

RETURN NAME & ADDRESS

City of Woodinville
Attn: City Clerk
17301 133rd Avenue NE
Woodinville, WA 98072



201906210221 20 PGS
06/21/2019 10:48am \$118.00
SNOHOMISH COUNTY, WASHINGTON

Please print neatly or type information
Document Title(s)

Wellington Hills Settlement Agreement

Reference Number(s) of related documents:

Additional Reference #'s on page ____

Grantor(s) (Last, First, and Middle Initial)

Northshore School District No. 417

Additional Grantors on page ____

Grantee(s) (Last, First, and Middle Initial)

City of Woodinville

Additional Grantees on page ____

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range,
quarter/quarter)

Section 35, Township 27, Range 5

Complete legal on page 9, 10, 11

Assessor's Property Tax Parcel/Account Number

27053500301300

Additional parcel #'s on page 4

The Auditor/Recorder will rely on the information provided on this form. The responsibility for the accuracy of the indexing information is that of the document preparer.

*I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

WELLINGTON HILLS SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made as of April 29, 2019, by and among the CITY OF WOODINVILLE, a Washington municipal corporation (the “City”) and the NORTSHORE SCHOOL DISTRICT NO. 417, a Washington municipal corporation (the “School District”). All of the foregoing entities may be referred to individually as a “Party” and collectively referred to as the “Parties.”

RECITALS

- A. In 2015, Snohomish County (the “County”) authorized the sale to the School District of certain real property commonly known as the Wellington Property, located adjacent to the City, to the north, and legally described in the attached Exhibit A (the “Site”);
- B. The City challenged the sale of the Site by legal actions filed in Skagit County Superior Court (Cause No. 13-2-00714-5 and 15-2-01492-0) and Thurston County Superior Court (Cause No. 16-2-02541-34);
- C. NEIGHBORS TO SAVE WELLINGTON PARK (“NSWP”) challenged the sale of the Site by legal actions filed in Skagit County Superior Court (Cause No. 15-2-01555-1) and Thurston County Superior Court (Cause No. 16-2-02628-34);
- D. The County closed on the contract to sell the Site to the School District in 2017;
- E. The School District serves a geographic area that includes the City and portions of the County, and has said that it will eventually develop portions of the Site for school facilities, but it currently has no plans to do so;
- F. The proposed development of the Site will require review under the State Environmental Policy Act, Chapter 43.21C RCW (“SEPA”); and
- G. The Parties wish to resolve all claims by entering this Agreement, but without waiving claims and defenses against NSWP, which has declined to participate.

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. Planned Use of Site.

- a. The School District intends to develop and use the Site for School Purposes. However, the School District has not developed a plan for the facilities to be constructed on the Site and anticipates that such planning and initial Site development will not commence for several years. The facilities at the Site may be constructed in phases or as separate projects over a period of years. Prior to adoption of plans for development of the Site, the School District will

undergo planning as described in Section 2, Capital Facilities and Comprehensive Planning. In this Agreement “School Purposes” means uses and activities that are necessary for or consistent with the education of students and are typically provided on school-owned property, including classrooms, libraries, lunch facilities, administrative offices, gymnasiums, sports fields, theatres, industrial arts facilities, parking stalls, and other similar uses and activities. The School District shall not construct any facilities at the Site primarily intended to serve broader community needs, such as a community center or a community sports complex. While both Parties agree that the Site is to be developed and used for school purposes, it does not preclude incidental use of School Facilities by community members and groups.

b. Absent changes to the current comprehensive planning and zoning of the Site and surrounding area, the initial planned capacity of School District’s facilities planned on the Site will accommodate enrollment of 1,200 full-time students. Planned capacity may increase to up to 1,500 full-time students if (i) the Growth Management Act (GMA) Urban Growth Area is expanded to include land within the School District’s Boundary, or (ii) a zoning change occurs in the City that materially increases the student population projections from the City for the Site and assessment by an independent third party selected by the School District with the City’s consent, not to be unreasonably withheld, demonstrates that (iii) either (i), (ii) or both will generate 300 additional full-time students the School District reasonably determines are most appropriately housed in facilities at the Site; provided that appropriate Capital Facilities Planning and SEPA review (which must occur through an EIS if not covered by a previous EIS consistent with Section 3) shall accompany any such change by the District and shall consider whether any additional mitigation is appropriate. Notwithstanding the foregoing, the District shall not request or advocate for a change in the Urban Growth Area boundary to include the Site.

c. The School District shall not request to or extend sanitary sewer facilities to the Site unless (i) the Urban Growth Area is expanded to include the Site before either adequate septic facilities are constructed or existing septic facilities which are approaching the end of their useful lives are to be replaced or (ii) the School District otherwise is required to do so by an agency with jurisdiction.

