



202308020034

08/02/2023 10:44 AM Pages: 1 of 7 Fees: \$259.50
Skagit County Auditor

Document Title: Possession & Use Agreement

Reference Number :

Grantor(s): ☐ additional grantor names on page ____

1. Edward Berger Properties LLC
- 2.

Grantee(s): ☐ additional grantee names on page ____

1. City of Mount Vernon
- 2.

Abbreviated legal description: ☒ full legal on page(s) 4

SE 1/4 Section 19, Township 34, Range 4

Assessor Parcel / Tax ID Number: ☐ additional tax parcel number(s) on page ____

Plot 145

I, Christina Spruie, am hereby requesting an emergency non-standard recording for an additional fee 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. Recording fee is \$203.50 for the first page, \$1.00 per page thereafter per document. In addition to the standard fee, an emergency recording fee of \$50.00 is assessed. This statement is to become part of the recorded document.

Signed Christina Spruie Dated 8/2/2023

After recording, return to
City of Mount Vernon
Attn.: Bill Bullock, Public Works Department
910 Cleveland Avenue
Mount Vernon, WA 98273

POSSESSION AND USE AGREEMENT

Reference No.: N/A
Grantors: Edward Berger Properties, LLC
Grantee: City of Mount Vernon
Legal Description: SE ¼ Section 19, Township 34, Range 4; Lot 8 & Ptn Lot 7 Blk 2 Riverside Add Mount Vernon
Assessor's Tax Parcel No.: 3755-002-008-0009 (P54145)
Additional legal description on Schedule "A"

In the matter of: City of Mount Vernon Library Commons/2nd Street & Kincaid Project

Parcel No.: P54145

This agreement is made and entered into by and between the City of Mount Vernon, State of Washington, a municipal corporation organized as a Code City formed pursuant to Title 35A RCW and endowed with all the powers pursuant to RCW 35A and State Constitution, hereinafter referred to as the ("City") and the undersigned Grantors, hereinafter referred to as the ("Owner").

RECITALS

The Property described in the attached Schedule "A" of this Agreement is required by the City for the construction of the City of the Mount Vernon Library Commons/2nd Street & Kincaid Project ("the Project");

Delay in acquisition and construction of the Project is contrary to the public interest;

The City has made a firm and continuing offer to pay the Owner the amount of **One thousand nine hundred and no/100 dollars (\$1,900.00)** ("the "Offer") to purchase the Property and/or to compensate the Owner for any damage to the Property resulting from the Project;

The Owner wishes additional time to evaluate the City's Offer and resolve any questions it may have concerning just compensation.

AGREEMENT

1. The City will issue a Warrant in payment to the Owner in the form of a check of the amount of the Offer. *the City extending an offer to perform certain curb improvements on the north side of Grand Lot*
2. For and in consideration of payment by the City to the Owner of the amount of the Offer, the Owner grants the City possession and use of the described Property for project purposes; provided however such possession and use shall exclude the light pole currently affixed to the Property. Possession shall occur upon the recording of this Agreement in the records of the Skagit County Auditor.
3. The parties agree that the object and use for which the City is acquiring the property rights held by Owner in this case is a public object and a public use, and that the acquisition of the Property is necessary to that public use; i.e., acquisition of interests in real property for the Mount Vernon Library Commons/2nd Street & Kincaid in Mount Vernon, Washington. If the parties cannot agree as to the amount of just compensation due the Owner and the City institutes condemnation proceedings, the Owner will not object and further stipulate to the City's entry of an Order Adjudicating Public Use and Necessity, as provided by RCW 8.12.090 and agree that this instrument shall be treated as having the same legal effect as an Order for Immediate Possession provided by RCW 8.04.090, et seq., which by this reference, are incorporated herein as if fully set forth.
4. The Parties agree that if condemnation proceedings are instituted by the City, this Agreement shall be deemed to satisfy the requirements of a Stipulated Order of Immediate Use and Possession entered pursuant to RCW 8.25.070(3) the provisions of which are incorporated herein by reference. This Agreement shall continue in effect until said proceedings have terminated and the Property is finally acquired by the City.
5. Nothing in this Agreement shall be deemed to waive any right either party may have to a subsequent adjudication of compensation pursuant to state law. Neither this Agreement nor the basis for the payment made pursuant to this Agreement shall be construed as evidence of or an admission of fair market value or just compensation by either party to the Agreement.
6. The date of valuation for the determination of just compensation shall be the date that the warrant in the amount of the Offer has been delivered to Owner. Interest at the statutory rate shall be awarded on the difference between the Offer, and the final award of Just Compensation as determined at trial, from the date of valuation until the date any additional sums awarded are deposited into the court registry.
7. If condemnation proceedings are instituted, any payment of costs and attorney's fees shall be governed by the provisions of RCW 8.25.070 and 8.25.075.

