

CITY OF LYNDEN



Mayor
Scott Korthuis

Council Members
Gary Bode
Ron De Valois
Gerald Kuiken
Nick H. Laninga
Brent Lenssen
Kyle Strengholt
Mark Wohlrab

City Council - Regular Meeting
Annex - 205 Fourth Street
May 15, 2023

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Summary Reports and Presentations

- [1.](#) Legislative Session Report

Approval of Minutes

- [2.](#) Draft Council Minutes – May 1, 2023

Citizen Comment

Consent Agenda

- [3.](#) Approval of Payroll and Claims
- [4.](#) Council Confirmation of Public Works Director-Jon Hutchings
- [5.](#) Agreement for Wholesale Supply of Water to Berthusen Road Water Association
- [6.](#) RES-23-1064 – Schedule Public Hearing, Adopting a Six Year Transportation Improvement Program (STIP) 2023-2028
- [7.](#) RES-23-1065 and RES-23-1066 - Adopting MissionSquare Deferred Compensation Plan
- [8.](#) RES-23-1067 - Establishing the Policy for Transfer of Unused Stormwater Capacity in the City's Local Improvement District (ULID) 2008-1 West Lynden Stormwater Drainage Facility
- [9.](#) RES-23-1068 - Interfund Loan from F405 (Sewer) to F401 (Water)

Public Hearing

Unfinished Business

- [10.](#) Ordinance 23-1668 adding LMC Title 10.17

New Business**Other Business**

[11.](#) Draft Public Works Committee Meeting Minutes May 3, 2023

[12.](#) Calendar

Executive Session**Adjournment**

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EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Legislative Session Report	
Section of Agenda:	Summary Reports and Presentations	
Department:	Administrative	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	None	
Summary Statement:	<p>Briahna Murray will be present to give an overview of the session and significant bills that impact the city. This year's long session (105 days) concluded with the adoption of the State Capital Budget that included some successful requests for the City of Lynden.</p>	
Recommended Action:	Information Only.	

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EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Draft Council Minutes – May 1, 2023	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: N/A
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Draft Council Minutes – May 1, 2023	
Summary Statement:	Draft Council Minutes for Council review and possible approval.	
Recommended Action:	Review and approve draft minutes.	

CITY OF LYNDEN



CITY COUNCIL MINUTES OF REGULAR MEETING

May 1, 2023

1. CALL TO ORDER

Mayor Pro Tem Bode called to order the May 1, 2023 regular session of the Lynden city council at 7:00 p.m. held in the city’s council chambers.

PLEDGE OF ALLEGIENCE

ROLL CALL

Members present: Mayor Pro Tem Gary Bode and Councilors Ron De Valois, Brent Lenssen, Nick Laninga, Kyle Strengholt, and Mark Wohlrab.

Members absent: Mayor Scott Korthuis and Councilor Kuiken.

Staff present: Planning Director Heidi Gudde, Public Works Director Steve Banham, City Clerk Pam Brown, and City Administrator John Williams.

OATH OF OFFICE - None

SUMMARY REPORTS AND PRESENTATIONS - None

APPROVAL OF MINUTES

Councilor De Valois moved, and Councilor Wohlrab seconded to approve the April 17, 2023, regular meeting minutes. Motion approved on 5-0 vote.

CITIZEN COMMENT

Cynthia Ripke-Kutsagoitz, Guide Meridian, Lynden

Cynthia commented on several general topics, one of which included Loyalty Day, recognized on May 1.

2. CONSENT AGENDA

Payroll Liability to April 9 through April 22, 2023

EFT & Other Liabilities

Non-L&I Liabilities

Monthly EFT	\$264,478.60
Check Liability	\$0.00
Total Non-L&I Liabilities	\$264,478.60
Quarterly Liabilities	\$14,029.13

Total EFT & Other Liabilities **\$278,507.73**

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CITY COUNCIL MINUTES OF REGULAR MEETING



Approval of Claims – May 2, 2023

Manual Warrants No.	<u>27195</u>	through	<u>27195</u>		\$61.75
EFT Payment Pre-Pays					\$38,821.83
				Sub Total Pre-Pays	\$38,583.59
Voucher Warrants No.	<u>27199</u>	through	<u>27279</u>		\$250,689.18
EFT Payments					\$5,512.10
				Sub Total	\$256,201.28
				Total Accts. Payable	\$294,784.86

Whatcom County Library District Interlocal, Amendment No. 1

The original 20-year lease expires in 2023, this agreement would extend the lease for an additional 10 years as provided for by the original agreement. The Library District and City met to discuss the continuation of this lease and it was approved by the Library Board on April 18th at their board meeting.

Motion made by Councilor Lenssen seconded by Councilor De Valois to approve the consent agenda as presented. Motion approved 5-0.

3. PUBLIC HEARING - None

4. UNFINISHED BUSINESS

Ord-23-1660, Whatcom Buildable Land Report

On November 21, 2022, Lynden City Council held a public hearing to review the 2022 Buildable Lands Report for Whatcom County jurisdictions. While the Report covers the entire County, each jurisdiction is responsible for review and adoption by their policy makers.

The Buildable Lands Report is a data driven growth evaluation program that “looks back” at how development has occurred in the County (and specifically in each UGA) since the last Comprehensive Plan update in 2016. The Buildable Lands Report reviews planned densities and land availability for those densities as determined in the Comp Plan, but then specifically evaluates how development has actually occurred in the city since 2016. The data collected for the Report will be used by the city to inform the writing of the 2025 Comp Plan update.

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CITY COUNCIL MINUTES OF REGULAR MEETING



If the analysis in the Report shows that growth assumptions are not occurring as expected, then the city must identify “reasonable measures” that must be enacted in the next Comp Plan update to reduce the differences between development assumptions and actual growth. The Report shows that Lynden has been reaching its density assumptions as development has occurred since 2016, and therefore, no reasonable measures are being proposed for Lynden.

Since the November 21st public hearing, additional review by the County Council has prompted revisions to the Report – these revisions are mostly associated with the Bellingham UGA profile and do not substantially change the Report as it relates to Lynden. Furthermore, additional Findings have been added to Ordinance 1660, a draft of which was available for review at the November hearing. These additional Findings are concerned with housing affordability and specifically recognize that the Buildable Lands Report does not address housing affordability or reasons for the housing crisis in the State. We anticipate that housing issues, particularly through the Housing Element, will be an important component of the 2025 periodic update to the City’s Comprehensive Plan.

Motion made by Councilor Lenssen, seconded by Councilor Wohlrab to approve Ord-23-1660 adopting the Buildable Lands Report and authorize the Mayor’s signature on the document. Motion approved 5-0.

5. NEW BUSINESS

The City Council is being asked to consider a parking easement agreement with Lynden Professional Group, LLC (LPG), the property owner of Buildings A and B of 1610 Grover Street. The easement would be established on the corner of Liberty St and 17th St. where the existing private parking lot encroaches into the City’s right-of-way. The encroachment occurred because the area was inaccurately labeled as “vacated” on a 1972 plat. The issue became known during the currently proposed plat which would separate Building A and Building B onto their own parcels (see attached plat draft). Aside from land division, no redevelopment or changes to the property are proposed at this time. Encroachment, which totals about 1100 square feet, is needed in order for the parking lot to continue to function as designed.

The City currently has no plans to utilize this portion of Liberty Street right-of-way. When public property is utilized by a private entity a value of this use is assigned. The easement agreement details the value at 30% of the assessed land value of the adjacent parcel (which equals \$6,860.86). The easement may remain in place until the property is significantly redeveloped or the right-of-way is successfully vacated and included into the subject parcel. The agreement also requires that the property owner maintain insurance for the benefit of the City and indemnifies the City against claims.

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CITY COUNCIL MINUTES OF REGULAR MEETING



Motion made by Councilor De Valois, seconded by Councilor Lenssen to approve the Parking Easement Agreement with Lynden Professional Group for a portion of the Liberty Street and 17th Street right-of-ways and authorize the Mayor's signature on the document. Motion approved 5-0.

6. OTHER BUSINESS - None

7. EXECUTIVE SESSION

The council did not hold an executive session.

8. ADJOURNMENT

May 1, 2023, regular session of the Lynden City Council adjourned at 7:25 p.m.

Pamela D. Brown, City Clerk

Scott Korthuis, Mayor

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Approval of Payroll and Claims	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	None	
Summary Statement:	Approval of Payroll and Claims	
Recommended Action:	Approval of Payroll and Claims	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Council Confirmation of Public Works Director-Jon Hutchings	
Section of Agenda:	Consent	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: None
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	None	
Summary Statement:	LMC 2.05.010 (B) Such officers shall be appointed by the Mayor, subject to confirmation by the City Council.	
Recommended Action:	Council confirmation of Public Works Director Jon Hutchings.	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Agreement for Wholesale Supply of Water to Berthusen Road Water Association	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	Legal Review:
		<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:	Agreement for Wholesale Supply of Water to Berthusen Road Water Association	
Summary Statement:	<p>The City of Lynden is authorized and has been providing wholesale water to the Berthusen Water Association for several decades, but the current agreement between the City and the Berthusen Road Water Association has lapsed. City staff have worked closely with the Association and the City Attorney to update the agreement to provide for a long-term supply of water that will allow the Association to update its Water System Plan with the State Department of Health. This agreement identifies the maximum annual amount of water to be provided by the City and adds provisions related to conservation and shortage management. The term is for 60 years with options for additional 25-year extensions.</p> <p>This agreement was reviewed at both the April 5th and May 3rd Public Works Committee Meetings and at the May meeting the Committee voted to advance the agreement to the full City Council with a recommendation for approval.</p>	
Recommended Action:	That City Council approve the Wholesale Water Agreement with the Berthusen Road Water Association and authorize the Mayor's signature on the agreement.	

**AGREEMENT FOR WHOLESALE SUPPLY OF WATER
CITY OF LYNDEN AND BERTHUSEN ROAD WATER ASSOCIATION**

This agreement for the wholesale supply of water ("Agreement") between the City of Lynden ("City") and the Berthusen Road Water Association ("Association") is effective this ____ day of _____, 2023.