2. Capital Facilities and Comprehensive Planning. In advance of any development on the Site, as described in Section 1, the School District shall identify and describe the anticipated facilities in the School District’s Capital Facilities Plan, as the same may be updated from time to time, which in turn will be proposed for inclusion in the County’s comprehensive plan, or if then applicable, the City’s comprehensive plan.

3. SEPA Review.

a. The School District will serve as lead agency under SEPA for planning and development of school facilities at the Site. The School District will prepare a full environmental impact statement (“EIS”) under SEPA in accordance with the state SEPA regulations, Ch. 197-11 WAC, the School District’s SEPA Policies, Board Policy No. 9280, as amended (“SEPA Policies”), and other applicable law prior to adoption of a plan for development of such school facilities at the Site. The School District will not issue or rely upon a determination of nonsignificance (including a mitigated determination of nonsignificance) pursuant to the SEPA regulations, Ch. 197-11 WAC. The School District and the City will

appoint a mutually agreeable, independent third-party SEPA Responsible Official to prepare the EIS and oversee SEPA review. The SEPA Responsible Official will consult with the City on an ongoing basis concerning potentially significant adverse impacts, including but not limited to potential adverse impacts to transportation systems and concurrency, vehicular traffic, parking, circulation, pedestrian and bicycle safety, and traffic hazards. The Responsible Official working with the School District and the City, shall establish at the outset of his/her work protocols for communication with or among the School District and the City consistent with the intent of the appointment of the SEPA Responsible Official which is to ensure independence and unbiased results, based on the Responsible Official's independent judgement.

b. The independent SEPA Responsible Official will be selected by the School District Board of Directors as follows. The School District shall solicit consultant interest in preparation of the EIS, after notice to the City, pursuant to normal School District procurement process for such services. The City may encourage consultants to request consideration for the assignment. A representative of the School District and a representative of the City shall jointly review the list of proposers and select one proposer to recommend to the Board, subject to negotiation of a mutually (between the School District and the City) acceptable contract between the School District and such consultant. If the School District Board rejects such recommendation, or the recommended consultant does not accept the proposed contract, then a representative of the School District and a representative of the City shall jointly review the remaining list of proposers and select a second proposer to recommend to the Board, and this process shall continue until the School District and the recommended consultant enter into the approved contract. If the School District representative and City representative are unable to agree on the proposer to be recommended to the Board, then the School District Superintendent and City Manager shall select between the School District representative's and City representative's preferred proposer. If the Superintendent and City Manager are unable to agree, then the Parties will ask Dennis McLearren¹ (or if he is not available for any reason, a mutually acceptable retired King County superior court judge) to make the selection after reviewing a statement of reasons from the School District and the City. The cost of such to be equally split by the School District and the City.

c. The School District shall commission and disclose as part of the EIS a full geotechnical analysis of the Site ("Geotech Report"), including full investigation of potential seismic lineaments and faults, to be prepared by a geotechnical consultant selected by the City, subject to the consent of the School District, not to be unreasonably withheld, conditioned, or delayed.

4. Transportation. The School District and the City desire to minimize traffic to and from the Site from the east along 240th St. SE. The School District recognizes that other access to the Site must be improved because it is currently steep, circuitous and substandard. The School District will implement policies, physical measures and improvements to minimize vehicle trips attributable to access to and egress from the Site from the east, and to substantially improve other access. In furtherance thereof, the School District will, prior to use of the Site, design and make good faith efforts to secure necessary approvals for, and upon receipt of such final approvals, to

¹ Mr. McLearren served as mediator in the resolution of the disputes between the School District and the City that this Agreement resolves.

implement such policies, measures, and improvements including but not limited to street improvements, to 240th St. SE on the west side of the Site; that are reasonable and appropriate to facilitate and encourage use of that access and to meet traffic demand to and from the Site by vehicle trips attributable to the Site. Upon completion of such road improvements, the School District will make all reasonable effort, including by policies, and other measures, to direct all vehicle trips attributable to Site usage to access the Site from the west side of the Site, unless and except when and to the extent such access is otherwise legally or practically unavailable (e.g., road repairs, snow, etc.).

