner. In the construction, relocation, maintenance, removal or repair and laying of the Water Line, the Franchisee shall leave such trenches, ditches and tunnels in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work; and where any of such trenches, ditches, or tunnels are left open at night, the Franchisee shall place warning lights and barricades at such a position as to give adequate warning of such work. The Franchisee shall be liable for any injury to person or persons or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the Franchisee.

Section 7. Relocation of Lines and Facilities.

(a) If at any time the City shall improve the City Right-of-Way by grading or re-grading or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage facilities, sewer, water or other City street, right-of-way or other City property, the Franchisee upon written notice from the Director of Public Works, shall at its sole expense, immediately change the location or re-adjust the elevation of its Water Line so that the same shall not interfere with such City work and so that such lines and facilities shall conform to such new grades or routes as may be established. The City of Lynden shall in no way be held liable for any damage to said Franchisee that may occur by reason of any of the City's improvements, changes or works above enumerated.

(b) All work to be performed by the Franchisee under this Section shall require a permit as provided under Section 4 and shall meet all other terms and requirements of this Franchise. Said work shall be under the direction and approval, and shall pass the inspection of the Director of Public Works. The Franchisee shall pay all actual and necessary costs and expenses incurred in the examination, inspection and approval of such work.

Section 8. City Road Work Permitted.

The laying, construction, operation and maintenance of the Franchisee's Water Line, appurtenances and facilities authorized by this Franchise shall not preclude the City of Lynden, its agents or its contractors from blasting, grading, excavating or doing other necessary road work contiguous to the said lines and facilities of the Franchisee provided that the Franchisee shall be given forty-eight (48) hours-notice of said blasting or other work in order that the Franchisee may protect its lines and facilities.

Section 9. Monuments and Survey Markers.

(a) Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Franchisee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Franchisee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Director of Public Works. The replacement of all such monuments or other points to be referenced shall be approved by the Director of Public Works and in accordance with State law (RCW 58.24.040). The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit by a professional land surveyor (PLS), and as directed by the Director of Public Works. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Franchisee.

(b) A complete set of reference notes for monuments and other ties shall be filed with the City of Lynden Director of Public Works.

Section 10. Vacations.

If at any time the City of Lynden shall vacate any City street, right-of-way or other City property which is subject to the rights granted by this Franchise and said vacation shall be for the purpose of acquiring the fee of other property interest in said street, rights-of-way or other City property for the use of the City of Lynden, in either its proprietary or governmental capacity, then the Lynden City Council may at its option and by giving one hundred and eighty (180) days written notice to the Franchisee, terminate this Franchise with reference to such City street, right-of-way or other City property so vacated and the City of Lynden shall not be liable for any damages or loss to the Franchisee by reason of such termination.

Section 11. Successors and Assignees.

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assignees of the Franchisee, and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its successors and assignees equally as if they were specifically mentioned wherever the Franchisee is mentioned herein.

Section 12. Transferability.

Neither this Franchise nor any interest therein shall be sold, transferred or assigned without the previous consent in writing of the City of Lynden as authorized by the City Council;

provided, however, that Franchisee may assign this Franchise to a purchaser or transferee of the Depot Road Facility with the City's consent which shall not be unreasonably denied, delayed or conditioned.

Section 13. Enforcement/Remedies.

If the Franchisee shall willfully violate, or fail to comply with any of the provisions of this Franchise through willful or unreasonable neglect, or fail to heed or comply with any notice given the Franchisee under the provisions of this Franchise, then said Franchisee shall forfeit all rights conferred hereunder, and this Franchise may be revoked or annulled by the City Council of Lynden. In addition to any rights implied or set out elsewhere in this ordinance, the Council reserves the right to require the Franchisee to specifically comply with the terms and conditions of the Franchise ordinance, and this Franchise may be terminated at any time. Any forfeiture, revocation, annulment or termination of the Franchise under this Section shall occur only following ten (10) days prior written notice of such intent to Franchisee. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Franchisee to comply with the provisions of this Franchise and to recover damages and costs incurred by the City by reason of the Franchisee's failure to comply.

Section 14. Compliance with Laws and Regulations.

This Franchise is subject to, and the Franchisee shall comply with all applicable Federal, State, City or municipal laws, regulations and policies affecting performance under this Franchise.

Section 15. Insurance.