ARTICLE 1. RECITALS

1.01 Pursuant to Title 35 and 35A RCW, the City is authorized to contract for the wholesale provision of water to an association outside city limits; and

1.02 The City has supplied the Association with treated potable water for several decades; and

1.03 The Association holds certain groundwater rights evidenced by Certificate of Water Right No. G1-20260C ("Association Water Right") stating production well authorization to produce a maximum of 30 gallons per minute and 48 acre-feet per year; and

1.04 The Association groundwater right will be placed into trust to preserve its potential for future use and to be potentially utilized in accordance with this Agreement; and

1.05 The Association is a validly existing water association which distributes the wholesale water provided by the City to its members through its own water distribution system in compliance with all Federal, State, and local laws for water associations; and

1.06 It is the intent of the Parties that the City shall supply potable water; and

1.07 It is the intent of the Parties that the City shall supply existing fire flow water where existing piping adjacent to Association properties is adequate for that purpose. The provision of that supply is at the point of connection(s) to the Association, subject to the terms and conditions herein; and

1.08 The foregoing recitals are a material part of this Agreement.

ARTICLE 2. AGREEMENT

The City shall sell, and the Association shall purchase a wholesale supply of potable water according to the terms and conditions herein.

ARTICLE 3. DEFINITIONS

3.01 "Calendar year." The entire twelve-month period beginning on January 1 and ending on December 31.

3.02 "City Master Meter(s)." City-owned meter(s) located at the Main Wholesale Connections and any other additional or alternate connection(s) hereafter established,

which will measure the quantity and flow of water provided to the Association by the City pursuant to this Agreement.

3.03 "Contract Annual Quantity." The maximum quantity of potable water the City shall make available to supply the Association during a Calendar year. The Contract Annual Quantity shall be expressed in acre feet per year ("af/yr").

3.04 "Contract Demand." The maximum quantity of potable water the City shall make available to supply the Association on an annual basis and the maximum number of connections served in any Calendar year or portion thereof during which this Agreement is in effect, subject to any required Shared Reduction in Use. Water is made "available to supply the Association" when it is delivered by the City and withdrawn by the Association at the Main Wholesale Connections and any additional or alternate connections established pursuant to this Agreement. Contract Demand shall include two components: Contract Annual Quantity and Contract Maximum Connections. The Contract Demand will not change from year to year, except by amendment to this Agreement.

3.05 "Contract Maximum Connections." The maximum number of water utility connections in the Association served with potable water supplied by the City pursuant to this Agreement.

3.06 "Declaration of Supply Shortage." A written statement from the City to the Association declaring the existence of a Supply Shortage, the factual basis therefor, the new water quantities available after each Parties' Shared Reduction in Use, and the expected duration that Shared Reduction in Use shall be required, if known. A Declaration of Supply Shortage may be for a defined period of time, indefinite, or even permanent in duration.

3.07 "Main Wholesale Connections." Wholesale water service to the Association is provided through City meters as shown in the table below:

Service Type	Address	Account ID
4" Master Meter	2100 Main St	M1582
2" Service Meter	586 Birch Bay Lynden Rd	M5884
2" Service Meter	576 Birch Bay Lynden Rd	M5885
¾" Service Meter	8174 Berthusen Rd	M5886
¾" Service Meter	8205 Berthusen Rd	M5887
2" Service Meter	8291 Berthusen Rd	M5888
¾" Service Meter	8367 Berthusen Rd	M5889
¾" Service Meter	8371 Berthusen Rd	M5890
¾" Service Meter	8393 Berthusen Rd	M5891
¾" Service Meter	2350 Main St	M5892
¾" Service Meter	2208 Main St	M5893

3.08 "Party" or "Parties" The City and/or the Association

3.9 "Reduced City Demand" or "Reduced Demand" of the City. The quantity of water from the Water Supply System available for use by the City on a maximum month, annual quantity, or instantaneous basis following Declaration of a Supply Shortage.

3.10 "Reduced Association Demand" or "Reduced Demand" of Association. The quantity of water from the Water Supply System available for use by the Association on a maximum month, annual quantity, or instantaneous basis following Declaration of a Supply Shortage.

3.11 "Regulatory approval(s)" Any and all approvals, authorizations or permits from local, state or federal agencies, including any administrative or judicial appeals/litigation thereon, required to lawfully allow for the purchase, sale and use of potable water as described in this Agreement.

3.12 "Shared Reduction in Use" Contemporaneous reductions in water usage over periods of time such as annually, monthly, or instantaneous by the City and the Association, in equal proportion, as required by this Agreement due to a Supply Shortage.

3.13 "Stranded Costs" Capital costs of the Water Supply System which benefit the Association and are not fully depreciated on the date water service is terminated, if ever.

3.14 "Supply Shortage." Any circumstances under which the City determines, pursuant to Section 6.04, that it is unable to deliver water to the Association under the terms of this Agreement, and which do not fall directly within the force majeure provisions in Section 12.13 or temporary emergencies as described in Section 6.07. Circumstances under which a Supply Shortage may result, include without limitation, (a) environmental factors such as low flow, declining water tables, or pollution of water source; (b) determination made or agreed settlement in a water right adjudication which results in the City having less valid water rights than stated as the City position on its water rights in its approved Water System Plan in place on the effective date of this Agreement; (c) conditions imposed on City water rights and intake facilities by federal or state agencies relating to Endangered Species Act ("ESA") compliance; (d) conditions imposed pursuant to the National Environmental Policy Act ("NEPA") or the State Environmental Policy Act ("SEPA"); or (e) the entry of habitat conservation plans, watershed plan agreements, water system plan agreements, or water right agreements, of any kind, between the City and local municipalities, state, or federal agencies, or Indian Tribes. The Association expressly acknowledges that the City may, in its discretion, negotiate such agreements, which may on a temporary or permanent basis reduce the availability of water over a defined period of time, e.g., annual, monthly, or instantaneous, under this Agreement.

3.15 "Water Rights." Any and all permit applications, claims, permits, or certificates for any quantity of water on file with the State Department of Ecology now or in the future.

3.16 "Water Supply System." The City-owned and operated system that supplies potable water to the Association, City, and other City wholesale customers. The Water Supply System includes all Water Supply System Assets.

3.17 "Water Supply System Assets." City owned and operated Water Supply System infrastructure, including without limitation, pumps, transmission mains, water lines,

treatment facilities, telemetry, production meters, wells, land, equipment, vehicles. and certain storage reservoirs and planning documents, which are used in supplying potable water to the Association, City and other City wholesale customers.

3.18 "Water System Plan." The comprehensive water system plan of the City and/or the Association, including amendments thereto, required by State law and subject to approval by Whatcom County and the State Department of Health. An approved Small Water System Management Program may serve as all or part of a Water System Plan for the Association.

ARTICLE 4. SUPPLY AND PURCHASE OF WATER

4.01 The City shall treat and annually supply to the Association the Association's Contract Demand, or such portion thereof utilized by the Association, according and subject to the terms and conditions herein.

4.02 The Association shall annually purchase from the City the Association's Contract Demand, or such portion thereof as is needed by the Association, subject to the terms and conditions herein.

4.03 The Association shall be allowed to purchase and use water from the City in quantity less than its Contract Demand without penalty and without prejudice to its ability to purchase water in future years.

4.04 The Association shall have the ability to utilize City water and water storage for existing fire flow and fire protection purposes and shall purchase the actual water, if any, drawn from the system for this purpose; provided that, the City shall have no obligation to provide the Association with additional fire flow or fire flow capacity beyond that which currently exists and is made available as of the effective date of this Agreement.

ARTICLE 5. CONTRACT DEMAND

5.01 Contract Demand is established as follows. Contract Annual Quantity shall be **126 acre-feet per year** ("af/yr"). Contract Maximum Connections shall be equal to the maximum number of connections the Association is approved for by the State Department of Health provided that new connections do not cause the Association to exceed Contract Annual Quantity. Addition of new connections is also governed by Section 12.02. These maximums shall be reduced on a pro rata basis upon any annexations of property within the Association to include all water servicing Association members under this Agreement. Except pursuant to a Supply Shortage, these components of Contract Demand may be adjusted only by written amendment of this Agreement.

5.02 The City shall be obligated to supply a quantity of water sufficient to meet the Association's Contract Demand, subject to all terms and conditions herein. The Parties may by mutual agreement amend this Agreement to reduce the Contract Demand on a temporary or permanent basis.

5.03 The quality of water supplied to the Association under this Agreement shall meet or exceed all applicable federal, state, and local rules and regulations governing water quality for Group A water systems.

5.04 The Association shall have the right to use the City's water and water storage for fire flow and fire protection purposes at the level of availability and capacity existing on the effective date of this Agreement. The Association shall have no right to increased or additional fire flow or fire flow capacity under this Agreement.

5.05 The Association shall have the right to identify the City water as available water for planning documents for storage capacity purposes.

ARTICLE 6. CONDITIONS OF SERVICE —CITY

6.01 The City shall furnish such potable water as the Association demands within its Contract Demand or reduction thereof pursuant to a Shared Reduction in Use. Delivery by the City and withdrawal by the Association of said potable water shall be at the Main Wholesale Connections. Flows shall be measured through the City's Master Meter(s) at the Main Wholesale Connections. The flow measurement will include all water servicing Association members under this Agreement.

6.02 The City shall install, own, and operate the City Master Meter(s). The City Master Meter(s) shall be calibrated and tested by a certified tester as required. Calibration may be requested by the Association no more than bi-annually. The City shall maintain the City Master Meter(s) to have a registration accuracy within the limits established in AWWA Standards for the corresponding type and size of meter used for the City Master Meters(s).

6.03 The City shall provide continuous supply and transmission service to the Association, subject to the terms of this Agreement.

6.04 The Association recognizes the obligation of the City to meet the needs of its citizens; therefore, if the City issues a Declaration of Supply Shortage, the Association and the City's other water customers will share, in equal proportion, a reduction in water usage ("Shared Reduction in Use") for the periods of use determined by the City, e.g., annual, monthly, or instantaneous. The City may in its discretion issue a Declaration of Supply Shortage and implement a Shared Reduction in Use for multiple periods of use. The City may issue a Declaration of Supply Shortage when, in its discretion, it determines that the requested reduction is necessary to properly manage the Water Supply System. A Declaration of Supply Shortage must be issued before any Shared Reduction in Use may be required or implemented. A Shared Reduction in Use may be required immediately upon issuance of a Declaration of Supply Shortage.

6.05 The Parties intend that any Shared Reduction in Use be applied in equal proportion to the Association and City customers. A Shared Reduction in Use for any Supply Shortage shall mean that the Association will reduce its water use in the same or similar percentage as is required of the City's industrial water class, which both parties agree is the class of customers which Association water use most closely resembles. In the event the industrial class no longer exists in the City's water use system, the parties will mutually determine which class or classes most closely resembles the Associations customer class or classes. In the event of a disagreement on which class or classes most closely resembles the Associations customer class or classes, the City shall make the final decision so long as it does not abuse its discretion.

6.06 Following a Declaration of Supply Shortage and implementation of Shared Reduction in Use, the City shall periodically review and evaluate whether to maintain in place the Declaration of Supply Shortage.

