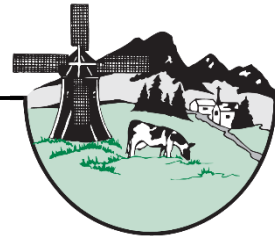


CITY OF LYNDEN



Mayor
Scott Korthuis

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

Online (Microsoft Teams) City Council Meeting
205 Fourth Street, Lynden, WA, 98264
August 17, 2020

Council members will participate in this meeting remotely through an online web-based meeting platform. Per Washington State Proclamation 20-28.3, in-person attendance at public meetings is prohibited at this time.

Members of the public may join the city council meeting telephonically by dialing 1-253-948-9362. You will then be prompted to enter the Conference ID 937 807 389 #. It is necessary to enter the # symbol after entering the numerals.

To join the city council meeting via computer please contact the city clerk at 360-255-7085 before 5 p.m. the day of the council meeting and provide an email address so a meeting invitation can be emailed to you.

If you would like to speak before council please contact the city clerk before 12:00 noon on Thursday prior to the council meeting so that you can be added to the agenda.

The time allotted to speak is up to 4 minutes. You can speak to any topic that is not on that night's agenda. Unscheduled public comments will not be taken at council meeting until further notice.

Call to Order

Pledge of Allegiance- Not held during online meetings.

Roll Call

Oath of Office

Approval of Minutes

- [1.](#) Draft Special City Council Meeting Minutes-August 7, 2020 Public Safety
- [2.](#) Draft Council Minutes- August 3, 2020

Items from the Audience**Scheduled**

- [3.](#) Cameo Besherse

Unscheduled (20 Minutes)

Audience members may address the Council on any issue other than those scheduled for a public hearing or those on which the public hearing has been closed. Prior to commenting please state your name, address, and topic. Please keep comments under 4 minutes.

Consent Agenda

- [4.](#) Approval of Payroll and Claims
- [5.](#) Young Long Plat (Double Ditch Road) Request to Cash Out Water Improvements on Double Ditch Road Instead of Installing Water Main
- [6.](#) Faith Community Church Waterline Easement

Public Hearing

- [7.](#) Public Hearing for Lynden Technical Security Audit

Unfinished Business**New Business**

- [8.](#) Set Public Hearing Date- Ord. 1607-Extension of the Pepin Creek Moratorium
- [9.](#) Appointment to Planning Commission – Karen Timmer
- [10.](#) IT Department (Exempt) – Out of Schedule Compensation and Costing Policy

Other Business

- [11.](#) Draft Public Works Committee Minutes - August 5, 2020
- [12.](#) Calendar

Executive Session**Adjournment**

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 17, 2020	
Name of Agenda Item:	Special City Council Meeting Minutes August 7, 2020-Draft	
Section of Agenda:	Approval of Minutes	
Department:	Police Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Public Safety <input 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:	Special City Council Meeting Minutes August 7, 2020-Draft	
Summary Statement:		
Recommended Action:	For Council Review	

CITY OF LYNDEN

POLICE DEPARTMENT

Steve Taylor, Police Chief

(360) 354-2828



Public Safety Committee Meeting Minutes **SPECIAL COUNCIL MEETING**

Police Department - 203 19th Street

4:00 PM August 07, 2020

Call to Order

Roll Call

Members present: Mayor Scott Korthuis and Councilors Mark Wohlrab, Brent Lenssen, Gerald Kuiken and Kyle Strengholt.

Staff present: City Administrator Mike Martin, Chief Mark Billmire, Chief Steve Taylor, Assistant Chief Thomas Hatley, Lieutenant Jeremy Bos, Support Services Manager Holly Vega.

Scheduled guest present: Chris Pickering, *CEO Northwest Washington Fair.*

Approval of Minutes

1. Approval of July meeting minutes

The minutes from the July 9, 2020 meeting were approved.

Items from the Audience

Scheduled

2. Proposal to extend NW WA Fair to ten days in 2021. Fair manager, Chris Pickering has proposed a ten-day fair in 2021 with proposed dates of August 12th - 21st.

Chris Pickering discussed the potential of expanding the NWWF to 10 days in 2021, addressing several concerns including being open on a Sunday. The Fair could offer a free church service on Sunday morning, and offer vendors the opportunity to close for the day if they choose. The proposed dates would overlap with 2 other Washington fairs, Clark County and Skagit County, the latter of which has concerns regarding vendor overlap and attendance. There would be a greater community impact with more traffic for more days, and both positive and negative effects on local businesses.

Several benefits include the opportunity for more entertainment, attendance would be spread out providing a more enjoyable experience and shorter lines. The livestock shows could be split to allow more exhibitors and the opportunity for the exhibitors to attend the Fair on other days.

Police and Fire have no notable concerns regarding the proposed 10-day fair. Councilor Lenssen discussed the potential for the NWWF to charge hotel/motel tax when they rent out their facility. Mr. Pickering is open for further discussion on this topic.

Unscheduled - None.

Committee Items

3. Council statement affirming they stand for racial equality

Mayor Korthuis will distribute a statement to Council for review.

4. Public Safety Overtime - June 2020

Chief Billmire noted an increase in overtime for Fire in June due to coverage for 787 hours of leave; however, the savings of volunteer hours cuts the cost in half.

Chief Taylor noted a large portion of the overtime for Police is for shift coverage, although it has reduced greatly from where it was at the beginning of the year.

Fire Department Items

5. Fire Monthly Report - July 2020

Chief Billmire presented the monthly report for July noting an increase in call volume over past months. A/C Hatley is part of an incident management team for wildland fires and went on 2 deployments in July, which is reimbursed to the City for his time and vehicle.