(a) Upon acceptance of such Franchise, the Franchisee shall file annually with the City of Lynden, and shall thereafter, during the entire term of such Franchise, maintain in full force and effect, a corporate insurance policy or other adequate surety agreement in the amount of ONE MILLION DOLLARS (\$1,000,000.00) for the property damage and for public liability coverage per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) aggregate, and ONE MILLION DOLLARS (\$1,000,000.00) for public liability coverage per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) aggregate, with such policies reflecting the City of Lynden as additional insured, so as to protect the City against damages or costs, and there shall be recoverable, jointly and separately from the principal and surety, any such damages or costs suffered or incurred by the City, including attorneys' fees and costs of any action, or proceedings, and including the full amount of any compensation, indemnification, cost of removal of any property or other costs which may be incurred up to the full principal amount of such insurance policy; and said condition shall be a continuing obligation during the entire term of such franchise and thereafter until Franchisee shall have satisfied in full any and all obligations to the City and any Franchisee which arise out of or pertain to said franchise. Neither the provisions of this section, nor any insurance policy accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee, or limit the liability of the Franchisee under any franchise issued pursuant to this ordinance.

(b) The City reserves the right to have its legislative body review the dollar amount of said insurance policy and reasonably adjust the amount of coverage as deemed appropriate upon

an annual basis.

Section 16. Indemnification.

(a) The Franchisee by acceptance of the privileges granted hereunder, does hereby agree and covenant to indemnify, defend, and save harmless the City of Lynden and those persons who were, are now, or shall be duly elected or appointed officials or members or employees thereof, against and from any loss, damage, costs, charges, expenses, liability, claims, demands or judgments whatsoever kind or nature whether to persons or property, arising wholly or partially out of any act, action, neglect, omissions or default on the part of the Franchisee, its agents and/or employees which may occur by reason of construction, operation, maintenance, repair, or relocation of the Franchisee's Water Line within the City's Third Street Right of Way. In case that suit or action is brought against the City of Lynden for damages arising out of or by reason of the above-mentioned causes, the Franchisee will upon notice of the filing of a claim or the commencement of said action, appear and defend the same at its sole cost and expense, and in case judgment shall be rendered against the City of Lynden in suit or action, the Franchisee will fully satisfy said judgment after said suit or action shall have finally been determined, if determined adversely to the City of Lynden.

(b) Acceptance by the City of any work performed by the Franchisee at the time of completion shall not be grounds for avoidance of this covenant.

Section 17. Reasonable Costs and Attorney's Fees.

In the event legal action is filed by a party hereto pursuant to this Franchise, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees.

Section 18. License, Tax and Other Charges.

No privileges or rights granted hereunder shall exempt Franchisee from any future uniform rent, license, tax charge or impost which may hereafter be required by the Franchisor, for revenue or as reimbursement for use and occupancy of public ways, and failure to timely remit any sums properly due thereby, shall be cause for forfeiture of rights hereunder.

Section 19. Severability.

If any portion of the ordinance is deemed invalid the remainder will remain in effect.

Section 20. Titles.

The section titles used herein are for reference only and should not be used for the purpose of interpreting this ordinance.

Section 21. Modification.

The City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 22. Remedies to Enforce Compliance.

In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 23. Notice.

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

City of Lynden
ATTN: Public Works Department
300 4th Street
Lynden, Washington 98264

Franchisee:

Darigold, Inc.
ATTN: Director Of Environmental Compliance
P.O. Box 34377
Seattle, WA 98124-1377

Section 24. Entire Franchise Agreement.

This Franchise Agreement constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Agreement.

Section 25.

This ordinance shall be in full effect five (5) days after its passage, approval and publication as provided by law.

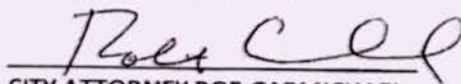
PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, 6 IN FAVOR 0 AGAINST, AND
SIGNED BY THE MAYOR THIS 18 DAY OF January, 2017.


MAYOR SCOTT KORTHUIS

ATTEST:


CITY CLERK PAMELA BROWN

APPROVED AS TO FORM:


CITY ATTORNEY BOB CARMICHAEL

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that BLAKE STARKENBURG 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 MEMBER of JANSTAR HOLDINGS, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SIGNED this ____ day of _____, 2017.

NOTARY PUBLIC for the State of Washington.
Commission expires: _____.