- (a) If in the City's discretion it appears that a Declaration of Supply Shortage more severe than previously issued and a larger Shared Reduction in Use requirement is necessary, a new Declaration of Supply Shortage may be issued and a larger Shared Reduction in Use requirement may be implemented
- (b) If in the City's discretion it appears that circumstances no longer exist to support the Declaration of Supply Shortage, the Declaration of Supply Shortage and Shared Reduction in Use requirements may be amended to a lesser Shared Reduction in Use, or if there is no longer reason to support any Supply Shortage, the Declaration of Supply Shortage and Shared Reduction in Use shall promptly be rescinded and dissolved.

6.07 The City may temporarily interrupt or temporarily reduce delivery of water to the Association, if the City determines that system emergencies or maintenance and repair so require. Except for in emergencies, the City shall notify the Association forty-eight hours (48) in advance of a service interruption or reduction. The City shall attempt to provide as much notice as possible to ensure the Association can provide timely notice to its customers.

ARTICLE 7. CONDITIONS OF SERVICE —THE ASSOCIATION

The Association's demand upon the City's water supply shall not exceed the Association's Contract Demand provided for in Section 5.01 herein, nor shall it exceed any amount established pursuant to a Declaration of Supply Shortage and Shared Reduction in Use as provided in Sections 6.04-6.06 herein.

7.01 Exceedance of Contract Demand or required Shared Reduction in Use by the Association shall result in a fifty percent (50%) surcharge in addition to the regular charge on the overage represented by the quantity of water taken by the Association in excess of Contract Demand or a required Shared Reduction in Use, whichever is the greater quantity.

7.02 The Association shall timely pay the City for all water supplied to it pursuant to Article 8 of this Agreement, including any imposed surcharge.

7.03 Should the Association's water use exceed Contract Demand or a required Shared Reduction in Use at any time during the term of this Agreement, the City may, in its discretion, require that the Association install flow limiting devices acceptable to the City.

7.04 Nothing herein shall limit the rights remedies available to the City in the event the Association exceeds its Contract Demand or a required Shared Reduction in Use. The City shall have all rights and remedies available in law and equity, including without limitation the right to obtain an order of abatement and injunctive relief.

ARTICLE 8. RATES AND BILLING

For water supplied by the City to the Association, the Association shall pay to the City in accordance with the City water rates for water associations as set by resolution or

by adoption of the annual budget. Each month's payment shall be made on or before the 25th day of the succeeding month for the preceding month's water used. Delinquent and unpaid balances shall bear interest at the prime rate plus four (4) percent, as published in the Wall Street Journal, compounded annually.

ARTICLE 9. ASSOCIATION WATER RIGHT

The Association holds the Association Water Right, as described under Article 1 herein. The Association shall reasonably cooperate with City initiated and funded projects to allow the City a temporary right to use the allocation of water under the Association Water Right so long ownership of the Association Water Right is retained by the Association and so long as the water use needs of the Association members are met by the City in accordance with the terms of this Agreement. In addition, the City's use of the Association Water Right shall not restrict or compromise the future availability of water for the Association Water Right for its stated purposes. Notwithstanding the foregoing, in the event of annexation to the City of all or part of the land within the Association, all or part of the Association Water Right shall be transferred to the City in accordance with Section 12.04 herein.

ARTICLE 10. CONSERVATION PLANNING AND SHORTAGE MANAGEMENT

10.01 The City shall adopt a Water System Plan and the Association shall adopt a Small Water System Management Program approved by Whatcom County and the State Department of Health. Each Party shall adopt a conservation program as part of their respective plans. Conservation program efforts shall be communicated and coordinated between the Parties. The Association specifically agrees to abide by and enforce compliance with the City's water conservation plan and any conservation requirements required by State law.

10.02 The Association shall annually monitor its Water Use Efficiency Program and maintain distribution system leakage below the industry standard of 10%. In the event system's distribution leakage increases above the 10% threshold the Association agrees to take leak detection actions to reduce system leakage below this standard.

10.03 The Association and its members shall be bound by the water restriction provisions in Chapter 13.04 Lynden Municipal Code now in place (including without limitation 13.04.300, 13.04.301, 13.04.302, 13.04.303, 13.04.320, and 13.04.330) and as hereafter may be amended in the same manner and degree as City residents. The Association shall fully enforce compliance with said water restriction provisions by its members.

10.04 Each Party retains the responsibility for shortage management within its own service area and retains authority to make decisions concerning implementation of its shortage management plan, subject to restrictions on water availability during Supply Shortages, general emergencies pursuant to Section 6, or water restrictions implemented pursuant to Chapter 13.04 of Lynden Municipal Code.

ARTICLE 11. TERM AND TERMINATION

11.01 Unless otherwise agreed in writing between the Parties, this Agreement shall remain in effect for a term of sixty years (60) years.

11.02 The Parties may, by mutual agreement, elect to extend this Agreement for an additional term of twenty-five (25) years from the date of the expiration of the initial twenty-five (25) year term, and may do so for up to a total of three (3) separate and successive twenty-five (25) year extensions. Any extension or successive extensions of this Agreement shall be automatic unless one party notifies the other that they do not intend to extend the term no later than three (3) year before this Agreement would otherwise terminate.

ARTICLE 12. ADMINISTRATIVE; OTHER PROVISIONS

12.01 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 12.01, "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. If 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.

12.02 The Association shall not allow or approve any new connections to its water system prior to (a) notification to the City of the Association's plans to add a service connection no later than one (1) month prior to making a new service connection; and (b) the Association must verify that payment in full was made by the potential new member to the City for current City facility charges for new connections prior to making said new connection. Any existing connections for which general facilities charges have not been collected shall be paid to the City within thirty (30) days of the date of this Agreement at the City's current general facilities connection charge. The addition of new connections shall be subject to compliance with Section 5.01.

12.03 The Association shall perform regular maintenance and repair of its water delivery system and at all times keep said system in good working order and in compliance with its own Water System Plan and all regulations governing the operation of such system.

12.04 In the event the City annexes all or part of the land area now serviced by the Association, the Association shall convey to the City all its right, title, and interest in all real and personal property, including easements and appurtenances, comprising that portion of the Association water system required to serve the land being annexed, along with a pro

rata share of the Association Water Rights. Said pro rata share of the Association Water Rights to be conveyed to the City as a condition of annexation shall be determined by looking at the actual water use for the connections within the area annexed in comparison to the total Association Water Rights. after which said property shall become part of the City's Water Supply System. Provided, however, in the event that the Association's then current water use exceeds the Association Water Right then no conveyance of any portion of the Association Water Rights shall be required. Notwithstanding the foregoing, the City retains the right to deny any annexation request if it determines in its discretion that the Association or any other person has failed to commit to convey to the City adequate real or personal property such as easements for infrastructure or water rights, or for any other lawful reason.

12.05 The Association and its members shall be obliged to pay their fair pro-rata share for capital improvements made to the City Water Supply System, as incorporated in the City water rate structure. Capital improvements shall include without limitation all associated studies, designs, plans, engineering, surveying, construction, mitigation, legal fees and other costs associated with making improvements and betterments to the City Water Supply System, all of which are captured in the City's water rate structure adopted in accordance with the Lynden Municipal Code.

12.06 The City shall indemnify, defend and hold the Association, 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 City, its agents or employees in connection with the provision of water under this Agreement. If suit in respect to the above is filed and judgment is rendered or settlement made requiring payment of damages by the Association, its officers, agents or employees, the City shall pay the same.

12.07 The Association 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, 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 Association, its agents or employees in connection with its use of water under this Agreement. 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, the Association shall pay the same.

12.08 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:

Berthusen Road Water Association
President
Berthusen Road Water Association
PO Box 529
Lynden, Washington 98264

City of Lynden
Public Works Director
City of Lynden City Hall
300 4th Street
Lynden, Washington 98264

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.

12.09 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.

12.10 If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement 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 Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.11 The laws of the State of Washington shall govern any disputes arising under this Agreement.

12.12 Subject to Section 12.01, any disputes shall be adjudicated in the Superior Court for Whatcom County, Washington, unless otherwise agreed.

12.13 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, drought, 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). 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; and provided further that, any shortage in water availability resulting from said force majeure condition(s) shall be shared by the Parties in equal proportion as required for sharing Short-Term Supply Shortages, described in Section 6.05.

12.14 The Parties recognize and acknowledge that damages may be an insufficient or inadequate remedy for a breach of this Agreement. Accordingly, this Agreement shall also be enforceable by and through any other remedy available in law and equity, including specific performance.

12.15 This Agreement may be recorded by either Party and shall be binding upon the successors and assigns of each Party. This Agreement shall run with the Water Supply System and the land on which they are located, for so long as this Agreement remains in effect.

12.16 This Agreement constitutes the entire agreement between the City and the Association as to the matters contained herein and supersedes all prior agreements. 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.

Dated this _____ day of _____, 2023.

CITY OF LYNDEN:

BERTHUSEN ROAD WATER
ASSOCIATION:

Scott Korthuis, Mayor

Attested:

City Clerk

Approved as to form:

Robert A. Carmichael, City Attorney

CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Resolution 23-1064 – Adopting a Six Year Transportation Improvement Program (STIP) 2023-2028	
Section of Agenda:	Consent	
Department:	Public Works	
<u>Council Committee Review:</u>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		<u>Legal Review:</u>
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
1) STIP Project List 2) Map of STIP Project Locations 3) Resolution 23-1064		
Summary Statement:		
<p>By law, a public hearing must be held for the City Council to consider comments regarding the City's Six Year Transportation Improvement Program (2024 to 2029). Attached are Lynden's proposed transportation improvement projects that will, after approval by City Council, be submitted to the Whatcom Council of Governments and from there to the Washington State Department of Transportation (WSDOT) as part of their statewide program.</p> <p>To be eligible for funding for these projects, every city and county must prepare a planned local list of projects which ultimately is forwarded to the WSDOT by July 31 of each year for inclusion in the State's Transportation Improvement Program (STIP) list.</p> <p>The Public Works Committee reviewed the STIP projects at their April 5, 2023, meeting and recommended that City Council set a public hearing date for 7:00 p.m. on June 5, 2023, their regular meeting, at the Lynden City Hall Annex, to hear comments on the City's Six-Year Transportation Improvement Program.</p>		
Recommended Action:		
That City Council set a public hearing date of June 5, 2023 at 7:00 p.m. to hear comments on the City's Six Year Transportation Improvement Program.		