The renovation project had previously planned for the temporary use of Station 72 during construction. North Whatcom is now occupying the facility but has agreed to allow a mobile trailer on-site. Design plans now include a mobile trailer and are expected to be ready for review at the end of this month.

There is soon to be a drive through COVID-19 test site at Bender Fields starting August 28th, every Friday 9:00 a.m. – 12:00 p.m. by appointment.

Police Department Items

6. Corporal promotions

Chief Taylor announced the promotion of Scott Myhre and Anders Fiksdal to the positions of Corporal as of August 1, 2020. The assessment and testing process were completed in July and the list was certified by the Civil Service Commission. The corporal positions will provide additional layers of supervision during hours when there is currently none.

7. Police Monthly Report - July 2020

Chief Taylor overviewed the monthly report for July, discussing a notable increase in behavioral and mental health calls likely due to COVID stress. Extra patrol will continue near Bender fields for complaints of kids congregating and playing loud music.

Added Items

8. Lynden WATCH

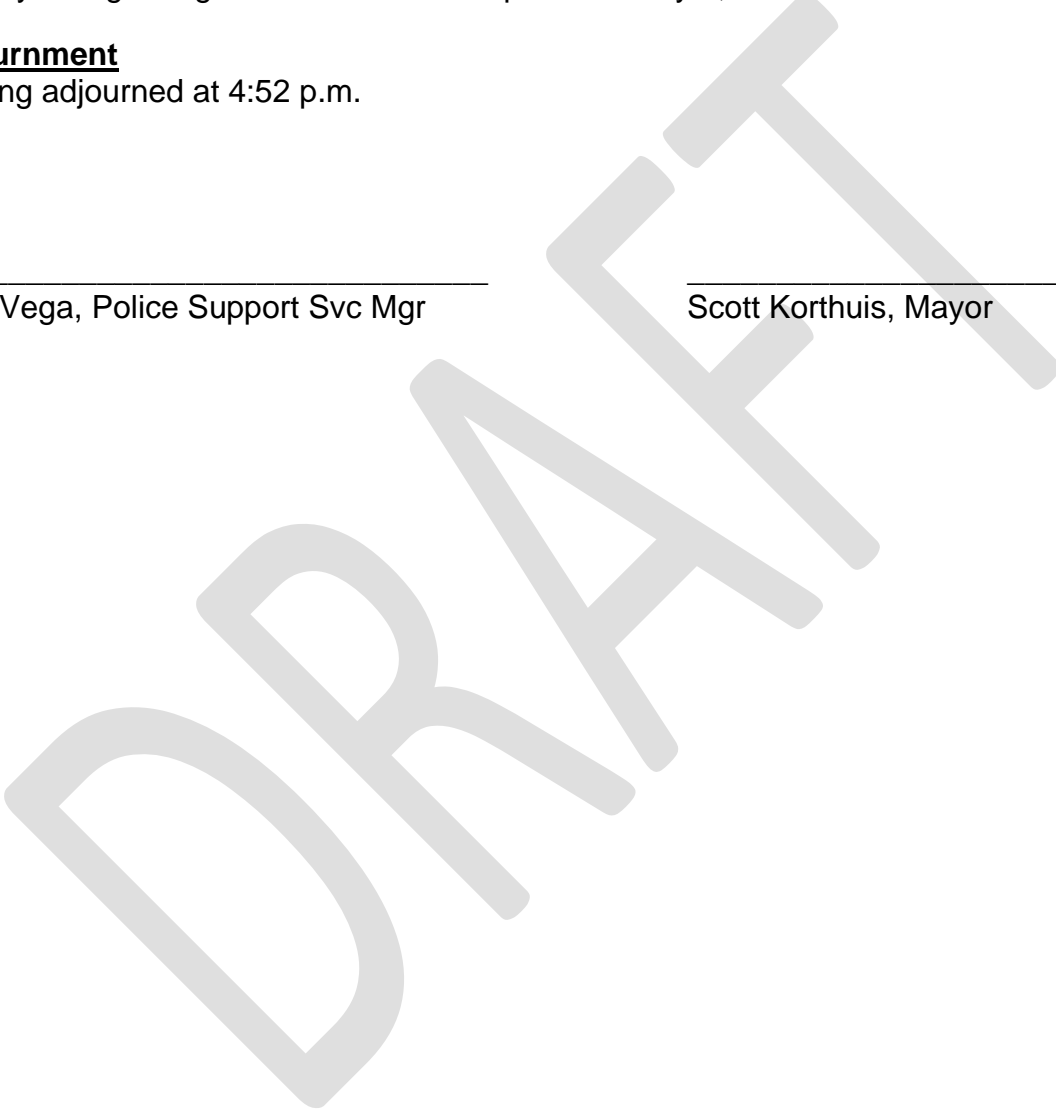
Councilor Wohlrab gave an update on Lynden WATCH. Posts included the recent airplane crash, safety precautions on the Nooksack river, recent thefts, and a letter written by Chief Taylor regarding the march that took place on July 5, 2020.

Adjournment

Meeting adjourned at 4:52 p.m.

Holly Vega, Police Support Svc Mgr

Scott Korthuis, Mayor



CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 17, 2020	
Name of Agenda Item:	Draft Council Minutes- Regular Meeting	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input 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- Regular Meeting	
Summary Statement:	Draft Council Minutes- Regular Meeting	
Recommended Action:	For Council review.	

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



August 3, 2020

1. CALL TO ORDER

Mayor Korthuis called to order the August 3, 2020 regular session of the Lynden City Council at 7:00 p.m. held through an online web-based meeting platform (Microsoft Teams).

ROLL CALL

Members present: Mayor Scott Korthuis and Councilors Gary Bode, Ron De Valois, Gerald Kuiken, Brent Lenssen, Nick Laninga, Kyle Strengholt, and Mark Wohlrab.