EXHIBIT "D-1"
PORTION OF EASEMENT No. 2 WITHIN
TPN 400320 366239 0000

A 20 FOOT WIDE STRIP OF LAND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., WHATCOM COUNTY, WA, THE NORTHERLY BOUNDARY OF SAID STRIP DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP MARKING THE MOST NORTHERLY CORNER OF PARCEL F AS SHOWN IN RIVERVIEW LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2120102778, RECORDS OF SAID COUNTY; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL F SOUTH 23°29'04" EAST 60.00 FEET TO A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 66°31'10" EAST 3.57 FEET TO THE P.C. OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 172.27 FEET AND A CENTRAL ANGLE OF 21°23'49"; THENCE ALONG SAID CURVE 64.33 FEET TO THE P.T.; THENCE NORTH 87°55'00" EAST 243.85 FEET TO THE EASTERLY BOUNDARY OF LOT C AS SHOWN IN B.D.C. LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2070304692, SAID RECORDS; THENCE ALONG SAID EASTERLY BOUNDARY OF LOT C NORTH 23°10'29" WEST 76.65 FEET TO THE **TRUE POINT OF BEGINNING** OF SAID NORTHERLY BOUNDARY OF THE 20 FOOT WIDE STRIP OF LAND; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 87°55'44" EAST 88.87 FEET TO THE P.C. OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 477.50 FEET AND A CENTRAL ANGLE OF 20°52'38"; THENCE ALONG SAID CURVE 173.99 FEET TO THE P.T.; THENCE NORTH 67°03'06" EAST 12.69 FEET TO THE WESTERLY BOUNDARY OF LOT 3, BRATT/DAVIDSON SHORT PLAT RECORDED AT AUDITOR'S FILE NUMBER 2070403246, SAID RECORDS, THE ENTIRE WIDTH OF SAID 20 FOOT WIDE STRIP OF LAND EXTENDING TO AND LIMITED BY SAID EASTERLY BOUNDARY OF LOT C AND SAID WESTERLY BOUNDARY OF LOT 3.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

REVISED on 11/07/2016

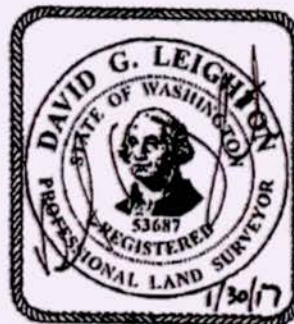


EXHIBIT "D-2"
PORTION OF EASEMENT No. 2 WITHIN
TPN 400320 343220 0000

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., WHATCOM COUNTY, WA, DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP MARKING THE MOST NORTHERLY CORNER OF PARCEL F AS SHOWN IN RIVERVIEW LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2120102778, RECORDS OF SAID COUNTY; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL F SOUTH 23°29'04" EAST 60.00 FEET TO A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 66°31'10" EAST 3.57 FEET TO THE P.C. OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 172.27 FEET AND A CENTRAL ANGLE OF 21°23'49"; THENCE ALONG SAID CURVE 64.33 FEET TO THE P.T.; THENCE NORTH 87°55'00" EAST 243.85 FEET TO THE EASTERLY BOUNDARY OF LOT C AS SHOWN IN B.D.C. LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2070304692, SAID RECORDS; THENCE ALONG SAID EASTERLY BOUNDARY OF LOT C NORTH 23°10'29" WEST 76.65 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE RETURNING ALONG SAID EASTERLY BOUNDARY SOUTH 23°10'29" EAST 21.43 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY SOUTH 87°55'44" WEST 119.03 FEET; THENCE SOUTH 85°49'29" WEST 35.14 FEET; THENCE SOUTH 75°55'38" WEST 151.83 FEET TO THE EASTERLY BOUNDARY OF PARCEL F; THENCE ALONG SAID EASTERLY BOUNDARY NORTH 23°29'04" WEST 20.21 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 75°55'24" 156.55 FEET; THENCE NORTH 85°41'22" EAST 37.90 FEET; THENCE NORTH 87°55'44" EAST 111.31 FEET TO SAID POINT OF BEGINNING.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

REVISED on 1/26/2017



EXHIBIT "E"

100' WIDE TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION WITHIN TPN 400320 366239 0000

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER
AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, SECTION 20,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., WHATCOM COUNTY, WA
DESCRIBED AS FOLLOWS:

