

EVERETT SCHOOL DISTRICT NO. 2

RESOLUTION NO. 1047

Snohomish County Right of First Refusal Agreement

A Resolution of the Board of Directors (the "Board") of Everett School District No. 2 (the "School District") authorizing execution and delivery on behalf of the District of a Snohomish County Right of First Refusal Agreement and related instruments to give Snohomish County a right to purchase a tract of real property adjacent to Jefferson Elementary School at fair market value should the School District decide to surplus and sell such real property within the next twenty years.

WHEREAS, the School District owns Lot 2 of Snohomish County Short Plat 09-102385-00-00 SP (the "Short Plat") (AFN 201109075001), in Snohomish County, Washington, which is more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Property was, until recently, part of a larger parcel of property devoted to use for educational purposes, but following construction of a county road (Cadet Way) in connection with development of the new Jefferson Elementary School facilities to the south of Cadet Way, the Property has become a separate legal lot, with certain use restrictions imposed as set forth in the Short Plat, and is not actively devoted to current school uses; and

WHEREAS, the Property has not been declared surplus to the School District's needs, nor is it currently available for sale or other use; and

WHEREAS, the County of Snohomish (the "County"), at the request of residents of the community in the vicinity of the Property, is interested in potential acquisition of the Property in the future to preserve it for park, open space and recreational purposes, should the School District declare it to be surplus and available for sale or use; and

WHEREAS, to facilitate the County's desires without compromising the School District's management of its property or stewardship of School District resources, the School District desires to grant, and the County desires to accept, a right of first refusal with respect to a potential future conveyance of the Property, on and subject to certain terms and conditions as more particularly described in the Snohomish County Right of First Refusal Agreement attached hereto as Exhibit B and incorporated herein by this reference ("Right of First Refusal Agreement"); and

WHEREAS, the Right of First Refusal Agreement provides that if, in the twenty (20) years following the date of the Agreement, the School District declares the Property to be surplus and either desires to convey ownership of the Property or a third party purchaser presents the School District with an offer to purchase the Property, which offer the School District is otherwise willing to accept, then the School District will deliver a written notice to the County (an "Offer Notice") and the County will then have a 90-day right to accept the Offer Notice and thereafter to purchase the Property at market value; and

WHEREAS, the Intergovernmental Disposition of Property Act, Chapter 39.33 RCW, provides municipal corporations of the State of Washington with the authority to transfer real property on such

terms and conditions as may be mutually agreed upon by the proper authorities of such municipal corporations; and

WHEREAS, the County's acceptance of the Offer Notice and the future sale of the Property, if it occurs, shall be preceded by notice, hearing and other matters pursuant to Chapter 28A.335 RCW, Chapter 39.33 RCW, or both, and appropriate requirements of law, all as reasonably proscribed by the School District Board of Directors.


NOW, THEREFORE, be it resolved by the Board of Directors, pursuant to Chapter 39.33 RCW, that:

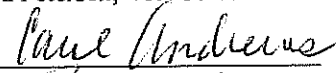
the Board authorize, and hereby authorizes, the Superintendent of the School District (or the Superintendent's designee) to execute and deliver to the County the Right of First Refusal Agreement, and related instruments, and to do all other things necessary and advisable to be done in accordance therewith, all in accordance with applicable law.

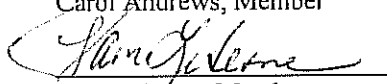
ADOPTED this 28th day of August, 2012, and authenticated by the signatures affixed below.

BOARD OF DIRECTORS:


Jeff Russell, President
Board of Directors


Ed Petersen, Vice President


Carol Andrews, Member


Pam LeSesne, Member

Jessica Olson, Member

ATTESTED BY:

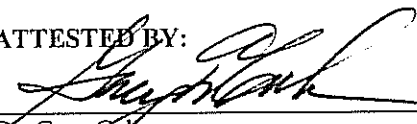

Dr. Gary Cohn
Superintendent & Secretary to the Board of Directors
Everett School District No. 2

EXHIBIT A

DESCRIPTION OF THE PROPERTY

THAT PORTION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 17,
TOWNSHIP 28 NORTH, RANGE 5 EAST, W.M. DESCRIBED AS FOLLOWS:

LOT 2 SNOHOMISH COUNTY SHORT PLAT PFN 09-102385-00-00-SP AS RECORDED
UNDER RECORDING NUMBER 201109075001, RECORDS OF SNOHOMISH COUNTY
WASHINGTON

CONTAINING 429,717 SQUARE FEET OR 9.86 ACRES, MORE OR LESS.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

Exhibit B

SNOHOMISH COUNTY RIGHT OF FIRST REFUSAL AGREEMENT

SNOHOMISH COUNTY RIGHT OF FIRST REFUSAL AGREEMENT

THIS SNOHOMISH COUNTY RIGHT OF FIRST REFUSAL AGREEMENT (this "Agreement") is made as of _____, 2012, by and between the EVERETT SCHOOL DISTRICT NO. 2, a Washington municipal corporation (the "School District"), and SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County"). The School District and the County are each referred to as a "Party" and together referred to as the "Parties".

RECITALS

1. The School District and the County are both entities authorized to engage in intergovernmental dispositions of property pursuant to Chapter 39.33 RCW.
2. The School District is the record owner of the fee interest in certain real property located in Snohomish County, Washington, as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Property was, until recently, part of a larger parcel of property devoted to use for educational purposes, but following construction of a County road in connection with development of new school facilities to the south of the road, the Property has become a separate legal lot not actively devoted to current school uses. The Property has not been declared surplus to the School District's needs, nor is it available for sale or other use.
3. The County, at the request of residents of the community in the vicinity of the Property, is interested in potential acquisition of the Property, should the School District declare it to be surplus and available for sale or use.
4. To facilitate the County's desires without compromising the School District's management of its property or stewardship of School District resources, the School District desires to grant, and the County desires to accept, this right of first refusal with respect to future conveyance of the Property, on and subject to the following terms and conditions.