Members absent: None

Staff present: Fire Chief Mark Billmire, HR Manager Denise Bosman, Parks Director Vern Meenderinck, Public Works Director Steve Banham, City Clerk Pam Brown, City Administrator Mike Martin, and City Attorney Bob Carmichael.

OATH OF OFFICE- None

APPROVAL OF MINUTES

Councilor Laninga moved and Councilor Strengholt seconded to approve July 6, 2020 and July 20, 2020 minutes as presented. Motion approved on a 7-0 vote.

ITEMS FROM THE AUDIENCE

Scheduled: None

Unscheduled- None

2. CONSENT AGENDA

Approval of Payroll Disbursed – July 16 through July 31, 2020

Paychex EFT	\$295,519.00
City of Lynden EFT.....	\$66,299.10
Warrant Liability	\$64,763.53
Subtotal	\$416,581.63
Paychex EFT Liability	\$7,979.58
Total EFT & Other Liabilities	\$434,561.21

CITY OF LYNDEN



CITY COUNCIL
MINUTES OF REGULAR MEETING

Approval of Claims – August 3, 2020

Manual Warrants No.	-	through	-		\$0.00
EFT Payment Pre-Pays					\$398,770.13
				Sub Total Pre-Pays	\$398,770.13
Voucher Warrants No.	<u>19893</u>	through	<u>19930</u>		\$85,853.01
EFT Payments					\$0.00
				Sub Total	\$85,853.01
				Total Accts. Payable	\$484,623.14

Set Public Hearing Date (August 17) for Lynden Technical Security Audit

Councilor Laninga moved and Councilor Wohlrab seconded to approve the Consent Agenda. Motion approved on 7-0 vote.

3. PUBLIC HEARING - None

4. UNFINISHED BUSINESS - None

5. NEW

CARES Act Interlocal Agreement

Congress passed what is known as the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March. Among many other things, it gives direct grants to cities for costs associated with the COVID-19 pandemic. Whatcom County and all its cities have pooled some of their CARES funds to provide a unified response to the COVID crisis. That money will be redistributed to qualifying entities, including Lynden and all small businesses and nonprofits in the 98264 zip- code.

Total funding in the pool is \$16.3 million and Lynden proposes contributing \$150,000 to that amount. Participating in this program gives Lynden the ability to potentially triple its contribution by gaining access to the larger pool.

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



The money will be distributed in “microgrants” of \$15,000 or less. Agencies apply for a grant, and a Business Assistance Team will vet the applications. The Team is comprised of representatives from the Chamber of Commerce, the Downtown Business Association and a local businessman. The deadline for applying was July 31, 2020. There are currently thirty-five small businesses and non-profits in the 98264 zip-code that have applied for grants.

All local governments in the County have or will soon, approve the Agreement. However, timing issues precluded inclusion of certain edits. We recommend signing the Agreement tonight, but we would like Council to be aware of our recommended edits.

Councilor Strengholt moved and Councilor Kuiken seconded to ask the City Attorney to describe the edits that were included in the Interlocal Agreement then authorize the Mayor to sign it. Motion approved on 7-0 vote.

6. OTHER BUSINESS

Council Committee Updates

Councilor Lenssen reporting for the Community Development Committee which involved discussion of:

- CDC meeting had 5 council members in attendance
- City attorney Bob Carmichael was in attendance and lead a discussion on the possible role of a Hearing Examiner for the city of Lynden
- The new sign on Front Street
- Update on the Cedarbrook application
- RFI for former YMCA

Councilor Bode reporting for the Public Works Committee which involved discussion of:

- ADA parking stall on 3rd and Front Street
- Proposal for “Iceworks” business from David Jansen
- Benson Road pedestrian improvements
- Building Official position has transferred from Public Works department to the Planning department
- 17th Street extension project
- Foxtail Street gap elimination
- NW Fairgrounds recoating project for reservoir tank
- Traffic signal improvements
- An airport height improvement funded by the insurance company of the plane that crashed

CITY OF LYNDEN

CITY COUNCIL
MINUTES OF REGULAR MEETING



Chris Pickering Director of the NW WA Fair has spoken to Mayor Korthuis about having a 10-day Fair next August. The Mayor placed the item on the Public Works Committee agenda, and he will also place the item on the Public Safety Committee agenda. He invited council members to attend one of those meetings.

7. EXECUTIVE SESSION

Council recessed into executive session at 7:29 p.m. to discuss a potential litigation matter. It was anticipated that the executive session would last approximately 15 minutes and that a decision would not be made.

8. ADJOURNMENT

The August 3, 2020 regular session of the Lynden City Council adjourned at 7:44 p.m.

Pamela D. Brown, MMC
City Clerk

Scott Korthuis
Mayor

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 18, 2020	
Name of Agenda Item:	Cameo Besherse	
Section of Agenda:	Audience: Scheduled	
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 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:	Discussion: Black Lives Matter	
Summary Statement:	None	
Recommended Action:	For information only.	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:		August 17, 2020
Name of Agenda Item:		Approval of Payroll and Claims
Section of Agenda:		Consent
Department:		Finance
Council Committee Review:		Legal Review:
<input type="checkbox"/> Community Development	<input type="checkbox"/> Public Safety	<input type="checkbox"/> Yes - Reviewed
<input checked="" type="checkbox"/> Finance	<input type="checkbox"/> Public Works	<input type="checkbox"/> No - Not Reviewed
<input type="checkbox"/> Parks	<input type="checkbox"/> Other: _____	<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 – City Council



Meeting Date:	August 17, 2020	
Name of Agenda Item:	Young Long Plat (Double Ditch Road) Request to Cash Out Water Improvements on Double Ditch Road Instead of Installing Water Main	
Section of Agenda:	Consent	
<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:	Young Letter	
Summary Statement:	<p>Long plats, per City Development Standards, are normally required to improve the utilities across their frontage. Because the frontage of the Young Long Plat is just sixty feet in length the owner has requested to pay the City directly for the certified cost of improvements rather than performing the work themselves. The City will use these funds in the future to make a continuous pipeline improvement from the south end of Double Ditch Road to the intersection of Village Drive.</p>	
Recommended Action:	<p>That City Council accept the request by the Young Long Plat to provide cash in the amount of the utility improvements associated with their plat, in lieu of performing the work.</p>	



Freeland and Associates, Inc.