5. Conservation Areas; Buffer.

a. The School District will treat as a “Conservation Area” and will not construct school facilities or improvements, including but not limited to structures, buildings, parking lots, and sports fields, on the area(s) depicted on the attached Exhibit B and identified as a Conservation Area; provided, however, that underground utilities, and educational program activities that do not involve structures or improvements (e.g. simple garden beds), are permitted. Access roads on the perimeter of the Site are not permitted, but roads that provide direct site access may be permitted. The Conservation Area may also satisfy or be counted toward any legally required Native Growth Protection Areas and Critical Areas Protection Areas under the Snohomish County Code or similar requirements under other applicable law.

b. The Conservation Area includes a buffer of sixty (60) feet along the following roadways:

- i. the westerly side of 71st Dr. SE for that portion of 71st Dr. SE that is north of 240th St. SE;
- ii. the southerly side of 240th St. SE for that portion of 240th St. SE that is east of 71st Dr. SE;

c. The Conservation Area includes a buffer of one hundred (100) feet in the following areas:

- i. the easterly boundary of tax parcel no. 2705350030-1300
- ii. the easterly boundary of the portion of tax parcel no. 2705350030-2200 that is south of tax parcel no. 2705350030-1300;
- iii. the southerly boundaries of tax parcel nos. 2705350030-2200, 2705350030-1100, 2705350030-0400, and 2705350030-0500.

d. Nothing in this Agreement shall preclude the School District from taking advantage of securing regulatory credit for the restrictions imposed by this Agreement on use of the Conservation Area in buffer averaging, variances or mitigation options under applicable development regulations that could otherwise restrict development in sensitive areas outside of or in addition to the Conservation Area. However, the specified minimum buffers in this Agreement must be maintained.

6. Right of First Offer; Alternative Siting.

- a. If the School District determines that all or any portion of the Site is not needed for School Purposes and should be sold, the School District will give the City notice of that determination and allow the City a minimum of 60 days in which to request an appraisal of such surplus property by an independent appraiser selected by the Board of Directors of the School District, with the consent of the City, which shall not be unreasonably withheld, conditioned or delayed, who is familiar with land use and development regulations applicable to the Site, the University of Washington deed restriction on the site, the history of public recreational use of the Site, and its environmental and geotechnical constraints. The appraisal shall conform to Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute. The School District shall grant the City an ongoing right of first offer to purchase any such surplus property for its then-appraised value, in the form attached as Exhibit C. Sale of the property by the School District shall be performed in accordance with Chapter 28A 335 RCW or Chapter 39.33 RCW as appropriate.
- b. If a property comparable to the Site in development potential for the school facilities becomes available before January 1, 2028, or when the School District begins schematic design on a planned development of the Site, whichever is earlier, the School District will assess whether the alternative site will meet all of the School District's capital facilities needs planned or possible at the Site in a manner consistent with the School District's student demographics, Capital Facilities Plan, available funds (and consult with the City in good faith as to the extent to which the City may commit to supplement the School District's available funds in furtherance of the School District's purchase of the potential alternative site) and other prudent school facilities planning. If the School District determines that the alternative site is suitable for the School District's capital facilities needs planned for the Site, and agrees with the City that Site development will consequently be substantially limited or will not occur at all, then the City will exercise reasonable efforts to assist the School District to acquire the alternative site on commercially reasonable terms consistent with the School District's schedule and budget, provided that the ultimate decision to acquire the alternative site or not shall remain the School District's in its sole discretion. Following any such alternative site acquisition, the School District shall determine if the Site or a portion of it is then surplus to the School District's needs and make it available for purchase pursuant to Section 6.a. above.

7. Public Use of Site. Until the School District begins actual development of school facilities on the Site, the School District shall permit Passive Recreational use of the Site by the public under the terms and conditions set forth in the Washington Recreational Use Immunity statute (RCW 4.24.210). The term "Passive Recreational Uses" means the following or similar activities by individuals or groups of individuals: walking, jogging, birding, bicycling, and picnicking.

8. Release; Future Obligations. The Parties forever quit, release, surrender, and discharge any and all claims, suits, actions, allegations, charges, demands, judgments, and costs, whether known or unknown, both legal and equitable, arising out of the purchase of the Site by the School District and the sale of the Site by the County. If either Party is not in compliance with this Agreement, the non-breaching Party shall be entitled to injunctive relief under Section 15 and other legal remedies to compel compliance.