AGREEMENT

NOW, THEREFORE, for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Right of First Refusal

- (a) If, in the twenty (20) years following the date of this Agreement, the School District (1) declares the Property to be surplus and (2) either:
 - (i) the School District desires to convey ownership of the Property, or
 - (ii) a third party purchaser presents the School District with an offer to purchase the Property, which offer the School District is otherwise willing to accept,

Then, prior to the School District entering into an agreement to convey the Property to a third party, the School District shall first deliver a written notice (an "Offer Notice") to the County outlining the School District's interest in conveyance.

(b) The County shall have ninety (90) days following the receipt of the Offer Notice to elect, by written notice to the School District (the "Acceptance Notice"), to purchase the Property on the terms set forth in such Offer Notice. If the County timely executes and delivers the Acceptance Notice within the ninety (90) day period, the School District shall convey the property to the County, and the County shall purchase and accept the conveyance of the Property from the School District on, and subject to, the terms of such Offer Notice. If the County fails to timely deliver an Acceptance Notice by 11:59 pm of the ninetieth (90th) day following receipt of the Offer Notice (or the next business day if said ninetieth (90th) day falls on a Saturday, Sunday or legal holiday), the County's right of first refusal shall automatically terminate, and the School District may offer the Property and convey its interest in the Property to any third party free of any further obligation to first refusal the Property to the County under this Agreement.

(c) The right of first refusal described herein shall not be applicable to conveyance by the School District of leases or licenses, utility easements or other conveyances of less than fee title.

(d) If the County's right of first refusal terminates under Section 1(b) or by lapse of time, the County shall, if requested by the School District, deliver to the School District a quit claim deed releasing the interest of the County arising under this Agreement, in a form suitable for recording.

2. **General Terms and Conditions.** Unless and except to the extent the School District elects to offer other or different terms expressly stated in the Offer Notice (which the School District reserves the right to propose in the School District's sole discretion), the terms and conditions pursuant to which the School District would sell and the County would purchase the Property from the School District are as follows:

(a) Purchase Price: The purchase price shall be the market value of the Property based as determined by an appraisal conducted by a professional designated real estate appraiser selected by the School District pursuant to its obligations under RCW 28A.335.120, unless the third party offer the School District wishes to accept is a lower purchase price consistent with RCW 28A.335.120(5).

(b) Due Diligence: The County shall have sixty (60) days from the date of the Acceptance Notice to conduct any due diligence it desires with respect to the Property (the "Due Diligence Period"), including, but not limited to, conducting review of title and environmental condition of the Property. The County shall defend, indemnify and hold the School District and its employees and agents harmless from any loss, cost or liability arising from, or related to, such due diligence except to the extent caused by, or resulting from, the negligence of, or attributable to, the School District.

(c) Termination Costs: If at any time prior to the expiration of the Due Diligence Period the County terminates the purchase and sale of the Property, the County shall be solely responsible for paying any and all escrow termination fees associated with the transaction. The County's right of first refusal would not be reinstated following such a termination.

(d) Title and Condition of Property at Closing: At Closing, the School District shall convey title to the Property to the County by Statutory Warranty Deed, subject to defects and encumbrances of record and those which an accurate survey would disclose, in its then-current condition (including without limitation its environmental condition) AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS.

(e) Closing Date: The closing shall occur on a date mutually agreed by the Parties, but in no event later than ninety (90) days following receipt by the School District of the Acceptance Notice by which the County exercised its right of first refusal.

(f) Closing Costs and Prorations: Any real property taxes for the Property, if any, shall be prorated as of the date of closing. Each Party shall pay one half of all escrow and closing costs, and each Party shall be responsible for its own fees and costs. If applicable, the School District shall pay the real estate excise tax, and the County shall pay any applicable sales tax.

(g) Compliance with Other Requirements of Law. The County's acceptance of the Offer Notice, and the Closing of the transaction described therein shall, in addition, be preceded by notice, hearing and other matters pursuant to Chapter 28A.335 RCW, Chapter 39.33 RCW, or both, and appropriate requirements of law, all as reasonably proscribed by the School District Board of Directors.

3. **Notice.** For purposes of any Offer Notice, Acceptance Notice or any other notice to be given hereunder, the notice shall be sent via a nationally known overnight delivery service or United States Postal Service, registered or certified mail, return receipt requested to the following addresses (as may be amended from time to time by each Party upon notice to the other Party of such change in address):

Everett School District No.2
Attn: Harold Beumel, Director of Facilities & Planning
3715 Oakes Avenue
Everett, WA 98201

Snohomish County Parks and Recreation
Attn: Director
6705 Puget Park Drive
Snohomish, WA 98296

4. Counterparts. This Agreement may be executed in one or more counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

EXECUTED and APPROVED by the Parties in identical counterparts, each of which shall be deemed an original on the dates set forth below.

DATED this ____ day of _____, DATED this ____ day of _____,
2012.

"SCHOOL

DIST

"COUNTY"

By _____
Dr. Gary
Superintendent Everett School

By _____
Aaron Reardon
County Executive

Approved as to Form Only:

Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ of EVERETT SCHOOL DISTRICT NO.2, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said School District for the uses and purposes therein mentioned, and on oath stated that _____ was duly elected, qualified and acting as said officer of the School District, that _____ was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My appointment expires: _____.

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ of SNOHOMISH COUNTY, a political subdivision of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that _____ was duly elected, qualified and acting as said officer of the corporation and that _____ was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My appointment expires: _____.

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