220 West Champion Street
Suite 200
Bellingham, Washington
(360) 650-1408

August 3, 2020

City of Lynden – Public Works Department
Public Works Department
300 4th Street
Lynden, WA 98264

Attention: Mark Sandal

Subject: Young Long Plat - Cost Certification

Dear Mark,

At the City's request, we have reviewed construction costs prepared by the contractor of the Young Plat for the water line improvements in Double Ditch Road. The costs appear acceptable and within industry standard. Please feel free to contact us if you have any questions about this.

Sincerely,
Freeland and Associates, Inc.



Miles McEathron, PE
Project Engineer



Date: July 30, 2020
To: Miles: Freeland

Proposal bid Double Ditch water line

This proposal has been prepared for the install of 60 LF of water line, (1) 8x8" tee, (2) 8" gate vales.

- 1. Pipe, valves, tee: \$2,387.00**
 - a. 60 LF of 8" C900
 - b. (2) 8" gate valves
 - c. (1) 8x8" tee
 - d. Accessory kits
- 2. Thrust block: \$440.00**
 - a. Concrete
 - b. Lumber for forming
 - c. Labor for forming and pouring
- 3. Machinery and labor: \$665.00**
 - a. 3 man crew for pipe/valve install
 - b. Labor for valve assembly bolting
 - c. Trench backfill and compaction

Total proposal price, excluding sales tax: \$3,492.00



Reque

CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



Meeting Date:	August 17, 2020	
Name of Agenda Item:	Faith Community Church Waterline Easement	
Section of Agenda:	Consent	
<u>Council Committee Review:</u>	<u>Legal 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: _____	<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:		
1) Faith Community Church Developer Extension Agreement 2) Easement Agreement		
Summary Statement:		
<p>Faith Community Church (FCC) is currently a Berthusen Water Association member which receives water from the City. Their underground tank that they have used to store water for fire protection is obsolete and leaks. FCC has requested to be able to extend a larger diameter water line along the north side of Birch Bay Lynden Road to be able to provide adequate fire protection. The attached Developer Extension Agreement and Water Line Easement Agreement provide for the extension of a 12-inch waterline from Berthusen Road across farm property owned by Mr. Mayberry and the church frontage. This line will be dedicated to the City upon completion and so requires an easement for access. Water service will continue to be provided by the Berthusen Water Association under its wholesale water agreement with the City.</p>		
Recommended Action:		
<p>That City Council approve the Developer Extension Agreement and Easement Agreement for the Faith Community Church waterline extension and authorize the Mayor’s signature on both documents.</p>		

RETURN TO:

ROBERT A. CARMICHAEL
CARMICHAEL CLARK, P.S.
P.O. BOX 5226
BELLINGHAM, WA 98227
PHONE: 360-647-1500

DOCUMENT TITLE:

DEVELOPER EXTENSION AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTORS:

FAITH COMMUNITY CHURCH, a Washington nonprofit corporation

GRANTEE:

CITY OF LYNDEN, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

PTN SE 1/4 OF SE 1/4, S23, T40N, R2E

Full legal descriptions at pages 14-15 hereto

ASSESSOR'S TAX PARCEL NUMBER(S):

400223 410070 0000
400223 410070 0001
400223 429064 0000
400223 466067 0000
400223 515031 0000

DEVELOPER EXTENSION AGREEMENT

THIS DEVELOPER EXTENSION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20__, by and between FAITH COMMUNITY CHURCH, a Washington nonprofit corporation (hereinafter “DEVELOPER”) and the CITY OF LYNDEN, a Washington municipal corporation (hereinafter “CITY”). Developer and City may be referred to herein individually as “Party” or collectively as “Parties.”

Recitals

WHEREAS, City is a Washington municipal corporation that is capable of supplying water for fire protection purposes to Whatcom County residents dwelling in close proximity to the City’s limits; and

WHEREAS, Developer is the sole owner of real property within Whatcom County legally described in Exhibit A attached hereto and fully incorporated herein by reference (hereinafter “Benefitted Property”); and

WHEREAS, CMF Farming Properties, L.L.C. is a Washington limited liability company (hereinafter “CMF”) which is the sole owner of real property within Whatcom County legally described in Exhibit B attached hereto and fully incorporated herein by reference (hereinafter “Burdened Property”); and

WHEREAS, Developer wishes to secure a source of water for fire protection purposes for the Benefitted Property by constructing an improvement—specifically entailing the installation of a water line providing fire flow (hereinafter “Fire Protection Facilities” or “Project”)—that will be connected to and supplied by City’s water main and run under and across a portion of the Burdened Property to a connection point on the Benefitted Property, said improvement being depicted in the Preliminary Site Plan attached hereto as Exhibit C and fully incorporated herein by reference; and

WHEREAS, in order to establish certain development conditions upon which both Parties can rely to insure that the development of the Project is consistent with City policies, plans, design standards and ordinances, City and Developer have agreed to enter into this Agreement; and

WHEREAS, these recitals are a material part of this Agreement; and

NOW, THEREFORE, in consideration of the promises and conditions herein, the Parties hereby covenant and agree as follows:

Terms

1. LOCATION OF IMPROVEMENT

The proposed improvement will be installed in approved easements, on approved public rights-of-way and/or on private property and shall be for the use and benefit of the

Benefitted Property described in Exhibit A.