9. Dismissal of Actions. Within twenty (20) days of the Effective Date, the City will file a voluntary dismissal of its claims in each court, namely Thurston County Superior Court (*City of Woodinville v. State Growth Management Hearings Board, et al.*, Cause No. 16-2-02541-34) and Skagit County Superior Court (*City of Woodinville v. Snohomish County and Northshore School District*, Cause No. 15-2-01492-0, consolidated with Cause No. 15-2-01555-1).

10. Condition Precedent. This Settlement Agreement will not bind any of the Parties unless and until each of the following governing bodies of each Party provide written acceptance of this Settlement Agreement; moreover, if any of the following governing bodies do not provide written acceptance of this Settlement Agreement within sixty (60) days of the date first written above, then this Settlement Agreement is not binding on any party in any respect:

- a. The School Board of the Northshore School District;
- b. The Woodinville City Council; and

11. No Admission. This Agreement does not constitute, nor shall it be deemed to constitute, an admission by any Party with respect to any allegation, claim, fact, or conclusion of law set forth in any legal pleading in any of the actions listed in Section 9.

12. Notices. Any notice or other communication required or permitted to be given under this Agreement will be provided by certified mail to the following individuals and addresses:

City of Woodinville
Attn: City Manager
17301 133rd Avenue NE
Woodinville, WA 98072

Northshore School District
Attn: Superintendent
3330 Monte Villa Pkwy
Bothell, WA 98021

13. Costs, Expenses and Attorneys' Fees. The Parties will bear their own costs, expenses and attorneys' fees as they were originally incurred in connection with the matters covered by this Agreement.

14. Miscellaneous. The obligations of the Parties hereunder shall be specifically enforceable. This Agreement constitutes the entire agreement between Parties respecting its subject matter and shall not be modified or amended except in a writing signed by all Parties. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Washington. Venue for any dispute arising from this Agreement shall be in King County Superior Court. Any rule of construction to the effect that ambiguities are to be resolved in favor of any Party shall not be employed in the interpretation of this Agreement and are hereby waived by every Party.

This Agreement shall be construed as a whole. Each Party was represented by competent counsel during the negotiation of this Agreement, and such counsel negotiated the terms of this Agreement. The misplacement, addition or omission of a word or character shall not change the intent of any part of this Agreement from that set forth by this Agreement. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. If any portion of this Agreement is determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in effect, and such unlawful or unenforceable provision shall not relieve either Party of its lawful obligations under this Agreement. Subject to the approvals required by Paragraph 9 above, this Agreement is effective as of the date first written above. This Agreement does not create any rights or claims for any third-parties, and it shall not create any third-party beneficiaries except with regard to the passive Public Use of the Site agreed upon in Section 7.

15. Injunctive Relief. The parties acknowledge and admit that damages are not an adequate remedy at law for a failure or breach of any provision of this Settlement Agreement, and that in the event of such failure or breach, the non-breaching party shall be entitled to obtain relief in the form of temporary or permanent injunctions, specific performance, and any and all other remedies.

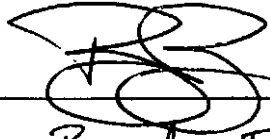
16. Waiver. No waiver of any term or provision of this Agreement shall be effective unless in writing. The waiver by either party of any term or provision contained in this Agreement shall not be deemed to constitute a waiver of any other term or provision of any subsequent breach of the same term or provision.

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17. Effective Date. Subject to the approvals required by Paragraph 10 above, this Agreement is effective as of the date first written above ("Effective Date").

CITY OF WOODINVILLE

NORTHSHORE SCHOOL DISTRICT



By: Brandon Behanan
Its: City Manager



By: Michelle C. Reid
Its: Superintendent

Unofficial Document

EXHIBIT A

Legal Description of the Wellington Property

Parcel A:

That portion of the North 300 feet of the West 400 feet of the West half of the Southwest Quarter of the Southwest Quarter of Section 35, Township 27 North, Range 5 East of the Willamette Meridian, Snohomish County, Washington, lying Southerly of the centerline of Wellington Hills Road, also known as 240th Street Southeast;

Together with the South 50 feet of the North 350 feet of the West 400 feet of the West half of the Southwest Quarter of the Southwest quarter;

Together with the South 175 feet of the North 350 feet of the East 50 feet of the West 450 feet of the West half of the Southwest Quarter of the Southwest Quarter in said Section 35;

Except that portion thereof lying within Wellington Hills Road, also known as 240th Street Southeast.