THE EASTERLY 100.00 FEET OF THAT PORTION OF LAND DESCRIBED IN
AUDITOR'S FILE NUMBER 2120900868, RECORDS OF SAID COUNTY LYING
NORTHERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP MARKING
THE MOST NORTHERLY CORNER OF PARCEL F AS SHOWN IN RIVERVIEW LOT
LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2120102778; THENCE
ALONG THE EASTERLY BOUNDARY OF SAID PARCEL F SOUTH 23°29'04" EAST
60.00 FEET TO A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP; THENCE
LEAVING SAID EASTERLY BOUNDARY NORTH 66°31'10" EAST 3.57 FEET TO THE
P.C. OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 172.27 FEET AND
A CENTRAL ANGLE OF 21°23'49"; THENCE ALONG SAID CURVE 64.33 FEET TO THE
P.T.; THENCE NORTH 87°55'00" EAST 243.85 FEET TO THE EASTERLY BOUNDARY
OF LOT C AS SHOWN IN B.D.C. LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S
FILE NUMBER 2070304692; THENCE ALONG SAID EASTERLY BOUNDARY OF LOT C
NORTH 23°10'29" WEST 84.69 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE
LEAVING SAID EASTERLY BOUNDARY NORTH 87°55'44" EAST 91.77 FEET TO THE
P.C. OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 470.00 FEET AND A
CENTRAL ANGLE OF 20°52'38"; THENCE ALONG SAID CURVE 171.26 FEET TO THE
P.T.; THENCE NORTH 67°03'06" EAST 12.63 FEET TO THE WESTERLY BOUNDARY OF
LOT 3, BRATT/DAVIDSON SHORT PLAT RECORDED AT AUDITOR'S FILE NUMBER
2070403246, RECORDS OF SAID COUNTY..

SITUATE IN WHATCOM COUNTY, WASHINGTON.

Prepared on 01/27/17



EXHIBIT "E-1"
TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION WITHIN
TPN 400320 343220 0000

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., WHATCOM COUNTY, WA, DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP MARKING THE MOST NORTHERLY CORNER OF PARCEL F AS SHOWN IN RIVERVIEW LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2120102778, SAID REBAR ALSO MARKS A POINT ON THE WESTERLY BOUNDARY OF LOT A OF THE B.D.C. LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2070304692, ALL AS SHOWN IN THE RECORDS OF SAID COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID LOT A NORTH 23°29'04"WEST 75.62 FEET; THENCE LEAVING SAID WESTERLY BOUNDARY OF LOT A NORTH 75°55'38"EAST 177.06 FEET; THENCE NORTH 85°49'29"EAST 45.63 FEET; THENCE NORTH 87°55'44"EAST 82.27 FEET TO A POINT ON THE EASTERLY BOUNDARY OF LOT C OF SAID B.D.C. LOT LINE ADJUSTMENT; THENCE ALONG SAID EASTERLY BOUNDARY OF LOT C SOUTH 23°17'43"EAST 85.75 FEET TO THE NORTHERLY LINE OF THE PROPOSED DRAINLINE EASEMENT WITH WHICH THIS EASEMENT IS ASSOCIATED; THENCE LEAVING SAID EASTERLY LINE AND ALONG SAID NORTHERLY LINE SOUTH 87°55'44"WEST 111.31 FEET; THENCE CONTINUING ALONG SAID NORTHERLY LINE SOUTH 85°41'22"WEST 37.90 FEET; THENCE SOUTH 75°55'24"WEST 156.55 FEET TO SAID WESTERLY BOUNDARY OF LOT A; THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID WESTERLY BOUNDARY NORTH 23°29'04"WEST 5.53 FEET TO SAID POINT OF BEGINNING

SITUATE IN WHATCOM COUNTY, WASHINGTON.

REVISED on 1/27/2017

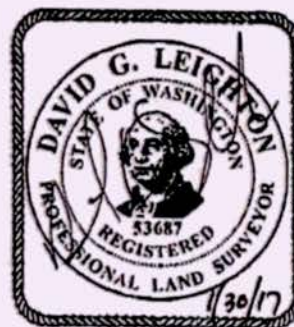


EXHIBIT "E-2"

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION WITHIN TPN 400320 366239 0000