2. DESCRIPTION OF IMPROVEMENT AND OWNERSHIP

The proposed improvement (i.e., Fire Protection Facilities) will consist of approximately 1375 lineal feet of 12 inch water line (providing fire flow) and appurtenances connected to the City water main, as shown in Exhibit C, and shall be installed in accordance with plans and specifications approved by the City, and in accordance with the standards and conditions set forth in the "Project Manual for Engineering Design and Development Standards" (hereinafter "Project Manual") as adopted by the Lynden Municipal Code, the terms and conditions of which are made a part hereof.

Developer represents, guarantees and warrants that Developer is the owner of the Benefitted Property and that Developer shall be responsible for construction of the Project in conformance with the terms of this Agreement.

3. PERMITS REQUIRED

Permits, approvals or agreements are required by the County and sometimes other jurisdictions, prior to initiating any construction or demolition work. Work covered by this Agreement may require multiple permit authority review and approvals. Several types of permits and approvals may require prior approval from authorities other than County, before a building or other substantial permit can be issued. Developer is responsible for submitting timely applications for and obtaining all required permits and approvals.

The following general categories describe the major permits, approvals and agreements:

A. Environmental Review

An Environmental Checklist is required for this Project: _____ (yes/no)

B. Permits required by City for Land Development Activities

- i. Fill and Grade Permit. A Fill and Grade Permit is required for all significant land alterations, including stockpiling, which is not covered by other permits and agreements. The City must be contacted prior to any contemplated clearing or grading activities.
- ii. Street Obstruction/Excavation Permit. A Street Obstruction/Excavation Permit is required for any work within the road right of way which is not covered by other permits and agreements. Such work may include utilities work, road or lane closures, frontage improvements, access and temporary uses.
- iii. Other permits/approvals as required by City or County ordinance.

C. Other Permits or Approvals from permitting agencies with jurisdiction.

Permits or approvals from outside authorities other than City may be required. Developer will coordinate with such other authorities and obtain all such permits. Copies of all permits from such outside authorities shall be given to City. Permits may include but are not limited to the following: Hydraulic Project approvals from the Washington State Department of Fish and Wildlife; Short Term Water Quality Modification Approval and/or Dam Safety Permit from the Washington State Department of Ecology; Section 404 Permit and Section 10 Permit/letter of permission from the U.S. Army Corps of Engineers; Baseline General Permit to Discharge Stormwater Associated With Construction Activities (NPDES) and/or Waste Discharge Permits from the Washington Department of Ecology; Developer/Local agency Agreement from the Washington State Department of Transportation.

County or the regulating governmental agency shall be contacted for further details.

4. FEES AND CHARGES

- A. An initial plan review deposit fee in accordance with Division 2, Section 2.A. of the Project Manual shall be paid by Developer to City. The initial fee, calculated by City, is \$_____.
- B. All costs incurred by City on construction of the Project of the shall be borne by Developer. The fee to cover all of City’s costs shall be based upon actual time and expenses and shall include without limitation inspection, engineering, legal, administrative, financial or any other services performed by or for City in connection with the Project. The fee shall be adjusted by the City and an additional deposit required if actual costs incurred indicate that the deposits will not cover all costs. The fee shall be paid to City in consideration of administering this Agreement (the administration of which is outlined in Division 2 – Applicant’s Checklist of the Project Manual).
- C. This Agreement shall not provide any vested rights to a particular general facilities charge. Any general facilities charges due and owing shall be paid at the rate in effect at the time each individual building/lot actually connects to the City system.

5. PAYMENT OF FEES

Developer shall pay all fees required by state and local agencies and City. City fees shall be paid at the times designated in Sections 2. A and 3. E of Division 2 of the Project Manual.

All of the charges detailed herein shall be and become a lien on the Benefitted Property.

6. PROFESSIONAL QUALIFICATIONS

Professionals in the technical fields of engineering, architecture or surveying who prepare or are responsible for the preparation of plans, drawings, specifications, calculations,

technical reports, etc., for the process of obtaining required permits or approvals shall currently be licensed or registered in the State of Washington.

7. STANDARD SPECIFICATIONS

All work and materials shall conform to the most current editions of: the STANDARD SPECIFICATIONS FOR ROAD, BRIDGE AND MUNICIPAL CONSTRUCTION and APWA SUPPLEMENT as prepared by Washington State Department of Transportation, City of Lynden Ordinances, the City of Lynden “Project Manual for Engineering Design and Development Standards,” applicable Whatcom County design and development standards, and according to the recommendations of the manufacturer of the material concerned.

All work and materials shall be subject to the approval of City.

8. PLANS AND SPECIFICATIONS

Developer shall submit three sets of the complete plans and specifications for the Project—prepared in accordance with Division 3 – Construction Plan Requirements of the Project Manual—to City for preliminary review. The plans shall be stamped “PRELIMINARY” and sealed by a Professional Engineer licensed in Washington. After City’s preliminary review, comment, and corrections, Developer shall submit the corrected plans and specifications for the Project to the appropriate State Agencies for final review and action, if required. After approvals have been received, Developer shall submit a final set of Construction Contract Documents including reproducible plans to City for final review and approval. Upon final approval by City, a set of these plans stamped “APPROVED” shall be made available to Developer.

9. COMPREHENSIVE PLAN

Developer shall check the Project for compliance with the City of Lynden Comprehensive Plan (hereinafter “Comprehensive Plan”).

If the Project is not in compliance the Comprehensive Plan, an engineering report is required. The report will consider the impact upon City’s utilities and transportation systems. In certain cases, the Project may require an addendum to, or to be incorporated in, the Comprehensive Plan.