Parcel B:

That portion of the North 300 feet of the West 400 feet of the West half of the Southwest Quarter of the Southwest Quarter of Section 35, Township 27 North, Range 5 East of the Willamette Meridian, Snohomish County, Washington, lying Northerly of the centerline of Wellington Hills Road, also known as 240th Street Southeast;

Except that portion thereof described as follows:

Beginning at the Northeast corner of the North 300 feet of the West 400 feet of the West half of the Southwest Quarter of the Southwest Quarter of said Section 35;

thence West along the North line of said tract for 150 feet;

thence due South to the centerline of Wellington Hills Road, also known as 240th Street Southeast;

thence Northeasterly along centerline of said road to the East line of the West 400 feet of said West half of the Southwest Quarter of the Southwest Quarter of Section 35;

thence North in a straight line to the Point of Beginning; and

Except that portion thereof lying within Wellington Hills Road, also known as 240th Street Southeast.

Parcel C:

That portion of the Southeast Quarter of the Southwest Quarter of Section 35, Township 27 North, Range 5 East of the Willamette Meridian, Snohomish County, Washington, described as follows:

Beginning at the Southeast corner of said subdivision;

thence North 0° 01' 34" West along the East line of said subdivision 600.56 feet;

thence North 85° 39' 36" West parallel with the South line of said Section a distance of 20.06 feet to the Westerly margin of 75th Avenue Southeast;

thence North 0° 01' 34" West parallel with the East line of said subdivision 60.00 feet;

thence North 85° 39' 36" West 447.92 feet to the West line of the East 466.62 feet of said subdivision and the true point of beginning;

thence continuing North 85° 39'36" West 251.01 feet;
thence North 0° 01'34" West parallel with the East line of said subdivision 607.39 feet to the South line of the North 20 feet of said subdivision;
thence North 85° 29'23" West along said South line 486.39 feet to the East line of the West 100 feet of said subdivision;
thence South 0° 54'30" West along said East line 1,268.01 feet to the South line of said Section;
thence South 85° 39'36" East along South line 758.79 feet to the West line of the East 466.62 feet of said subdivision;
thence North 0° 01'34" West along said West line 660.56 feet to the true point of beginning.

Parcel D:

The West half of the Southwest Quarter of Section 35, Township 27 North, Range 5 East of the Willamette Meridian;

Except that portion conveyed to the State of Washington for Primary State Highway No. 15, by deeds recorded under Auditor's File No. 1271247 and 1296500, records of Snohomish County, Washington; and

Except that portion described as follows:

Beginning at the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 35;

thence East along the North line of said subdivision 250 feet;

thence due South to the centerline of the Wellington Hills Road;

thence Northeasterly along the centerline of said road to the East line of the West 400 feet of said Southwest Quarter of the Southwest Quarter of Section 35;

thence South along the East line of said West 400 feet to a point 175 feet South of the North line of said Southwest Quarter of the Southwest Quarter of Section 35;

thence East 50 feet;

thence South 175 feet;

thence West 450 feet to the West line of said Southwest Quarter of the Southwest Quarter of Section 35;

thence North along said West line to the Point of Beginning; and

Except any portion lying within Wellington Hills Road, also known as 240th Street Southeast.

Parcel E:

The West 100 feet of the East half of the Southwest Quarter of Section 35, Township 27 North, Range 5 East of the Willamette Meridian;

Except that portion thereof lying within Wellington Hills Road, also known as 240th Street Southeast.

Parcel F:

That portion of the Southeast Quarter of the Southwest Quarter of Section 35, Township 27 North, Range 5 East of the Willamette Meridian, records of Snohomish County, Washington, described as follows:

Beginning at the Southeast corner of said subdivision;

thence North 0° 01'34" West along the East line of said subdivision 600.56 feet;

thence North 85° 39'36" West parallel with the South line of said Section a distance of 20.06 feet to the Westerly margin of 75th Avenue Southeast;
thence North 0°01'34" West parallel with the East line of said subdivision 60.00 feet;
thence North 85° 39'36" West 447.92 feet to the West line of the East 466.62 feet of said subdivision and the true point of beginning;
thence continuing North 85° 39'36" West 251.01 feet;
thence North 0° 01'34" West parallel with the East line of said subdivision 607.39 feet to the South line of the North 20 feet of said subdivision;
thence South 85° 39'36" East along said South line 251.01 feet to the West line of the East 466.62 feet of said subdivision;
thence South along the West line of the East 466.62 feet of said subdivision to the true point of beginning.