8. If the City's possession and use of the Property requires that the Owner move from the Property, the Owner waives the requirement of a written notice to move as provided by RCW 8.26.180 and agree to surrender possession of the Property by the date the Agreement is signed by both the City and the Owner.
9. This Agreement is the complete expression of the terms hereto, any other representation whether oral or in writing not incorporated in this Agreement are excluded. The terms and obligations of this Agreement shall be effective when the Agreement is signed by both the City and the Owner. Time is of the essence of the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any other subsequent default.

DATED this 15th day of August, 2023.

GRANTOR

By: Carol L. Edward

Name: Carol L. Edward for Edward Berger Properties, LLC

Title: Managing Member

Date: 8/1/2023

ACCEPTED AND APPROVED this 15th day of August, 2023.

CITY OF MOUNT VERNON

Jill Boudreau

JILL BOUDREAU, Mayor

Attest:

Wang Volosky for Becky Jensen

Becky Jensen, City Clerk

Approved as to form:

[Signature]

City Attorney

GRANTOR ACKNOWLEDGMENT

State of Washington) ss
City of Mount Vernon)

On this day of August 1, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Carol L. Edward, to me known to be the Managing Member of Edward Berger Properties, LLC., the company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned and on oath stated that he/she was authorized to execute said instrument

Witness my hand and official seal hereto affixed the day and year last above written.

Notary Seal



Kerri A. Grechishkin
Notary Public in and for the State of Washington
Residing at Mount Vernon, WA

My appointment expires 5/11/27

CITY ACKNOWLEDGMENT

State of Washington)
County of) ss

On the 2nd day of August, 2023, before me, personally appeared JILL BOUDREAU, known to be the duly elected, qualified and acting Mayor of the City of Mount Vernon, Skagit County, Washington, who executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and each on oath stated that they were authorized to execute said instrument by resolution or other action of the City Council, and that the seal affixed is the official seal of said City.

Given under my hand and official seal hereto affixed the day and year last above written.

Notary Seal



Kerri A. Grechishkin
Notary Public in and for the State of Washington
Residing at Mount Vernon, WA

My Appointment expires 5/11/27

SCHEDULE "A"

Legal Description
Mount Vernon Library
South Alley Access

An Easement For Public Right Of Way Purposes Lying Within A Portion Of Lot 8, Block 2, Riverside Addition To The Town Of Mount Vernon, According To The Map Thereof, Recorded In Volume 3 Of Plats, Page 24, Records Of Skagit County, Washington, more particularly Described As Follows:

Beginning At The Northwest Corner Of Said Lot 8; Thence Along The North Line Thereof, South $88^{\circ}05'20''$ East, 20.00 Feet; Thence Departing Said Line, South $77^{\circ}52'28''$ West, 20.61 Feet To A Point On The West Line Of Said Lot 8; Thence Along Said West Line, North $01^{\circ}54'14''$ East, 5.00 Feet To The Point Of Beginning.

Containing 50.00 Square Feet, More Or Less.

Situate In the City Of Mount Vernon, Skagit County, Washington.