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER
AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, SECTION 20,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., WHATCOM COUNTY, WA,
DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8" REBAR WITH COMPASS POINT LS 32430 CAP MARKING
THE MOST NORTHERLY CORNER OF PARCEL F AS SHOWN IN RIVERVIEW LOT
LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER 2120102778, SAID
REBAR ALSO MARKS A POINT ON THE WESTERLY BOUNDARY OF LOT A OF THE
B.D.C. LOT LINE ADJUSTMENT RECORDED AT AUDITOR'S FILE NUMBER
2070304692, ALL AS SHOWN IN THE RECORDS OF SAID COUNTY; THENCE ALONG
THE WESTERLY BOUNDARY OF SAID LOT A NORTH 23°29'04"WEST 75.62 FEET;
THENCE LEAVING SAID WESTERLY BOUNDARY OF LOT A NORTH 75°55'38"EAST
177.06 FEET; THENCE NORTH 85°49'29"EAST 45.63 FEET; THENCE NORTH
87°55'44"EAST 82.27 FEET TO A POINT ON THE EASTERLY BOUNDARY OF LOT C OF
SAID B.D.C. LOT LINE ADJUSTMENT **AND THE TRUE POINT OF BEGINNING**;
THENCE ALONG SAID EASTERLY BOUNDARY OF LOT C SOUTH 23°17'43"EAST
85.75 FEET TO THE NORTHERLY LINE OF THE PROPOSED DRAINLINE EASEMENT
WITH WHICH THIS EASEMENT IS ASSOCIATED; THENCE LEAVING SAID
EASTERLY LINE AND ALONG SAID NORTHERLY LINE NORTH 87°55'44"EAST 88.87
FEET TO THE P.C. OF A CURVE TO THE LEFT HAVING A RADIUS OF 477.50 FEET
AND A CENTRAL ANGLE OF 10°19'59"; THENCE ALONG SAID CURVE A DISTANCE
OF 86.12 FEET TO A POINT OF CURVATURE; THENCE LEAVING SAID NORTHERLY
LINE AND CURVE AND COINCIDENT WITH THE WESTERLY LINE OF THE
EASTERLY 100.00 FEET OF THAT PARCEL OF LAND DESCRIBED IN AUDITOR'S FILE
NUMBER 2120900868, RECORDS OF SAID COUNTY, NORTH 23°25'03"WEST 79.25
FEET; THENCE LEAVING SAID WESTERLY LINE OF THE EASTERLY 100.00 FEET
SOUTH 87°25'28"WEST 176.56 FEET TO SAID TRUE POINT OF BEGINNING.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

REVISED on 11/07/2016





AFTER RECORDING RETURN TO:

CARMICHAEL CLARK, PS
ATTENTION: ROBERT A. CARMICHAEL
P. O. BOX 5226
BELLINGHAM, WASHINGTON 98227



W-141400
5 pgs

DOCUMENT TITLE: ASSIGNMENT OF WATER RIGHT

REF. NO. OF RELATED DOCUMENT: NA

GRANTOR(S): Meadowbrook Water Association, a Washington non-profit corp.

GRANTEE(S): City of Lynden, a Washington municipal corporation

ABBREV. LEGAL DESCRIPTION: PTN NW ¼ NW ¼ Sec. 14, T40 N, Rge 3 E. W.M.
Full legal description is on page 2 of document.

ASSESSOR'S TAX PARCEL NUMBER(S): 128160 (Geographic ID 400314 004523 0000)

ASSIGNMENT OF WATER RIGHTS

THIS ASSIGNMENT is between Meadowbrook Water Association, a Washington non-profit corporation, ("Assignor"), and the City of Lynden, a Washington municipal corporation, ("Assignee").

The Assignor hereby conveys and assigns to the Assignee, the following-described ground water right and all rights associated therewith, in their entirety:

The ground water right associated with the Northwood Well located in the Kamm Creek Watershed, which has a water right certificate for seventy (70) gallons per minute and one hundred and twelve (112) acre feet of water annually, evidenced by Certificate of Water Right No. G1-*02843CWRIS.

(hereafter "Ground Water Right").

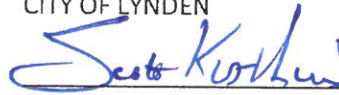
This assignment of Ground Water Right to Assignee shall be effective immediately.

IN WITNESS WHEREOF, the parties have executed this assignment the 25th day of July, 2017.