ALL SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

Unofficial Document

EXHIBIT B

Conservation Area Depiction

EXHIBIT B

Conservation Area Depiction

Copies on File with the Parties of Record

Unofficial Document

EXHIBIT C

WELLINGTON RIGHT OF FIRST OFFER AGREEMENT

THIS WELLINGTON RIGHT OF FIRST OFFER AGREEMENT (this "*Agreement*") is effective as of the Settlement Effective Date (defined below) by and between NORTSHORE SCHOOL DISTRICT NO. 417, a Washington municipal corporation (the "*School District*") and CITY OF WOODINVILLE, a Washington municipal corporation ("*City*").

BACKGROUND

- A. The School District owns certain real property commonly known as the Wellington Property, located near but outside of City's current boundaries, legally described on the attached Exhibit A (the "*Site*");
- B. The School District and City entered into that certain Wellington Settlement Agreement (the "*Settlement Agreement*") on April 29th, 2019 (the "*Settlement Effective Date*"); and
- G. In furtherance of the Settlement Agreement, the School District agreed to grant City certain rights with respect to the Site, should the School District subsequently declare the Site or any portion thereof surplus to the needs of the School District, subject to and in accordance with the terms and conditions contained in this Agreement.

In consideration of the foregoing and the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the School District and City agree as follows:

1. Right of First Offer.

(a) ROFO Term. The Right of First Offer, as defined below, commences on the Settlement Effective Date and shall expire on the fifteenth (15th) anniversary of the Settlement Effective Date, unless earlier terminated by the parties.

(b) ROFO Property. "*ROFO Property*" shall mean any portion of the Site or rights in or to such a portion, from time to time, that: (i) the School District no longer needs for school purposes, as evidenced by the School District having definitively resolved such portion to be surplus to such needs (the "*Surplus Determination*"), and (ii) is a legal lot or exempt from subdivision or short subdivision requirements.

(c) Appraisal. The School District will commission an appraisal of any such ROFO Property from a licensed appraiser in accordance with RCW 28A.335.120 and the Settlement Agreement. The appraiser shall determine the value of the ROFO Property as of the date of the Surplus Determination (the "*Appraised Value*").

(d) Right of First Offer - Initial Surplus Determination.

i. ROFO Notice. Upon any Surplus Determination, the School District shall deliver to City a ROFO Notice with respect to the ROFO Property. City shall have the right to purchase such ROFO Property for its Appraised Value in accordance with the terms and conditions contained in the ROFO Notice (the "**Right of First Offer**"). "**ROFO Notice**" shall mean a written notice containing (i) a surveyor's stamped legal description of the ROFO Property and (ii) the terms on which the School District will sell the ROFO Property to City for cash, including without limitation: price (which shall be the Appraised Value); closing date; and City's acceptance of the ROFO Property subject to all defects and encumbrances to title, and in its then-current condition, AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS, INCLUDING WITHOUT LIMITATION ENVIRONMENTAL DEFECTS, WITHOUT RECOURSE TO THE SCHOOL DISTRICT. The School District shall provide, within thirty (30) days after written request from City but without warranty, any reasonable additional non-confidential and non-privileged information kept in the School District's files in the ordinary course of operations with respect to the ROFO Property ("**Property Documents**").

ii. Exercise; Failure to Respond. City shall have ninety (90) days from the date on which it receives a ROFO Notice to notify the School District of City's exercise of its Right of First Offer at the Appraised Value with respect to the ROFO Property described in the ROFO Notice. If City does not timely respond, City shall conclusively be deemed to have waived its Right of First Offer at the Appraised Value with respect to such ROFO Property. Upon City's waiver or deemed waiver of its Right of First Offer with respect to any ROFO Property (including under Section 2 below), the School District shall have no further obligation to give any notice or opportunity for City to purchase such ROFO Property and shall thereafter have the right to list and sell to any party such ROFO Property, on economic and other transaction terms determined by the School District (whether more or less favorable to the School District than in the ROFO Notice to City) in the School District's sole and absolute discretion, unless and except in the event of a Reappraisal under RCW 28A.335.120(5), as described in Section 1(e) below.