10. EVIDENCE OF INSURANCE

Developer or Developer’s Contractor shall take out and maintain during the life of this Agreement Public Liability Insurance for bodily injury and property damage liability as specified in Section 1-07.18 of the APWA Supplement to the WSDOT Standard Specifications and as modified herein. The policy shall include without limitation, coverage for explosion, blasting, collapse and destruction of underground utilities (X.C.U.) and contingent liability, including products and completed operations and blanket contractual liability, as shall protect Developer or Developer’s Contractor, City and City’s outside consulting engineers (City’s Engineers). Developer shall have City and City’s

Engineers specifically added as additional named insureds in said policies, all at no cost to City or City’s Engineers. The above insurance shall cover City, City’s Engineers, Developer, Developer’s Contractor and Subcontractors for claims or damages for bodily injury, including wrongful death, as well as other claims for property damage which may arise from operations under this Agreement whether such operations be by themselves or by any subcontractor or anyone directly or indirectly employed by either or them and Developer agrees, in addition, to indemnify and save harmless City and City’s Engineers, either or both, from all suits, claims, demands, judgments, and attorney’s fees, expenses or losses occasioned by the performance of this Agreement by Developer, Developer’s Contractor, and subcontractor, or persons working directly or indirectly for Developer or Developer’s Contractor, or on account of or in consequence of any neglect in safeguarding the work or failure to conform with the safety standards for construction work adopted by the Safety Division of the Department of Labor and Industry of the State of Washington.

The amount of such insurance shall be as follows: Bodily injury liability insurance in an amount not less than \$2,000,000.00 for injuries, including wrongful death, to any one person and subject to the same limit for each person, in an amount not less than \$2,000,000.00 on account of any one occurrence, and property damage liability insurance in an amount not less than \$2,000,000.00 for each occurrence/\$2,000,000.00 aggregate, and City shall be named as an additional insured.

Developer or Developer’s Contractor shall not cause any policy to be canceled or permit it to lapse, and all policies shall include a clause to the effect that the policy or certificate shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance or any other material change until notice has been mailed to City stating when, not less than thirty (30) days thereafter, such cancellation or reduction or change shall be effective.

All certificates of insurance, authenticated by the proper officer of the insurer, shall state in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date, and the above-mentioned notice of cancellation clause. City may in its sole discretion accept insurance covering a Subcontractor in character and amounts less than the standard requirements set forth under this subsection where such standard requirements appear excessive because of the character or extent of the work to be performed by such Subcontractor.

A Certificate of Insurance evidencing coverage and a copy of the endorsement naming City and City’s Engineer as additional insureds must be submitted to City prior to the commencement of the Project.

11. PERFORMANCE BOND

For work within City owned property or right of way, Developer shall provide a performance bond or cash bond between Developer and City as specified in Division 9 of the Project Manual and Section 1-03.4 of the WSDOT Standard Specifications. The bond shall be in an amount equal to 150% of the City’s estimated cost of the Project, or 150% of actual cost, if known, prior to the commencement of the work. Cash bond shall be

approved by City Attorney.

The Performance Bond shall cover the faithful performance of Developer and the payment of all obligations arising thereunder in accordance with Section 1-03.4 of the APWA Supplement to the WSDOT Standard Specifications. This bond is submitted to comply with all requirements of RCW 39.08, as a statutory bond, and all the requirements of said statute are deemed incorporated herein by reference and shall control in case of any inconsistencies.

The Performance Bond shall require Developer to pay all persons furnishing labor and materials and shall hold City harmless from any claims thereof, whether any such claims would arise under the public works lien statutes, or the mechanic lien statutes of the State of Washington and compliance with the formal requirements of either or both of said statutes shall not be a condition to recovery upon said bond.

12. MAINTENANCE BOND

Developer shall provide a maintenance bond or a cash bond in the amount of ten percent (10%) of the Contract Construction Costs for improvements. Said bond shall guarantee maintenance for two (2) years after acceptance of the improvements by City and shall be in a form acceptable to City.

13. EASEMENTS

Developer shall obtain all necessary rights of way, easements and limits of construction permits without cost to City as specified in Section 1-07.24 of the APWA Supplement to the WSDOT Standard Specifications and as modified herein. Developer shall supply City with the supporting data necessary to verify the location of the rights of way or easements. If legal services are required by City in connection with the easement, the cost of such services shall be reimbursed by Developer to City on demand and before acceptance of the improvements.

In general, where construction will take place on private property other than Developer's, Developer shall obtain temporary construction easements and permanent easements subject to approval by the City. At the completion of construction and prior to City acceptance of the improvements, said temporary construction easements shall be released by the private property owner, and final signed permanent easements shall be recorded in City's name at the Whatcom County Auditor's Office. Copies of the recorded easements shall be delivered to City. The legal descriptions of said permanent easements shall be prepared and stamped by a licensed professional surveyor.

For the Project, as it is presently anticipated that a portion of the improvement will be constructed upon the Burdened Property owned by CMF, Developer shall obtain a temporary construction easement between itself and CMF authorizing and facilitating that portion of Project construction that will occur on the Burdened Property. In addition, Developer shall obtain from CMF a corresponding permanent easement in City's name per the conditions in the preceding paragraph.

Note that whenever a City utility is to be laid underground through private property, a permanent easement of not less than twenty feet (20') in width shall be provided for one utility line. For more than one utility line, a permanent easement shall be provided with a width of not less than ten feet (10') on each side of each utility line to edge of easement, and ten feet (10') of separation between each utility line. Easements shall be approved by the City and compatible with the City's Comprehensive Plan to insure continuation of a utility.

Developer is responsible for any encroachments on right of way, public property, or surrounding private property. Without any cost to City, Developer is required to remove or rebuild in an approved manner any portion of the construction that may have been constructed over property or setback lines.