ASSIGNOR:
MEADOWBROOK WATER ASSOCIATION

By: _____
Its: _____

ASSIGNEE:
CITY OF LYNDEN


By: Scott Korthuis
Its: Mayor

ASSIGNMENT OF WATER RIGHTS

THIS ASSIGNMENT is between Meadowbrook Water Association, a Washington non-profit corporation, ("Assignor"), and the City of Lynden, a Washington municipal corporation, ("Assignee").

The Assignor hereby conveys and assigns to the Assignee, the following-described ground water right and all rights associated therewith, in their entirety:

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(hereafter "Ground Water Right").

This assignment of Ground Water Right to Assignee shall be effective immediately.

IN WITNESS WHEREOF, the parties have executed this assignment the 20 day of July, 2017.

ASSIGNOR:
MEADOWBROOK WATER ASSOCIATION

By: Ken Fuller
Its: President

ASSIGNEE:
CITY OF LYNDEN

By: Scott Korthuis
Its: Mayor

STATE OF WASHINGTON)
) ss.
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 acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the MAYOR of CITY OF LYNDEN, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: July 25, 2017



Stephanie K. Joy
(Signature of Notary)
Print Name: Stephanie K. Joy
NOTARY PUBLIC in and for the State
of Washington, residing at Bellingham
My commission expires: 09-12-20

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

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

Date: July 26, 2017



Stephanie K. Joy
(Signature of Notary)
Print Name: Stephanie K. Joy
NOTARY PUBLIC in and for the State
of Washington, residing at Bellingham
My commission expires: 09-12-20

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL A:

THE WEST 50 FEET OF THE NORTH 70 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT EAST BADGER ROAD ALONG THE NORTHERLY BOUNDARY THEREOF.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

A NON-EXCLUSIVE ACCESS EASEMENT FOR ROAD PURPOSES AS GRANTED BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 2150600593, AND AS AMENDED BY AUDITOR'S FILE NO. 2016-0202465.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

... END OF EXHIBIT "A" ...



City of Lynden

MANAGED AQUIFER RECHARGE (MAR) DEMONSTRATION PROJECT

Project Purpose

Identify, permit, construct and operate a managed aquifer recharge (MAR) system that will increase flow in the Nooksack River primarily in June through November for habitat enhancement, stream flow augmentation, and municipal surface water right mitigation purposes.

General Concept

- Divert water from the Nooksack River (December through May) when the river exceeds minimum instream flow requirements and convey that water, by pump or gravity, to selected MAR site(s). The MAR system will infiltrate water into the subsurface resulting in recharge to the underlying shallow aquifer systems.
- Potential MAR sites are being considered along the South, North, and Middle Forks of the Nooksack River, and its Main-Stem, in geologic/hydrogeologic settings where a high percentage of the infiltrated water will return to the river as groundwater recharge/seepage.
- The MAR sites would be located where the groundwater time of travel to the river is between roughly 1 to 6 months so that river diversions between December and May will increase groundwater seepage/recharge to the river from June through November. See the MAR Conceptual Diagram on the back of this sheet for additional details.

Other Considerations

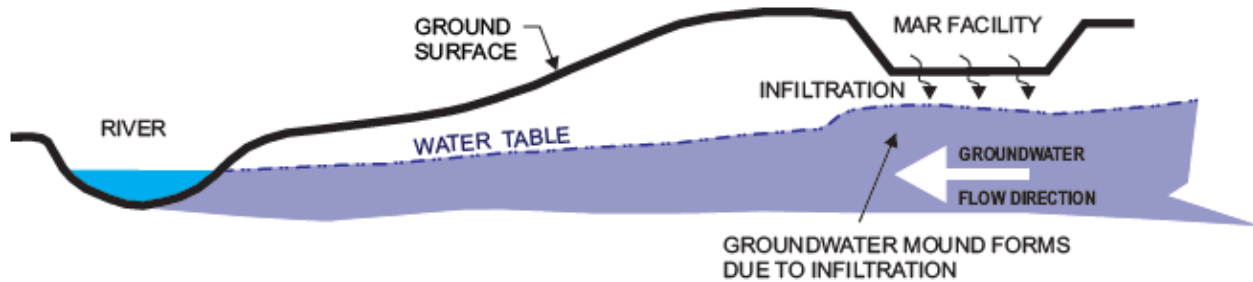
- Climate change models for Whatcom County predict a decrease in snowpack, an increase in winter/spring river flow, and a decrease in summer/fall river flow in the upcoming decades. The MAR projects may provide a reliable long-term solution to counter these predicted climate change impacts by storing a portion of the winter/spring river flows in the subsurface and releasing that stored water as cool groundwater recharge to the river during the summer/fall months.
- This same concept also means that the MAR projects would provide some degree of summertime drought protection for the Nooksack River.