(e) Right of Second Offer following RCW 28A.335.120(5) Reappraisal.

i. Second Offer Notice. If the School District (a) reappraises the property under RCW 28A.335.120(5) (a "**Reappraisal**") and (b) is prepared to sell such ROFO Property at a price elected by the School District that is less than 90% of the original Appraised Value (such price, the "**Reduced Price**"), then the School District shall first deliver to City a written notice substantially in the form of the ROFO Notice previously sent with respect to such ROFO Property, except that the price shall be the Reduced Price ("**Second Offer Notice**"), and City shall have the right to purchase such ROFO Property in accordance with the terms and conditions contained in the Second Offer Notice (the "**Second Offer**"). The School District shall provide, within thirty (30) days after written request from City but without warranty, any new Property Documents that were not previously provided.

ii. Exercise; Failure to Respond. City shall have ninety (90) days from the date on which it receives the Second Offer Notice to notify the School District of City's exercise of its Second Offer with respect to the ROFO Property described in the Second Offer

Notice. If City does not timely respond, City shall conclusively be deemed to have waived its Second Offer with respect to such ROFO Property. Upon City's waiver or deemed waiver of its Second Offer with respect to any ROFO Property (including under Section 2 below), the School District shall have no further obligation to give any notice or opportunity for City to purchase such ROFO Property.

(f) Rights Personal to City; Exceptions. This Agreement is personal to the parties and does not bind nor inure to the benefit of any successors or assigns of either the School District or City. Without limiting and notwithstanding the foregoing, City may not assign its rights to purchase any particular ROFO Property without the consent of the School District, which the School District may not unreasonably delay or deny. The School District consents to City's transfer of City's right to purchase any particular ROFO Property following City's exercise of its purchase right with respect thereto to any non-governmental organization whose purpose is acquisition or assistance in acquisition of parks and open space, any governmental entity that owns or manages public lands, or any combination of the foregoing, provided City shall remain liable for any failure of such assignee to perform, and provided further that any such assignment shall be subject to applicable law pertaining to sale of surplus school properties.

2. **City's Inspection Contingency; Closing.**

(a) Public Notice and Hearing. If City properly and timely exercises a Right of First Offer or Second Offer, the School District will give notice and hold a public hearing consistent with Chapter 28A.335 RCW, Chapter 39.33 RCW or other then-applicable law.

(b) City's Inspection Contingency. Following and subject to the notice and hearing process under Section 2(a), City shall thereafter have sixty (60) days (the "**Inspection Period**") to physically inspect the ROFO Property and examine title and other matters in order to determine whether to proceed to Closing (defined below). The School District shall apply for and deliver to City a preliminary title commitment from the Title Company (defined below). The School District shall provide City with reasonable access rights during the Inspection Period, subject to commercially reasonable insurance and indemnity requirements. The School District shall cooperate with City in assessment of title questions, but shall have no obligation to remove title matters to which City may object.

(c) Satisfaction of Inspection Contingency. If City desires to purchase the ROFO Property, City shall deliver written notice ("**Approval Notice**") to the School District before the expiration of the Inspection Period. If City notifies the School District that it elects not to purchase the ROFO Property or City fails to timely deliver an Approval Notice, City shall be deemed to have elected not to purchase the ROFO Property. If City elects or is deemed to have elected not to purchase the ROFO Property, City shall be deemed to have waived its right to purchase such ROFO Property pursuant to Section 1(d) or (e), as applicable. If City timely delivers the Approval Notice, City shall be obligated to purchase, and the School District shall be obligated to sell, the ROFO Property, the legal description of the ROFO Property contained in the ROFO Notice shall be deemed incorporated herein, and the parties shall proceed to Closing (defined below).

(d) Form of Conveyance. The ROFO Property will be conveyed by statutory bargain and sale deed (the "*Deed*") subject to all matters of record and matters that would be disclosed by an accurate survey.

(e) Closing; Closing Costs. Recordation of the Deed and payment by City of the purchase price ("*Closing*") shall occur on a date selected by City with the School District's consent, not to be unreasonably withheld, conditioned or delayed (the "*Closing Date*"), that is within ninety (90) days of City's delivery of the Approval Notice. Closing shall be done through the escrow division of Chicago Title Insurance Company or such other company as City may designate (the "*Title Company*"). By 12:00 p.m. on the Closing Date, the School District and City shall each have deposited funds sufficient to pay their respective closing costs and submitted such documents as the Title Company reasonably requires in connection with Closing, including a Real Estate Excise Tax Affidavit and FIRPTA certification. The School District shall pay the cost of an ALTA standard owner's title insurance policy and one-half of escrow fees charged by the Title Company. City shall pay the cost of recording the Deed, one-half of escrow fees charged by the Title Company, and the cost of extended coverage or any requested title policy endorsements. All other closing costs, including utility costs, shall be apportioned according to local custom.