RESOLUTION NO. 23-1064

**A RESOLUTION ADOPTING THE
2024-2029 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM (STIP)
FOR THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON**

WHEREAS, Washington State Law, RCW 35.77.010, requires the City of Lynden to annually adopt a Six-Year Transportation Improvement Program for the next six calendar years; and

WHEREAS, a report has been prepared and submitted by the City Public Works Director for a Six -Year Transportation Program for years 2024-2029, copies of which are on file in the office of the City Clerk;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Lynden, Washington, as follows:

SECTION 1: That the 2024-2029 Six-Year Transportation Improvement Program be adopted as the official Six-Year Transportation Improvement Program of the City of Lynden, Washington.

SECTION 2: That the City Clerk and the City Public Works Director are hereby directed to file a copy of this resolution with the State of Washington Department of Transportation.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Council hereby declares that it would have passed this code and each section, regardless of whether any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if for any reason this Resolution is declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

ADOPTED by the City Council of the City of Lynden, Whatcom County, Washington, on the _____ day of _____, 2023.

MAYOR SCOTT KORTHUIS

ATTEST:

CITY CLERK PAMELA BROWN

APPROVED AS TO FORM:

CITY ATTORNEY ROBERT CARMICHAEL

City of Lynden
2024 - 2029 Six Year
 Transportation Improvement Program
 In Priority Order Keyed to Map

Ref No.	Project	Description	Termini	Classified	Utilities	Complete Street	Phase	Funding Sources (\$ in thousands)					Local	State	TIB	Federal	Total	
								2024	2025	2026	2027 - 2029							
1	Pepin FASST (Flooding, Agriculture, Salmon, Safety, Transportation) RAISE Planning Grant	Basin-wide 30% design plans for street network and creek relocation for items 3-8 below City plans to apply for a federal RAISE Construction Grant in 2025 to construct items 3-8 below.	Pepin Creek sub-area	Y		Y	PE	X	X	X						2,000	2,000	
							Const				X						0	
2	Pine Street Bridge & Pepin Creek Channel	Vehicular Bridge and Approaches. Stream channel extended from Main to Westview Development	Pine Street over relocated Pepin Creek (Double Ditch) and 1000 ft of channel north of bridge <i>Developer Mitigation - incl. in Local</i>			Y	PE 2023-2024	X					150 (PWTF)				150	
							Const	X	X			47	5,000 (PWTF)				5,047	
3	Pepin Creek Main Stem <i>Pepin Lite Concept</i>	Upstream (Pepin Lite) Phased Relocation	Isom School to East/West Creek Corridor <i>Department of Ecology potential funding. Developer Mitigation - incl. in Local</i>			NA	PE	X	X			734					734	
							Const			X	X					8,950	8,950	
4	East/West Pepin Creek Corridor <i>Pepin Lite Concept</i> (including culvert at Double Ditch)	Upstream (Pepin Lite) Phased Relocation	North end of Pepin Main Stem to Double Ditch Road <i>Developer Mitigation - incl. in Local</i>			NA	PE	X	X			125				3,440	3,565	
							Const			X	X					3,440	3,440	
5	Double Ditch Road	Widen/Improve to City Arterial Street Standard (40') <i>Prerequisite: Construct Cross-Culvert to the North and redirect Pepin Creek into new channel</i>	Main Street to City Limits (Pepin Parkway) <i>Connect to Future Pepin Parkway Include Water & Sewer Trunk Lines Developer Mitigation - incl. in Local</i>	X		Y	PE		X	X		387						387
							Const			X	X					6,473	6,473	
6	Pepin Parkway Bridge	Pepin Parkway Arterial (Included in 2022 Design Standards) <i>Arterial Street - driveway access and parking restricted</i>	On Pepin Parkway over the relocated Pepin Creek <i>Developer Mitigation - incl. in Local</i>	X		Y	PE	X	X			248					248	
							Const			X	X					3,860	3,860	
7	Pepin Parkway Arterial	Pepin Parkway Arterial (Center Median Stormwater) <i>Arterial Street - driveway access and parking restricted</i>	Benson Road to Double Ditch <i>Developer Mitigation - incl. in Local</i>	X		Y	PE	X	X			387					387	
							Const			X	X					8,375	8,375	
8	Benson Road	Widen to the west to avoid ditch on east. Pedestrian on west side - possible 10' separated trail <i>Arterial Street - driveway access and parking restricted Surface Transportation Block Grant (STBG)</i>	Sunrise Drive to Badger Road <i>Connect to Future Pepin Parkway Federal STBG and CRP Developer Mitigation - incl. in Local</i>	Y	E	Y	PE	X				64			418	482		
							Const		X	X			1,700			6,394	3,245	
9	Kaemingk Trail Extension - Depot to 8th Street	Phased Trail Project begun in 2023 (complete in 2024) <i>Trail: Park Impact Fee Funds, Sidewalk: Street Funds</i>	North 8th Street to Depot Road			NA	PE										0	
							Const	X					300	550			850	
10	E. Front Street Slope Stability (Ph. 2)	Replace storm pipe, construct mechanically stabilized earth (MSE) wall to stabilize slope, and repair street	600 Block of East Front Street			NA	PE										0	
							Const	X					525				525	
11a	9th Street & Alley (Judson Area Stormwater Low Impact Development - Phase II)	Stormwater Low Impact Development <i>Ecology Stormwater Grant funded design in 2020 DOE Grant/Loan, TBD, & Utility Matching Funds</i>	Front St. to Judson and E/W Alley to 10th			Y	PE	X				50	120				170	
							Const	X	X				400	720			1,120	

City of Lynden
2024 - 2029 Six Year
 Transportation Improvement Program
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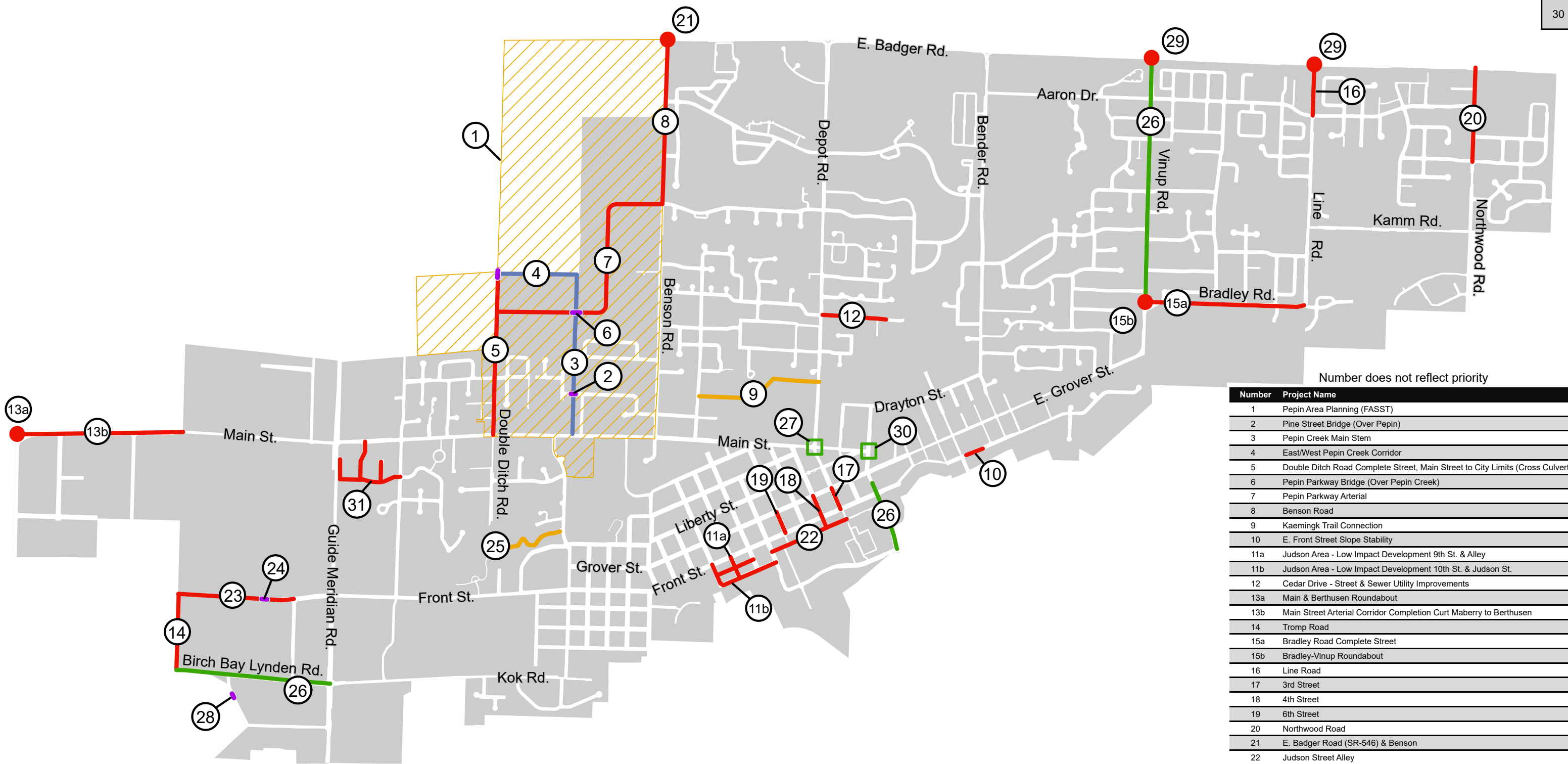
Ref No.	Project	Description	Termini	Classified	Utilities	Complete Street	Phase	2024 - 2029					Funding Sources (\$ in thousands)				
								2024	2025	2026	2027 - 2029	Local	State	TIB	Federal	Total	
11b	10th and Judson Street (Judson Area Stormwater Low Impact Development - Phase III)	Stormwater Low Impact Development <i>Ecology Stormwater Grant funded design in 2020</i> <i>Const. Funding Dependent DOE Const. Grant. TBD & Utility Matching Funds</i>	Front Street to 7th Street			Y	PE	X	X			50	120			170	
							Const			X		650	1,950			2,600	
12	Cedar Drive - Street, Stormwater, and Sewer Utility Improvements	Sewer upgrade (incl. lift station), stormwater relocation, street rehabilitation, and pervious shared-use shoulders <i>Sewer Utility Fund Project</i>	Depot Road to 124 E Cedar			N	PE/ROW	X				240				240	
							Const	X	X			2,400				2,400	
13a	Main Street and Berthusen Road Roundabout	Construct roundabout and approximatel 400 feet of each approach street <i>Community and Economic Revitatlization Board. Loan \$4.5 million</i>	Intersection of West Main and Berthusen Rd.	Y		Y	PE 2023	X				125				125	
							Const	X	X			1,000	4,500			5,500	
13b	Main Street Corridor Completion	Reconstruct Main Street between Curt Maberry Road and Berthusen Road	Curt Maberry Road and Berthusen Rd.	Y		Y	PE		X	X		100				100	
							Const				X	5,500				5,500	
14	Tromp Road Arterial Improvement	Upgrade to Full City Industrial Standard <i>Planning Purposes Only</i> <i>Community Economic Development (CEDs) listed</i>	Birch Bay Lynden Rd. to W. Front St.	Y		Y	PE				X	100				100	
							Const				X	3,000				3,000	
15a	Bradley Road Arterial Improvements	Upgrade to Complete Street with intersection improvements at both termini. <i>Anticipating State Commerce Funding and pursuing additional State/Federal funding</i>	Vinup Road to Line Road	Y		Y	PE	X	X			250				250	
							Const		X	X		1,540	2,950			4,490	
15b	Bradley-Vinup Roundabout	New Roundabout replaces stop sign on Bradley <i>Pursuing State/Federal funding</i>	Eastwood (east) Ridgeway (north) Grover (south)	Y		Y	PE	X	X			250				250	
							Const		X	X		1,590				1,590	
16	Line Road Complete Street	Upgrade to Full City Standard <i>Planning Purposes Only</i>	Aaron Drive to Badger Road (SR-546)	Y		Y	PE				X	50				50	
							Const				X	1,500				1,500	
17	3rd Street Reconstruction	Street Reconstruction <i>Planning Purposes Only</i>	Grover Street to Front St <i>Historic Business District</i>	Y		Y	PE				X	20				20	
18	4th Street Improvements	Street Reconstruction/Centennial Park Integration <i>Planning Purposes Only</i> <i>Community Economic Development (CEDs) listed</i>	Grover Street to Judson Street Alley <i>Historic Business District</i>			Y	PE				X	20				20	
19	6th Street Reconstruction	Street Reconstruction <i>Planning Purposes Only</i>	Grover Street to Front St <i>Historic Business District</i>			Y	PE				X	20				20	
20	Northwood Road Complete Street	Upgrade to Full City Std <i>Planning Purposes Only</i>	Brome to Badger	Y		Y	PE				X	70				70	