Expected Results

- The MAR projects could provide several thousands of acre-feet of relatively cold groundwater recharge to the upstream reaches of the river between June and November. It is intended that the vast majority of this MAR water will be placed in trust for streamflow and habitat enhancement purposes.
- A percentage of the increased flow in the river will be credited as mitigation for a modest new City of Lynden annual municipal water right. The City will provide for the ongoing monitoring and operation of the MAR systems to maintain their municipal surface water right.
- A share of the new water right may be used to address public health concerns of water associations, adjacent to Lynden, that currently use groundwater with nitrate concentrations above drinking water standards.

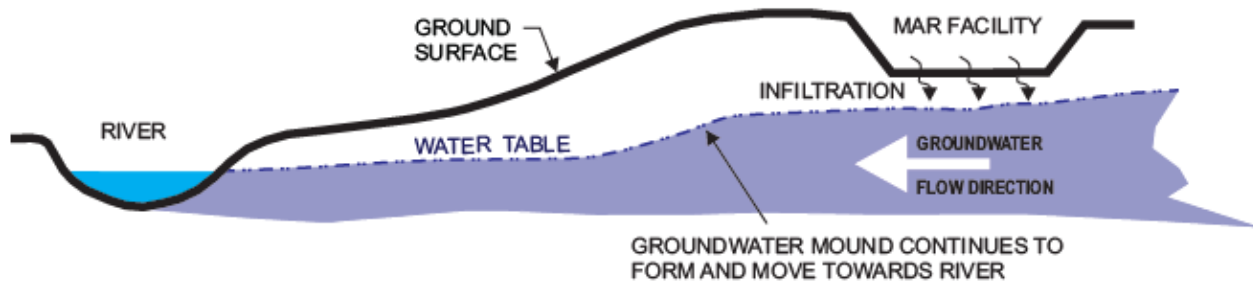
Project Team Members: City of Lynden, AESI, and Reichardt & Ebe

MAR Conceptual Diagram



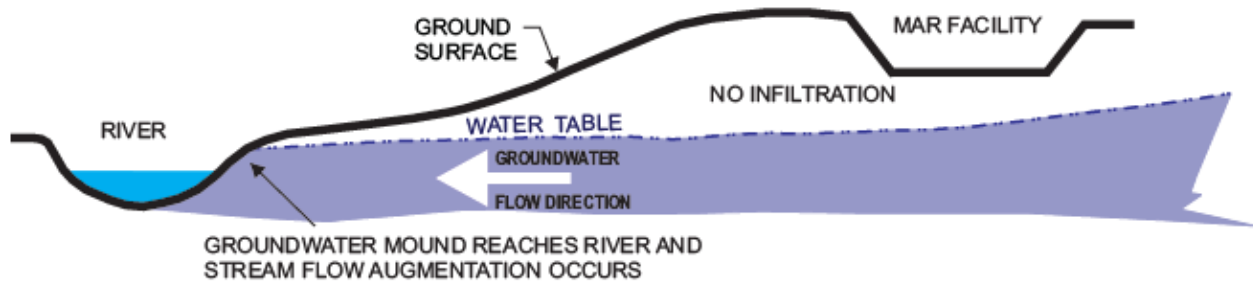
STAGE #1

INFILTRATION AT MAR FACILITY BEGINS
(WINTER / SPRING)