(f) Escrow Instructions. This Agreement shall constitute escrow instructions to the Title Company's escrow closer. The School District and City may supplement this Agreement with their own escrow instructions, but in the event of any conflict between this Agreement and such instructions, this Agreement shall control.

3. **Miscellaneous Provisions.**

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington.

(b) Modifications. This Agreement may be amended or modified only by written instrument duly executed by both of the parties.

(c) Notices. Any notice permitted or required hereunder shall be in writing and given to the parties at their respective addresses as set forth below:

School District:

Northshore School District
3330 Monte Villa Parkway
Bothell, WA 98021
Attn: Superintendent
Email: jpaperman@nsd.org

With a copy to:

Perkins Coie LLP
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004
Attn: R. Gerard Lutz
Email: JLutz@perkinscoie.com

City:
City of Woodinville
Attn: City Manager
17301 133rd Ave NE
Woodinville, WA 98072
BrandonB@ci.woodinville.wa.us

With a copy to:
Eglick & Whited PLLC
Attn: Peter Eglick
1000 Second Avenue, Suite 3130
Seattle, WA 98104

Either party may change the address to which notice must be given by delivery of notice to the other party in accordance with this Section 3(c). Notice shall be given by one of the following methods:

(i) By overnight commercial courier for next business day delivery, in which case notice shall be deemed delivered on the next business day following delivery to the courier prior to the last scheduled pick-up time.

(ii) By fax, in which case notice shall be deemed delivered upon receipt.

(iii) By electronic mail, in which case notice shall be deemed delivered upon receipt.

(d) Severability of Provisions. If any provision contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement will be interpreted such as to best give effect to the parties' intent.

(e) Time of Essence. Time is of the essence in this Agreement with respect to each provision of and matters contemplated by this Agreement.

(f) Waiver. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of the entire Agreement or as a waiver of any subsequent breach.

(g) Interpretation of Agreement. It is understood by and between the parties that any ambiguity in an agreement is not to be construed against the drafter of the agreement. Instead, any ambiguity shall be interpreted without regard to the identity of the drafter of this Agreement.

(h) Entire Agreement. This Agreement and the Settlement Agreement collectively contain the entire agreement between the parties with respect to the matters set forth herein.

(i) Recordation. City may record a memorandum of this Agreement. If and to the extent ROFO Property is to be sold by the School District to a third party, City shall deliver to the School District a quitclaim deed releasing, without warranty, any claim of City with respect to such ROFO Property.

(j) Estoppel Certificates. City shall at any time and from time to time ninety (90) days or later following the School District's delivery of a ROFO Notice with respect to the ROFO Property, within ten (10) days after written request from the School District, execute, acknowledge and deliver to the School District or its designee a written statement certifying, to the extent true, that (i) this Agreement is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date and terms of all agreements affecting this Agreement); (ii) all conditions under this Agreement to be performed by the School District with respect to the ROFO Property at issue have been satisfied, if any; (iii) as of the date of such certification there are no existing claims or defenses prohibiting sale of the applicable ROFO Property to a third party; and (vi) setting forth any other information reasonably requested by such third party. It is intended that all statements delivered pursuant to this Section 3(j) may be relied upon by prospective purchasers of the School District's interest in such ROFO Property, their lenders and other designees of the School District or such third party. If City fails to respond within ten (10) days of City's receipt of a written request by the School District as herein provided, such failure shall be a waiver under the terms and conditions of this Agreement. In addition, City shall be deemed to have given such certificate as above provided without modification, that there are no uncured defaults in the School District's performance, and that City has no claim against the ROFO Property or objection to the sale thereof.

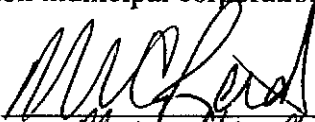
(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

(Signatures on Following Page.)

The parties have executed this Agreement to be effective as of the Settlement Effective Date.


SCHOOL DISTRICT:

NORTSHORE SCHOOL DISTRICT NO. 417,
a Washington municipal corporation

By: 
Print Name: Michelle C Reid
Title: Superintendent

CITY:

CITY OF WOODINVILLE,
a Washington municipal corporation

By: 
Print Name: Brandon Buchanan
Title: City Manager

Unofficial Document