City of Lynden
2024 - 2029 Six Year
 Transportation Improvement Program
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Ref No.	Project	Description	Termini	Classified	Utilities	Complete Street	Phase	Funding Sources (\$ in thousands)					Local	State	TIB	Federal	Total
								2024	2025	2026	2027 - 2029						
21	E. Badger (SR-546) and Benson Road Roundabout	Channelization/Roundabout & Lighting <i>Planning Purposes Only</i>	East Badger and Benson Road	Y		Y	PE	X			X	500	WSDOT 500				1,000
22	Judson Street Service Alley Improvements	Widen and reconstruct, relocate utility poles, and improve parking. <i>Community Economic Development (CEDs) listed</i>	3rd Street to 7th Street <i>Possible Directional Restrictions</i>			?	ROW/PE	X	X	X		50					50
23	W. Front Street Arterial Ph 2	Upgrade to City Industrial Street Standard (44' width) with curb, gutter, and sidewalk.	Duffner Ditch to Tromp Road <i>west of Guide Meridian</i>	Y		N	PE				X	300					300
							Const				X	1,500					1,500
24	W. Front St Culvert Repair/Replace Culvert at Duffner Ditch	Replace Flood Damaged Culvert Includes water, sewer and storm replacments <i>as needed</i>	Duffner Ditch to Duffner Drive <i>west of Guide Meridian</i>	Y		N	PE 2023	X				35				220	255
							Const	X	X			365				2,335	2,700
25	Kaemingk Trail Extension to Dickinson Park	Paved Trail w/ 2 Bridges <i>2019 Parks & Trails Bond</i>	17th Street to existing Ridgecreek Trail			NA	PE	X				200					200
							Const		X	X		2,500				2,500	
26	Arterial Street Preservation Program Classified Routes	Grind and Overlay. Include required ADA Upgrades. Apply for TIB Arterial Preservation Program (APP) Funding (Coordinate with County on Birch Bay Lynden)	1st Street/Hannegan (Grover to City Limits) Birch Bay Lynden Rd (City Limits to SR-539) Vinnup (Bradley to SR-546)	Y		Y	PE		X	X	X	300			300		600
							Const					2,000			2,000		4,000
27	Main and Depot Intersection Preservation and ADA	Reconstruct intersection with ADA as needed. Reconstruct approach streets approximately 300 feet	Main and Depot	Y		Y	PE										0
							Const	X				75				75	
28	Bay Lyn Drive Duffner Ditch Fish Passage Culvert	Duffner Ditch Culvert Replacement - Apply for State funding programs. Included in Legislative Agenda.	Duffner Ditch at Bay-Lyn			N/A	PE		X	X		200			300		500
							Const				X	1,200		1,200		1,200	
29	East Badger Road - Vinup and Line Roundabout/Intersection Improvements	Roundabouts or intersection Improvements at Vinup and Line				Y	PE			X		200					200
							Const				X				0		
30	Main and 1st Street Intersection Rehabilitation	Reconstruction and ADA upgrades Planning Purposes only	Main and 1st Intersection			Y	PE				X	100					100
31	Meadow Neighborhood Street, Water & Stormwater Rehabilitation	Street reconstruction with ADA upgrades as required. Water, sewer, storm drainage improvments as needed	Woodview Ct., Meadon Ln., S. Meadow Ln., and W. Meadow Ln. Duffner Ditch			NA	PE		X	X	X	100					100
32	Miscellaneous Pavement Preservation	Chip seal, asphalt overlays	Various Locations			N/A	Const Yearly budget	X	X	X	X	100					100

City of Lynden
2024 - 2029 Six Year
 Transportation Improvement Program
 In Priority Order Keyed to Map

Ref No.	Project	Description	Termini	Classified	Utilities	Complete Street	Phase	Funding Sources (\$ in thousands)					Total				
								2024	2025	2026	2027 - 2029	Local		State	TIB	Federal	
33	ADA and non-motorized Facilities	Sidewalk repair & replacement, ADA ramps, non-motorized facilities.	Various			N/A	Const Yearly budget	X	X	X	X	75					75



Number does not reflect priority

Number	Project Name
1	Pepin Area Planning (FASST)
2	Pine Street Bridge (Over Pepin)
3	Pepin Creek Main Stem
4	East/West Pepin Creek Corridor
5	Double Ditch Road Complete Street, Main Street to City Limits (Cross Culvert)
6	Pepin Parkway Bridge (Over Pepin Creek)
7	Pepin Parkway Arterial
8	Benson Road
9	Kaemingk Trail Connection
10	E. Front Street Slope Stability
11a	Judson Area - Low Impact Development 9th St. & Alley
11b	Judson Area - Low Impact Development 10th St. & Judson St.
12	Cedar Drive - Street & Sewer Utility Improvements
13a	Main & Berthusen Roundabout
13b	Main Street Arterial Corridor Completion Curt Maberry to Berthusen
14	Tromp Road
15a	Bradley Road Complete Street
15b	Bradley-Vinup Roundabout
16	Line Road
17	3rd Street
18	4th Street
19	6th Street
20	Northwood Road
21	E. Badger Road (SR-546) & Benson
22	Judson Street Alley
23	Front Street (West) Arterial - Full Industrial Standard
24	Front Street Culvert Repair/Replace
25	Kaemingk Trail Extension 17th Street to Dickinson Park
26	Arterial Street Preservation Program
27	Main & Depot Intersection Repairs and ADA Improvements
28	Bay-Lyn Culvert Replacement
29	E. Badger Road (SR-546) at Vinup & Line
30	Main & 1st Intersection Repairs and ADA Improvements
31	Meadow Neighborhood

Path: Z:\Projects\Public Works\TransportationImprovementProjects\TIP2024\TIP2024Projects\TIP2024Projects.aprx

- Project Type**
- Intersection Overlay
 - Roundabout
 - Motorized
 - Road Drainage
 - Overlay
 - Non-Motorized
 - Culvert or Bridge

2024 - 2029 Transportation Improvement Projects



Updated: 31 Mar 2023

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Resolution(s) 23-1065 and 23-1066 Adopting MissionSquare Deferred Compensation Plan	
Section of Agenda:	Consent	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Resolution 23-1065 and Resolution 23-1066	
Summary Statement:	<p>The City of Lynden currently offers deferred compensation plans as allowed under IRS Code. Resolution 23-1065 & 23-1066 would adopt MissionSquare as an additional plan provider. MissionSquare has offered plan administration to public sector employees for over 50 years and is a not for profit company that offers a lower fee structure for the employee plan members. By adopting these resolutions, the city be able to offer additional options to employees for their investment accounts. The addition of these plans was discussed at the April Finance Committee meeting.</p>	
Recommended Action:	To have Council make a motion to adopt the attached resolutions and authorize the Mayors signature on documents necessary for the plan creation.	

RESOLUTION NO. 23-1065

**A RESOLUTION FOR A LEGISLATIVE BODY RELATING
TO A MONEY PURCHASE PLAN, CITY OF LYNDEN, WASHINGTON**

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the establishment of a money purchase retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the Employer desires that its money purchase retirement plan be administered by MissionSquare Retirement:

NOW THEREFORE BE IT RESOLVED that the Employer hereby establishes or has established a money purchase retirement plan (the “Plan”) in the form of:

The MissionSquare Retirement Governmental Money Purchase Plan, pursuant to the specific provisions of the Adoption Agreement.

The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

BE IT FURTHER RESOLVED that the Employer hereby adopts the Declaration of Trust of VantageTrust Company dated May 2001, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the Plan are to be invested in the trust created by such Declaration of Trust (“VantageTrust”) that provides for the commingled investment of retirement funds.

BE IT FURTHER RESOLVED that the Employer hereby agrees to serve as trustee under the Plan and to invest funds held under the Plan in VantageTrust or in any other qualified investment options of the Plan; and

BE IT FURTHER RESOLVED that the City Administrator shall be coordinator for the Plan; shall receive reports, notices, etc., from MissionSquare Retirement or VantageTrust; shall case, on behalf of the Employer, any required votes under VantageTrust; may delegate any administrative duties relating to the Plan to appropriate departments; and

BE IT FURTHER RESOLVED that the Employer hereby authorizes the City Administrator to execute all necessary agreements with MissionSquare Retirement incidental to the administration of the Plan.

I, Pamela D. Brown Clerk of the City of Lynden, do hereby certify that the foregoing resolution was duly passed and adopted in the City Council of the City of Lynden at regular meeting thereof assembled this 15th day of May, 2023 by the following vote:

AYES:
NAYS:
ABSENT:

(Seal)

City Clerk of the City of Lynden

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF ____ IN FAVOR AND ____ IN OPPOSITION, AND SIGNED BY THE MAYOR THIS 15TH DAY OF MAY 2023.