Where work is done on easements, Developer shall obtain a written statement of satisfactory restoration from each property owner involved, and furnish a copy of the statement to City.

14. PERMITS AND BONDS

All permits and bonds necessary and effective during the prosecution of the Project works and subsequent guaranty period, shall be obtained and paid for by Developer. Developer shall give all notices required by such permits and provide all bonding and insurance required by such permits.

Developer shall provide City with a copy of all such permits before construction begins. Developer shall obtain and pay for all surveys, easements, rights of way and franchises required for the Project works.

15. REGULATIONS

Developer shall give all notices and comply with all Federal, State, and local laws, ordinances, rules and regulations bearing on the conduct of the Project works as outlined in Section 1-07 of the APWA Supplement to the WSDOT Standard Specifications. City will not consider any plea of misunderstanding or ignorance of such requirements.

16. COMMENCEMENT OF CONSTRUCTION

No work shall commence on improvements without construction plans stamped by City as "APPROVED" or without all necessary permits or approvals from the County.

17. RESPONSIBILITY FOR PROJECT MANAGEMENT

Developer shall be responsible for Project management and coordination. Project management includes but is not limited to preparation of construction contract plans and specifications, bidding of construction contract, and overall coordination of utility and road locations, elevations and conflicts of said. Developer shall save City harmless of any conflicts or disputes resulting from or in connection with the construction contract.

18. INSPECTIONS AND TESTS

Inspection and test of work and materials shall be strictly for the benefit of City and nothing contained herein shall be construed to relieve Developer of Developer’s obligations under the Contract.

As a minimum, the following scheduled inspections and tests shall be conducted by City:

- 1. Start of construction inspection.
- 2. Test inspections.
- 3. Final inspections.
- 4. End of Warranty Period inspection (to be conducted at least two (2) weeks prior to expiration of Developer’s maintenance bond).

Other scheduled inspections and tests may be required to comply with other sections of the Contract Documents, Engineer’s instructions, laws or ordinances. Some inspections and tests may be conducted by an authority other than City.

Developer shall give City forty-eight (48) hours written notice prior to the time when the state of work is such that a scheduled inspection and test can be conducted.

19. CONNECTION TO CITY’S UTILITY SYSTEM

Not less than forty-eight (48) hours prior to the time that said utility extension is partially or fully completed and connection to City’s system is desired, written application for permission to make the actual connection to City’s system at a specified time shall be made by Developer or Developer’s Contractor. All new connections to the existing system and all testing of the new line shall require authorization of City and shall be conducted in the presence of City’s representatives.

20. AS-BUILTS

Before final acceptance, Developer shall provide City with all final as-built drawings in the form of two bonded copies and digital copies in portable document format (PDF) and in the current release of Autocad with external references bound and submitted to the City on a USD. Refer to Division 3–Construction Plan Requirements of the Project Manual.

21. FINAL ACCEPTANCE

Developer agrees to execute a bill of sale prepared or approved by the City Attorney within sixty (60) days of the approved and completed improvement. Said bill of sale will provide for transfer of title of the constructed improvement from Developer to City and will further include the following items and statements:

- a. Cost including administration, legal and engineering fees, for the

improvement construction.

- b. That Developer owns without encumbrance the improvement which constitutes the Project and, therefore, is solely able to transfer title of the improvement to City, free and clear of encumbrances by warranty bill of sale. That Developer will defend the title and right of possession of City against all third-party claims of title or encumbrance. That Developer has the right to construct and install the improvement in and upon the land area in which it is installed.
- c. That all bills for labor and material have been paid.
- d. That Developer has the right to transfer said title and will warrant and defend the same against lawful claims and demands of all persons from two (2) years of the date of the bill of sale.
- e. Consideration will be recited that Developer grants the improvement to City for the consideration of incorporating the improvement in the overall system of the City.
- f. That the improvement has been constructed in accordance with City's specifications and this Agreement and is readily operable as an integral part of the utility system and/or roadway, as applicable.
- g. That all copies and warranties or guarantees from Developer or Developer's Contractor (including subcontractors and suppliers) specifically required under this Agreement have been delivered to City.
- h. That Developer further warrants that for a period of two (2) years from the date of the bill of sale that the Project improvement will remain in perfect working order and condition except where abused or neglected by City and Developer will promptly repair or replace at Developer's own expense any work or material that may prove to be defective during said two (2) year period of warranty.

22. LATECOMER AGREEMENT EXECUTION AND RECORDING

Following receipt of any required bill of sale, as heretofore described, City may agree to execute and record a latecomer agreement for eligible projects subject to Chapter 13.28 of the Lynden Municipal Code and other applicable ordinances and state statutes.

23. TIME FOR COMPLETION

The Project shall be complete and accepted within two (2) years of the date of execution of this Agreement. If the Project is not completed and accepted within two (2) years from the date below, then Developer's rights under this Agreement shall cease and no additional services shall be connected, unless and until Developer shall make a new application or City consents to the renewal of the existing application and Developer shall

pay the additional administrative, legal and engineering costs involved, for the renewal of the existing application.

24. FAILURE TO COMPLY

Failure to comply with measures set forth herein shall result in revocation of permits and forfeiture of all rights to occupy or otherwise use the identified improvement. Should City determine that Developer has failed to so comply, City shall provide Developer with written notice of such failure, setting forth the specific item or items of failure, and provide Developer an opportunity to cure the defect of defects. All permits and rights shall be null and void if not cured within fifteen (15) calendar days of receipt of the notice from City by Developer. The Director of Public Works shall determine if Developer has cured such defect or defects and so notify Developer in writing within the fifteen (15) day opportunity to cure. Developer may appeal the determination of the Director of Public Works in writing to the City Administrator within five (5) days of receipt of such determination from the Director of Public Works. Developer shall set forth the specific item or items being appealed and shall have the opportunity to present information to the City Administrator supporting such appeal. Within ten (10) days of receipt of the appeal, the City Administrator shall issue a written decision. The Administrator’s determination shall be final and binding. Nothing in this paragraph is intended as a waiver of either party’s right to seek judicial review, as may be permitted by law, with regard to interpretation or enforcement of this Agreement after exhaustion of these administrative remedies.