STAGE #2

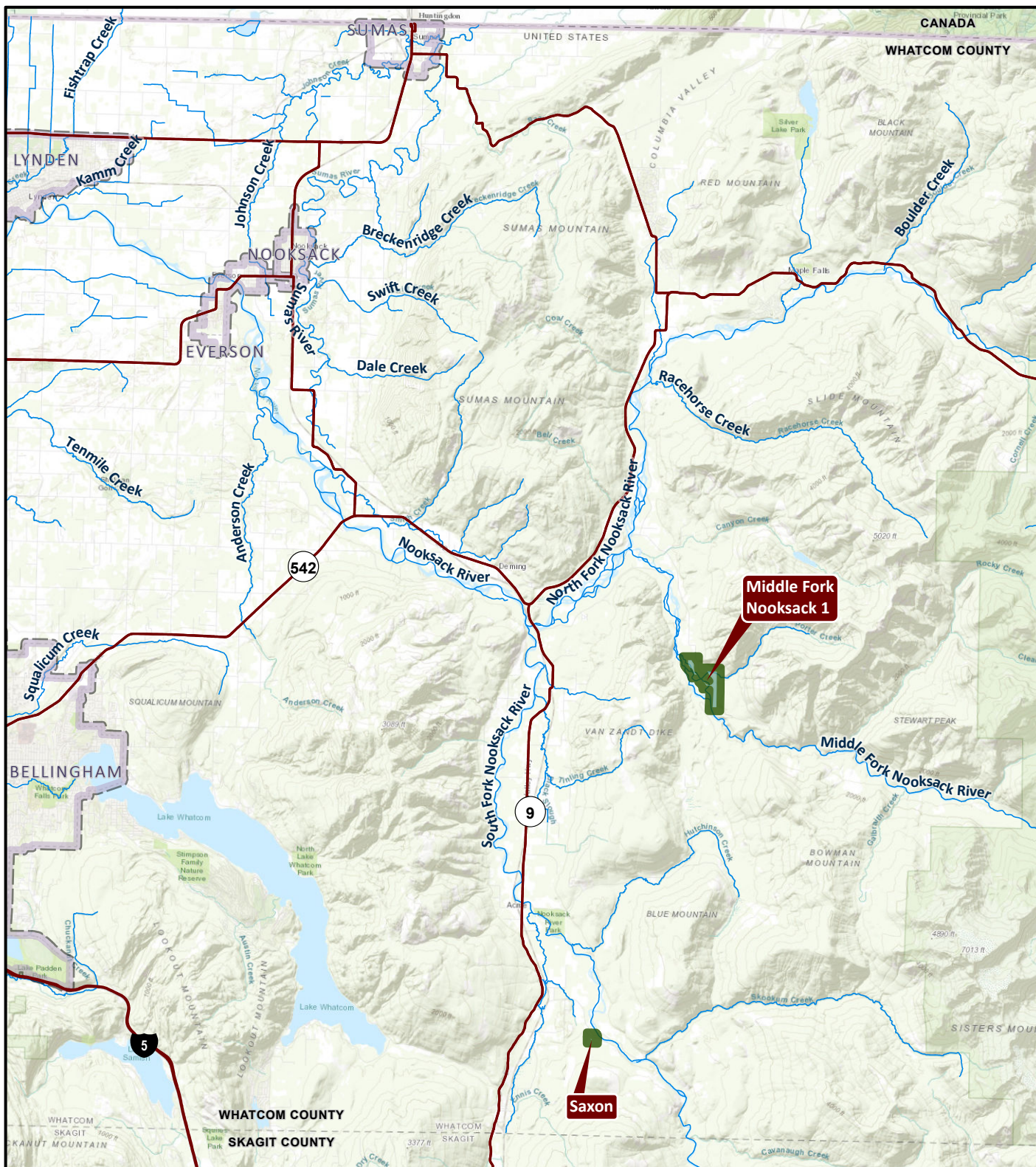
INFILTRATION AT MAR FACILITY CONTINUES
(SPRING)



STAGE #3

INFILTRATED WATER AUGMENTS STREAM FLOW
(SUMMER / FALL)

G:\GIS_Projects\aaY2020\200448 Lynden MAR\aprx\H001Task2\200448H001 VM_MAR.aprx | 200448H001 VM_MAR | 6/15/2021 1:04 PM



DATA SOURCES / REFERENCES:
USGS: 7.5' SERIES TOPOGRAPHIC MAPS, ESRI/I-CUBED/NATIONAL GEOGRAPHIC SOCIETY 2013
WHATCOM CO: STREETS 03/17, CITY LIMITS, PARCELS, 07/20
LOCATIONS AND DISTANCES SHOWN ARE APPROXIMATE

NOTE: BLACK AND WHITE REPRODUCTION OF THIS COLOR ORIGINAL MAY REDUCE ITS EFFECTIVENESS AND LEAD TO INCORRECT INTERPRETATION



associated
earth sciences
incorporated

MIDDLE FORK NOOKSACK 1 AND SAXON SITES

CITY OF LYNDEN MAR
WHATCOM COUNTY, WASHINGTON

PROJ NO.
20200448H001

DATE:
6/21

FIGURE:
1