Mayor Scott Korthuis

ATTEST:

City Clerk Pamela Brown

APPROVED AS TO FORM:

City Attorney Bob Carmichael

RESOLUTION NO. 23-1066

**A RESOLUTION ADOPTING A 457 DEFERRED COMPENSATION PLAN,
CITY OF LYNDEN, WASHINGTON**

Name of Employer: City of Lynden

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the establishment of a deferred compensation plan for such employees serves the interests of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the Employer has determined that the establishment of a deferred compensation plan to be administered by MissionSquare Retirement serves the above objectives; and

WHEREAS, the Employer desires that its deferred compensation plan be administered by MissionSquare Retirement, and that some or all of the funds held under such plan be invested in VantageTrust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans;

NOW THEREFORE BE IT RESOLVED that the Employer hereby adopts the deferred compensation plan (the "Plan") in the form of:

The MissionSquare Retirement Deferred Compensation Plan and Trust

BE IT FURTHER RESOLVED that the Employer hereby adopts the Declaration of Trust of VantageTrust Company dated May 2001, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in the trust created by such Declaration of Trust (the "VantageTrust") that provides for the commingled investment of retirement funds.

BE IT FURTHER RESOLVED that the assets of the Plan shall be held in trust, with the Employer serving as trustee, for the exclusive benefit of the Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose.

BE IT FURTHER RESOLVED that the Employer hereby agrees to serve as trustee under the Plan.

BE IT FURTHER RESOLVED that the City Administrator shall be the coordinator for this program; shall receive necessary reports, notices, etc. from MissionSquare Retirement or VantageTrust; shall cast, on behalf of the Employer, any required votes under VantageTrust; Administrative duties to carry out the plan may be assigned to the appropriate departments, and is authorized to execute all necessary agreements with MissionSquare Retirement incidental to the administration of the Plan.

I, Pamela D. Brown Clerk of the City of Lynden, do hereby certify that the foregoing resolution was duly passed and adopted in the City Council of the City of Lynden at regular meeting thereof assembled this 15th day of May, 2023 by the following vote:

AYES:
NAYS:
ABSENT:

(Seal)

City Clerk of the City of Lynden

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF ____ IN FAVOR AND ____ IN OPPOSITION, AND SIGNED BY THE MAYOR THIS 15th DAY OF MAY 2023.

Mayor Scott Korthuis

ATTEST:

City Clerk Pamela Brown

APPROVED AS TO FORM:

City Attorney Bob Carmichael

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Resolution No. 23-1067 Establishing the Policy for Transfer of Unused Stormwater Capacity in the City’s Utility Local Improvement District (ULID) 2008-1 West Lynden Stormwater Drainage Facility	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:	Resolution No. 23-1067	
Summary Statement:	<p>On March 6, 2006, the City passed Ordinance No. 1256 creating Local Improvement District (LID) No. 4 to acquire, construct, and install the West Lynden Storm Drainage Facility and trunk piping for conveying stormwater to that facility. LID No. 4 was converted to Utility Local Improvement District (ULID) 2008-1 via Ordinance No. 1325 in 2008.</p> <p>Certain ULID properties have paid into the ULID but not used all the capacity allotted to them. Others have deferred payments under RCW 84.34.300 and have not used any of the capacity that was allotted to them. Some of those properties with unused allotted capacity are willing to transfer their assessed storage and conveyance capacity, and other properties not included on the final assessment roll but within the same storm drainage watershed, have expressed interest in purchasing the unused capacity in the West Lynden Stormwater Drainage Facility.</p> <p>The City has an interest in supporting economic development within the City and transfer of that unused capacity would provide an opportunity for imminent development on those other properties within the basin not included in the original assessment roll.</p> <p>The Public Works Committee reviewed the proposed Resolution at their meeting on May 3, 2023, and concurred to recommend approval.</p>	
Recommended Action:	That City Council approve Resolution No. 23-1067 Establishing the Policy for Transfer of Unused Stormwater Capacity in the City’s Utility Local Improvement District (ULID) 2008-1 West Lynden Stormwater Drainage Facility and authorize the Mayor’s signature on the Resolution.	

RESOLUTION NO. 23-1067

A RESOLUTION OF THE CITY COUNCIL OF LYNDEN WASHINGTON ESTABLISHING THE POLICY FOR TRANSFER OF UNUSED STORMWATER CAPACITY IN THE CITY'S UTILITY LOCAL IMPROVEMENT DISTRICT (ULID) 2008-1 WEST LYNDEN STORMWATER DRAINAGE FACILITY.

WHEREAS, on March 6, 2006, the City of Lynden passed Ordinance 1256 creating Local Improvement District No. 4 (LID No. 4) to “acquire, construct, and install the West Lynden Storm Drainage Facility and trunk piping for conveying stormwater to that facility;” and

WHEREAS, on August 4, 2008, the City by Ordinance 1325 did subsequently convert LID No.4 to Utility Local Improvement District (ULID) 2008-1 and the City Council, acting as the board of equalization, established the final assessment role for ULID 2008-1 which assigned storage capacity in and conveyance capacity to the West Lynden Stormwater Drainage Facility and a 15-year repayment schedule for the assessed properties; and

WHEREAS, the properties on the final assessment role for ULID 2008-1 will be referred to herein as “ULID 2008-1 Properties;” and

WHEREAS, through the modeling done to determine the benefit area and assessment roll, each individual ULID 2008-1 Property was allotted a certain amount of stormwater capacity in the West Lynden Storm Drainage Facility; and

WHEREAS, certain ULID 2008-1 Properties have paid into the ULID 2008-1 but not used all the capacity allotted to them, and others have deferred payments under RCW 84.34.300 et seq. and also not used any of the capacity that was allotted to them; and

WHEREAS, certain of those ULID 2008-1 Properties with unused allotted capacity are willing to transfer their assessed storage and conveyance capacity; and

WHEREAS, other properties, not included on the final assessment role of ULID 2008-1, but within the same storm drainage watershed, have expressed interest in purchasing the unused capacity in the West Lynden Stormwater Drainage Facility; and

WHEREAS, the City of Lynden has an interest in supporting economic development within the City and transfer of that unused capacity would provide an opportunity for imminent development on those other properties within the basin not included in the original assessment roll;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lynden, Washington as follows:

Section 1. Stormwater Capacity Entitlement Transfer.

- A. The following policy and procedures shall apply when an owner of a ULID 2008-1 Property wishes to transfer all, or a portion of, the stormwater capacity allotted to that property. This policy addresses the methods that the City will use to facilitate the transfer of capacity included on the final assessment roll to another property not included in assessment roll.
- B. In this policy, the term “Transferor Property” refers to the property from which stormwater capacity is proposed to be transferred and the term “Transferee Property” refers to the property to which the ULID 2008-1 stormwater allotted capacity is proposed to be transferred.
- C. Transferee Proposed Development. Transfer of ULID 2008-1 stormwater capacity allotment is meant to enable development on a Transferee Property that is “imminent”, indicated by the proposed development having already been reviewed by the City’s Technical Review Committee (TRC) and determination that the development is:
 - a. Consistent with the City’s Comprehensive Plan in terms of type and density.
 - b. Is located within the Duffner Stormwater Basin.
- D. Evaluation of Transferor Property’s Stormwater Entitlement and Transferee Property Potential Benefit. Transferor Property owner must submit to the City Public Works Director a written request for transfer which clearly identifies both the Transferor Property and the Transferee Property by map and tax parcel number. The City will validate the amount of stormwater capacity allotted to the Transferor Property using the stormwater model for ULID 2008-1 or similar model, and the point where stormwater was designed to enter the stormwater collection system. This will be done utilizing the same methodology as per the original design for the regional stormwater facility and conveyance system, and the same assumptions of soils and future land use for the Transferor Property. A written engineering technical report will be prepared for City Public Works Director which evaluates the proposed transfer, to include:
 - a. flow control capacity in post developed cubic feet per second and acre feet,
 - b. runoff treatment capacity in acre-ft,
 - c. if stormwater can be legally and physically routed from the Transferee Property to the designed connection point, per original assumptions used to design the conveyance system, and
 - d. other constraints associated with the proposed transfer.This engineering report will be provided to both property owners to use to decide whether to proceed with the transfer.
- E. Payment of ULID assessment. The City will work with the ULID 2008-1 Administrator, Public Finance, to determine if the entire ULID assessment for the Transferor Property has been paid, and if not, how much remains to be paid. If the full ULID 2008-1

assessment has not been paid, the City will require that the full payment be made to the City prior to the transfer.

- F. Transfer Approval. If the proposed sale of private stormwater capacity meets the standards identified in section C through E above, the Public Works Director may approve a transfer of ULID 2008-1 allotted stormwater capacity by issuing a written approval letter to both Transferor and Transferee Properties, which approval shall not be unreasonably withheld. This transfer approval or a memorandum thereof will be executed by all parties and the City and recorded on both properties. Once recorded, the transfer will be deemed complete and the Transferee Property shall retain all rights to the West Lynden Storm Drainage Facility afforded to other properties with unused allocated stormwater capacity. Once the Transferee Property connects into the West Lynden Storm Drainage Facility, such rights shall vest and shall not be revoked or terminated. The Transferor Property shall no longer have access to the transferred capacity. Any subsequent transfer of the capacity, including back to the original Transferor Property, will require repeating these steps with a new transfer request.
- G. Valuation of ULID 2008-1 Capacity Transfer. The transfer of capacity will be considered by the City to be a private business transaction between a willing buyer and a willing seller at a value determined solely by the free market.
- H. Stormwater Drainage Design Approval. The transfer of capacity does not eliminate the need for a regular stormwater report by Transferee Property. That report should demonstrate that the proposed stormwater system for the development meets current City stormwater regulations using the transferred stormwater capacity, and that stormwater can be effectively conveyed to the designed connection point using existing piping or additional piping to be constructed with their development. Only the transferred capacity will be routed to the West Lynden Stormwater Drainage Facility. With City approval of the Transferee Property's stormwater drainage design the development will be considered vested into ULID 2008-1 until expiration of the associated City permit. Future development on the Transferor Property will need to provide stormwater runoff treatment and flow control consistent with the stormwater regulations at time of development. The City reserves the right to reject any proposed stormwater system that does not in its determination meet the requirements of this subsection.

Section 2. City Reservation of Right to Purchase Unused ULID Stormwater Capacity.

The City reserves the right to purchase unused capacity from ULID 2008-1 benefiting properties as identified on the final assessment roll in the future by mutual agreement.

Section 3. City Reservation of Right to Close West Lynden Storm Drainage Facility.

The City reserves the right to close the West Lynden Storm Drainage Facility to new stormwater discharges at any time, including from properties with allotted but unused ULID2008-1 capacity. This reservation would be predicated on a determination that due to changes in State Department of Ecology (DOE) regulations, permit requirements, or through

other legal determination, or due to damage to or failure of the facility, that there is no longer adequate capacity in the West Lynden Storm Drainage Facility to accept additional stormwater. A closure would restrict the use of the West Lynden Storm Drainage Facility for future substantial redevelopment of previously developed ULID 2008-1 Properties that triggers the application of new DOE stormwater regulations. Notwithstanding the foregoing, any such closure shall not apply to existing development on ULID 2008-1 Properties which have vested by virtue of physical connection to the West Lynden Storm Drainage Facility.

Section 4. Indemnification, Release, and Hold Harmless.

On the recorded transfer approval, the owners of Transferee and Transferor Properties shall indemnify, release, and hold harmless the City from any damages or liability arising out of any action taken by the City consistent with the provisions of Section 3 above.

Section 5. Severability.

If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN BY AN AFFIRMATIVE VOTE _____ IN FAVOR _____ AGAINST, AND SIGNED BY THE MAYOR THIS _____ DAY OF _____ 2023.

MAYOR SCOTT KORTHUIS

ATTEST:

CITY CLERK PAMELA D. BROWN

APPROVED AS TO FORM:

CITY ATTORNEY ROBERT A. CARMICHAEL

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	May 15, 2023	
Name of Agenda Item:	RES-23-1068 Interfund Loan from F405 (Sewer) to F401 (Water)	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
Legal Review:	<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:	RES-23-1068 Interfund Loan from F405 (Sewer) to F401 (Water)	
Summary Statement:	<p>Short-term funding is required in the Water Fund (401) to cover project costs and the interfund fund loan from the Water Fund (401) to the General Fund (001) used for the Fire Station improvements.</p> <p>The attached Resolution RES-23-1068 proposes a fund transfer plan to achieve the needed short-term coverage of costs in the Water Fund.</p> <p>The Finance Committee reviewed this resolution earlier today and approved it for review by the full Council.</p>	
Recommended Action:	To adopt RES-23-1068 and authorize the Mayor's signature.	

RESOLUTION NO. 23-1068

A RESOLUTION ESTABLISHING AN INTERFUND LOAN FROM THE SEWER FUND (F405) TO THE WATER FUND (F401) FOR THE CITY OF LYNDEN, WASHINGTON

WHEREAS, the City of Lynden after considering the operational needs of the City’s Water Fund seeks to improve the Water Fund’s cash balance to maintain a safe operational minimum; and

WHEREAS, this operational cash balance will require the City to transfer cash from another fund; and

WHEREAS, Resolution No. 23-1068 puts forth the details of an interfund loan to achieve the transfer;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lynden, Washington the following proposed establishment of an interfund loan to fund ongoing Water operations:

Section A: That an amount not to exceed the sum of \$800,000 is hereby available to be transferred from the City’s Sewer Fund (F405) to the Water Fund (F401) as a three-year capital interfund loan, to be transferred this year when needed.

Section B: The borrowing fund shall make interest only payments to the lending fund at a simple interest rate that is based at the time the loan is originated on the one-year U.S. Treasury rate combined with a one percent premium. The intention is to make the interest only payments for the three-year duration of the interfund loan, then when the Water Fund is reimbursed the money for the Fire Station remodel it will in turn pay in full this interfund loan from Fund 405.

Section C: BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section D: If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this resolution. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact than any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this resolution should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section E: This resolution shall take effect and be in force from and after its passage by the Council and after its approval by the Mayor, if approved, otherwise, as provided by law and five (5) days after the date of its publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, BY AN AFFIRMATIVE VOTE, ____ IN FAVOR ____ AGAINST AND SIGNED BY THE MAYOR THIS ____ DAY OF MAY 2023.

Scott Korthuis
Mayor

ATTEST:

Pam Brown
City Clerk

APPROVED AS TO FORM:

Robert Carmichael
City Attorney

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Ordinance 23-1668 adding LMC Title 10.17	
Section of Agenda:	Unfinished Business	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input checked="" type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review:
		<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:		
Ordinance 23-1668		
Summary Statement:		
<p>Discussion arose in the Public Safety Committee to allow the City and other public entities (including school districts) to use wheeled all-terrain vehicles (WATV), also known as utility terrain vehicle (UTV) for maintenance purposes on city streets with a speed of 35 mph or less. These vehicles must be owned and operated by a public entity and meet all the safety requirements of the state RCW, meet the additional requirements of LMC 10.17, and must be inspected annually by the Lynden Police Department.</p> <p>The Public Safety Committee reviewed this ordinance at its April 6th meeting and recommended taking the ordinance to City Council for approval. At the April 17th meeting Council referred it back to the Public Safety Committee for further discussion. After further review, it was determined that there is not a method to adopt a broader definition beyond ‘public entities’ without adopting the entire RCW and allowing everyone the use on City streets. The Public Safety Committee is not in favor of that. There was further discussion that allowances can be made for events for the use of a UTV via a special event permit. The special event permitting process is under review by city staff.</p>		
Recommended Action:		
It is recommended that Council make a motion to adopt ordinance 23-1668 and authorize the Mayor’s signature.		

ORDINANCE NO. 23-1668

An Ordinance of the City of Lynden Amending Lynden Municipal Code Title 10: Vehicles and Traffic, adding Chapter 10.17 entitled Wheeled All-Terrain Vehicles use by Public Entities.

WHEREAS, Chapter 46.09 RCW allows cities to authorize the operation of wheeled all-terrain vehicles on public roadways within their jurisdiction through legislative action; and

WHEREAS, the Lynden City Council intends to authorize the operation of wheeled all-terrain vehicles by public entities for the purposes of conducting official duties, subject to the limitations, conditions and requirements set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the City of Lynden as follows:

Section 1. Title 10 of the Lynden Municipal Code is hereby amended to add a new chapter 10.17 entitled Wheeled All-Terrain Vehicles.

Chapter 10.17

WHEELED ALL TERRAIN VEHICLES

Sections

10.17.010 Definitions

10.17.020 Use of Wheeled All-Terrain Vehicles on City Streets

10.17.030 Registration Requirements of a Wheeled All-Terrain Vehicle

10.17.040 Duty to Obey Traffic-Control Devices and Rules of the Road

10.17.050 Prohibited Uses

10.17.060 Violation-Penalty

10.17.070 Severability

10.17.010 Definitions

When used in this chapter, the City defines the words and phrases listed below as follows:

- A. “City” means the City of Lynden, its elected officials, employees and agents.
- B. “City Street” means every way, lane, road, street, boulevard, and every way or place in the city open as a matter of right to public vehicular traffic inside the city limits.
- C. “Rules of the Road” means all the rules that apply to vehicle or pedestrian traffic as set forth in state statute, rule or regulation.
- D. “Sidewalk” means that property between the curb lines or the lateral lines of a city street and the adjacent property parallel and in proximity to a city street and dedicated to use by pedestrians.
- E. “Wheeled All-Terrain Vehicle” or “WATV” means:
 - (1) A utility-type vehicle designed and capable of travel over designated roads that travels on four or more low-pressure tires of 20 psi or less, has a maximum width of less than 74 inches, has a maximum weight of less than 2,000 pounds, has a wheel base of 110 inches or less, and satisfies at least one of the following:
 - (a) Has a minimum width of 50 inches;
 - (b) Has a minimum weight of at least 900 pounds; or
 - (c) Has a wheelbase of over 61 inches;
 - (d) Has a steering wheel for steering control; and
 - (e) Has non-straddle seating with the operator and passenger sitting side by side in the vehicle; manufactured primarily for recreational non-highway all-terrain use.
- F. “Public Entity” means any agency of any political subdivision of the State of Washington, to include cities, counties and school districts (whether public or private).

10.17.020 Use of Wheeled All-Terrain Vehicles on City Streets:

Subject to the restrictions and requirements set forth in this chapter, Use of Wheeled All-Terrain Vehicles that are owned and operated by the city or other public entity may be used on city streets to move between one maintenance location to another within the city limits. These WATV’s must meet the following criteria:

- (a) Definition of WATV for purposes of this chapter will be those set forth in RCW 46.09.310 (19) (b)
- (b) The WATV must be equipped with all safety equipment required under RCW 46.09.457
- (c) WATV's may only be operated on city streets by a licensed driver aged 18 or older.
- (d) The WATV must have a bed for carrying cargo or a maintenance service box.
- (e) WATV's may only be operated on streets with a speed limit of 35mph or less.
- (f) WATV's may cross streets with a speed limit in excess of 35mph at a controlled crossing.
- (g) All publicly owned WATV's shall be clearly marked with the agency name and logo.
- (h) WATV's must be equipped with amber lights that are capable of flashing, and that are visible from both front and rear. Lights must be flashing when the vehicle is in use.
- (i) Prior to being put into use on city streets, all publicly owned WATV's shall be registered with and inspected by the Lynden Police Department, and annually thereafter.
- (j) No publicly owned WATV may be operated on city streets by anyone other than the approved agency.

10.17.030 Registration Requirements of a Wheeled All-Terrain Vehicle:

A WATV operated on a city street must comply with all registration requirements of the city, as listed in section 10.17.020 above.

10.17.040 Duty to Obey Traffic-Control Devices and Rules of the Road:

Unless otherwise directed by a police officer, a person operating a WATV must obey all the rules of the road that apply to vehicle or pedestrian traffic and must obey the instructions of official traffic-control signals, signs, and other devices applicable to vehicles.

10.17.050 Prohibited Uses:

(a) No person may operate a WATV in a negligent or unsafe manner, but instead must operate it with reasonable regard for his/her own safety and for the safety of others.

- (b) No person may occupy a WATV unless that person is seated in a seat designed to carry a person.
- (c) No person may tow any devices (trailer or any device attached to the vehicle) or persons behind a WATV.

10.17.060 Violation-Penalty:

A person who violates a provision of this chapter is guilty of a traffic or other infraction as prescribed by RCW 46.09.470 or any applicable section of Lynden Municipal Code (LMC), exclusive of any statutory assessments; provided, that any conduct that constitutes a criminal offense may be charged as such and is subject to the maximum penalties allowed for such offense.

10.17.070 Severability:

If any section, subsection, sentence, clause, paragraph, phrase, or word of this chapter should be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, paragraph, phrase, or word of this chapter.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 15, 2023	
Name of Agenda Item:	Public Works Committee Meeting Minutes May 3, 2023	
Section of Agenda:	Other Business	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
May 3, 2023 Draft Public Works Committee Meeting Minutes.		
Summary Statement:		
Draft minutes for the May 3, 2023 Public Works Committee meeting.		
Recommended Action:		
For Review		

CITY OF LYNDEN

PUBLIC WORKS DEPARTMENT
360-354-3446



PUBLIC WORKS COMMITTEE MINUTES

4:00 PM May 3, 2023

City Hall 2nd Floor Large Conference Room

CALL TO ORDER

Members Present: Councilors Gary Bode and Ron De Valois

Members Absent: Mayor Scott Korthuis, Jerry Kuiken with notice

Staff Present: Public Works Director Steve Banham; Programs Manager Mark Sandal; and Sr. Admin. Assistant Jessica King

Public Present: Gary Vis, Carlos Becerra, Lesa Kroontje, Chad Gooding, Joel VanderHoek, Doug Jay, John Mercer, Gary TeVelde

ACTION ITEMS

1. **Approve Minutes from April 5, 2023**

DeValois motioned to approve the minutes and Bode seconded the motion.

Action

The minutes from April 5, 2023, were approved.

2. **Landfill Lease Amendment - Carlos Becerra**

Banham presented a copy of the original agreement between the City of Lynden and Carlos Becerra and explained that the highlighted portions were the sections that Becerra was requesting to have revised. Becerra currently pays \$12,000 per year with a ten-year lease signed in 2018.

Becerra mentioned that the name of the LLC has changed to Bay-Lyn Storage LLC. Banham said the changes need to be reviewed by the City attorney regarding the name change requirements.

Becerra is interested in mini storage primarily, with the possibility of including a solar farm with roof-mounted solar panels that feed electricity back into the grid. These types of projects require a 30-to-50-year commitment.

Becerra said he was advised to request a 30-year minimum lease due to the large financial investment he intends to make on the property. These investments will also benefit the City in the long term. The Committee discussed lease term alternatives including a 20-year lease with the option of two 10-year extensions.

Bode expressed concern about the lease rate and taking into account future inflation for a long-term lease. Becerra said that he's comfortable including provisions for inflation.

Banham said that the plan for that property needs to take into consideration differential settlement as the property was formerly a landfill, and suggested to Becerra to have the Committee review his business proposals before they give final approval of the lease updates. Becerra said that preparing plans will cost him \$10,000 to \$15,000, so Banham suggested that he provide the Committee with a business plan before proceeding.

Bode asked if this would be a staffed property and Becerra said that it would be, but there would also be camera surveillance.

Action

The Public Works Committee recommended that the proposed lease changes be forwarded to the City Attorney for review. The Committee also requested that Becerra provide them with more details regarding his business plan.

3. Berthusen Water Association Wholesale Water Supply Agreement

Banham distributed the most recent draft of the Berthusen Water Association Wholesale Water Supply Agreement. The two attorneys were able to reconcile the class designation and other updates regarding future water right adjudication. Banham recommends that the Committee accept the changes and forward the agreement to City Council for approval. The Water Association and their attorney were agreeable to the most recent changes made by the City's attorney.

Action

The Public Works Committee concurred to forward the Berthusen Water Association Wholesale Water Supply Agreement to City Council for approval.

4. Request to Transfer Stormwater Credits from VanZanten Property to Premier Packing

Banham presented Resolution 23-1067 which details the proposed process to transfer stormwater credits in the West Lynden Stormwater Drainage Facility. Premier Packing presented a site map showing the parcel that would like to transfer stormwater credit from (VanZanten) and the property that Premier Packing is looking at developing on Curt Maberry Road. The transfer is being evaluated by the city's engineer. The Resolution provides the process, if both parties are agreeable, by which a transfer can be completed. Premier Packing is interested in using the pond because of high groundwater on their site. On-site detention would use too much land.

Bode asked what is being requested of the Committee at this time. Banham said that staff need the Committee's consent with the stormwater transfer concepts presented in the Resolution that would allow for this transfer and any other future transfers. These transfers are meant to facilitate development that is ready to proceed.

DeValois asked if the overall capacity of the pond is being changed. Banham said it is not, just who is using it.

Jay and Gooding both said this will be a helpful addition for the development and growth of their business on a national scale, which will also be a benefit to the City.

Kroontje asked if future transfers will be approved by the Public Works Director rather than the Council. Banham said that is the process that is detailed in the Resolution.

Action

The Public Works Committee concurred to forward Resolution 23-1067 Establishing the Policy for Transfer of Unused Stormwater Credits in the City’s West Lynden Stormwater Drainage Facility to City Council for approval.

5. Stormwater Vault Maintenance

Banham said Lion’s Gate Planned Residential Development (PRD) was approved by the Planning Commission. Subsequent to that approval, the engineer is proposing the installation of an underground stormwater vault instead of fat pipes. Banham noted that the fat pipe design is difficult because of other utilities, particularly sewer, in the PRD. Lion’s Gate PRD has asked staff how they would like to see the long-term maintenance of the vault performed (Homeowner’s Association (HOA) or City staff). Banham explained that the City does not have the staff to clean and maintain a stormwater vault of this size and would have to contract for those services. Staff consulted other cities in Whatcom County to see how they were handling these requests. Most are placing the responsibility for long-term maintenance on the HOA. Because this vault would also handle public streets’ runoff, this responsibility must be clearly identified through a separate agreement. Both the long-term maintenance and the requirement to include public streets need to be recorded with the plat to alleviate any questions about future liability and responsibility.

Bode asked if this vault would be below the groundwater level. Sandal said that it would, and the design process is taking this into consideration. There will be a private neighborhood park area above the stormwater vault, also expected to be maintained by the HOA.

The concern is how to ensure that there would be continued maintenance. Bode commented that taxpayers City-wide should not be paying for stormwater maintenance of this scale in a specific development. The Committee agreed the homeowner’s association should be responsible.

DeValois asked if this project includes private streets. Banham said this project involves both public and private streets.

Action

The Public Works Committee recommended staff work with the City attorney to draft the agreements needed for private stormwater maintenance on this plat.

INFORMATION ITEMS

6. Downtown Restroom Security Follow-Up

Security cameras are being researched by the Police and Parks Departments.

7. Lead and Copper Service Line Inventory Required by Dept. of Health by October 2024

Staff is developing an action plan to comply with the Department of Health’s (DOH) new guidelines that municipalities develop an initial inventory of service lines that meet the Lead and Copper Rule Revision (LCRR) requirements. This information is due to DOH by October 16, 2024.

8. Water Quality Results Fishtrap and Double Ditch from Whatcom County Health
Banham presented the water quality results for Fishtrap and Double Ditch Creeks.

9. Title VI Annual Report Completed
Banham explained the details of the Title VI requirements, noting that staff submitted the 2022-2023 report on May 1st.

10. 2022 Consumer Confidence Report
Banham presented the correct Water Quality Report for 2022, noting that the QR codes direct people to the report in Punjabi and Spanish on the City’s website.

11. South 6th Street Sewer Line Cured In Place Pipe (CIPP) Before and After
Banham presented the before and after photos of the South 6th Street Sewer Line CIPP, noting that the pipes have helped to ensure better flow. The Committee was pleased with the work that had been done.

12. Downtown Parking Options
Banham presented the concept of a “single loaded” parking design (one-way, single row of stalls on left and right) for Judson Alley. The design would be similar to the one at Bender Fields. This design would add approximately 45-50 parking spaces downtown.

Sandal asked if business employees would use it. Vis said business employees would.

13. Projects Update
The Committee reviewed the list of current projects. Banham noted that the City received a grant for Bradley Road. Vis asked about funding for the Community Center renovations. Banham explained that this new funding from the State adds \$309,000, so total funding for renovations is approximately \$900,000.

NEW BUSINESS:

14. Westview Plat Hockey and Basketball Sports Court – North of Isom Elementary School
Banham stated that there was a request to maintain the sports court. He said the City Public Works Staff clean it but don’t re-stripe it. Staff will talk to the Parks Department about re-striping this parklet.

15. WSDOT Guide Meridian Culvert Replacement Schedule
Banham said this WSDOT project is scheduled for the end of summer 2023 with both a north and a southbound detour route. The project will probably require four days of full road closure. Bode suggested that staff talk to Whatcom County for a temporary three-way stop at the intersection of Birch Bay Lynden Road and Berthusen Road.

ADJOURNMENT: The meeting was adjourned at 5:50 pm.

NEXT MEETINGS:
Special Council Meeting May 24, 2023 (WWTP Maintenance Building Discussion)
Regular Meeting June 7, 2023

CITY OF LYNDEN

EXECUTIVE SUMMARY



May 15	February 21, 2023	
Name of Agenda Item:	Calendar	
Section of Agenda:	Other Business	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: N/A
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:	Calendar	
Summary Statement:	Calendar	
Recommended Action:	Not an action item, information only.	

May 15, 2023

Monday

4:00 PM - 5:00 PM

Copy: Parks Committee Meeting -- City Hall 1st Floor Large Conference Room

7:00 PM - 9:00 PM

Copy: City Council Meeting -- Annex Council Chamber

May 16, 2023

Tuesday

9:00 AM - 11:00 AM

Small Cities Meeting -- City Hall 1st Floor Large Conference Room

10:00 AM - 11:00 AM

Copy: Airport Board Meeting -- City Hall 2nd Floor Large Conference Room
Welcome Board Members & Guests,

The Airport board meeting will be in person at City Hall, 2nd Floor Conference room. The meeting takes place the third Tuesday of each month at 10:00 A.M.

4:30 PM - 5:30 PM

Copy: Civil Service Meeting -- City Hall 1st Floor Large Conference Room

May 17, 2023

Wednesday

8:00 AM - 5:00 PM

Possible Jury Trial -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room

4:00 PM - 6:00 PM

Community Development Committee -- City Hall 2nd Floor Large Conference Room

7:00 PM - 9:00 PM

Berthusen Advisory Committee -- Annex South East Conference Room
Berthusen Advisory Committee meets the 3rd Wednesday in: January, March, May, September, and November

May 23, 2023

Tuesday

9:00 AM - 10:00 AM

Leadership Team Meeting -- City Hall 1st Floor Large Conference Room

May 24, 2023

Wednesday

4:00 PM - 6:00 PM

Copy: Special Council Meeting to Discuss New Wastewater Treatment Plant Maintenance Building -- City Hall 1st Floor Large Conference Room

May 25, 2023

Thursday

7:00 PM - 10:00 PM

Planning Commission -- Annex Council Chamber

May 31, 2023

Wednesday

8:30 AM - 5:00 PM

Court -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room

June 1, 2023

Thursday

2:00 PM - 4:00 PM

TRC -- City Hall 2nd Floor Large Conference Room

June 5, 2023

Monday

7:00 PM - 9:00 PM

Copy: City Council Meeting -- Annex Council Chamber