25. ASSIGNMENT – BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall not be assigned without the prior written consent of City; provided that, such consent shall not be unreasonably withheld. This Agreement shall run with the land and shall be binding on the successors and assigns of Developer.

26. WAIVER

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.

27. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be Whatcom County Superior Court.

28. COMPLETE AGREEMENT

This Agreement constitutes the complete agreement between Developer and City. This Agreement may be modified in writing only, upon mutual agreement of Developer and City.

IN WITNESS WHEREOF, the Parties hereunto enter this Agreement on the date first

above written.

FAITH COMMUNITY CHURCH

By:
Its:

CITY OF LYNDEN

By:
Its:

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of **FAITH COMMUNITY CHURCH**, a Washington nonprofit corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of the **CITY OF LYNDEN**, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

EXHIBIT A
Benefitted Property

Assessor's Tax Parcel Numbers: 400223 410070 0000 & 400223 410070 0001

THE WEST 210 FEET OF THE SOUTH 1245 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT RIGHT OF WAY FOR BIRCH BAY LYNDEN ROAD LYING ALONG THE SOUTHERLY LINE THEREOF.

SITUATE IN WHATCOM COUNTY, WASHINGTON,

Assessor's Tax Parcel Number: 400223 429064 0000

THE EAST 140 FEET OF THE WEST 350 FEET OF THE SOUTH 1245 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT RIGHT OF WAY FOR BIRCH BAY LYNDEN ROAD ALONG THE SOUTHERLY LINE THEREOF.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT B
Burdened Property

400223 466067 0000	Chasteen
Agr, Osag, Crop/Fruit/Tree/Nut/Vegs	19.59Acres

The SE ¼ of the SE ¼ of Section 23, T40N, R2E, W.M., Whatcom County, Washington, less roads.

EXCEPT: The West 350 feet of the South 1245 feet of said SE ¼ of SE ¼ of said Section 23.

EXCEPT: Beginning at the Southeast corner of Section 23, T40N, R2E, W.M., Whatcom County, Washington; thence North 1200 feet; thence West 363 feet; thence South 1200 feet; thence East 363 feet to the Point of Beginning. Less Roads. Containing 20 acres, more or less.

Situate in Whatcom County, Washington.

SUBJECT TO: Covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

400223 515031 0000	Chasteen
Agr, Osag, Crop/Fruit/Tree/Nut/Vegs	4.49 Acres

Beginning 600 feet North of the Southeast corner of said Section 23; thence West 363 feet; thence South 600 feet; thence East 363 feet; thence North 600 feet to the Point of Beginning. Less roads. Containing 5 acres.

Situate in Whatcom County, Washington.

SUBJECT TO: Covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

EXHIBIT C
Preliminary Site Plan

RETURN TO:

Starckenburg-Kroontje
Attorney at Law P.S.
PO Box 231
Lynden, WA 98264

DOCUMENT TITLE:

Access and Utility Easement

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTOR:

CMF FARMING PROPERTIES, L.L.C., a Washington limited liability company

GRANTEE:

CITY OF LYNDEN, a municipal corporation

ABBREVIATED LEGAL DESCRIPTION (Full Legal Descriptions on Pages 1-2):

Ptn. SE SE, S23, T40N, R2E

ASSESSOR’S TAX PARCEL NUMBER(S):

400223 466067 0000
400223 515031 0000

**ACCESS AND UTILITY EASEMENT
CITY OF LYNDEN, WASHINGTON**

THE UNDERSIGNED, CMF FARMING PROPERTIES, L.L.C., a Washington limited liability company, its successors and assigns, (hereinafter referred to as “GRANTOR”) for the public benefit, hereby conveys and grants to the CITY OF LYNDEN, a municipal corporation, its successors and assigns (hereinafter referred to as the “CITY”), from the following described property (hereinafter referred to as “Grantor’s Property”):

Assessor’s Parcel Number: 400223 466067 0000

The Southeast quarter of the Southeast quarter of Section 23, Township 40 North, Range 2 East of W.M., less roads.

EXCEPT: The West 350 feet of the South 1245 feet of said Southeast quarter of the Southeast quarter of said Section 23.

EXCEPT: Beginning at the Southeast corner of Section 23, Township 40 North, Range 2 East of W.M., Whatcom County, Washington; thence North 1200 feet; thence West 363 feet; thence South 1200 feet; thence East 363 feet to the point of beginning. Less roads. Containing 20 acres more or less.

Situate in Whatcom County, Washington.

Assessor’s Parcel Number: 400223 515031 0000

Beginning 600 feet North of the Southeast corner of Section 23, Township 40 North, Range 2 East of W.M.; thence West 363 feet; thence South 600 feet; thence East 363 feet; thence North 600 feet to the point of beginning. Less roads. Containing 5 acres.

Situate in Whatcom County, Washington.

A permanent, non-exclusive access and utility easement (hereinafter referred to as “Easement”) over, across, along, in, upon and under the portion of property (hereinafter referred to as “Easement Area”) described on Exhibit A and depicted on Exhibit B attached hereto, both fully incorporated herein by reference.

The CITY shall have the right, without prior institution of any suit or proceeding at law, to enter upon said Easement Area for the purpose of constructing, operating, maintaining, improving, removing, repairing, replacing and using one (1) underground water line, together with all underground connections and underground appurtenances thereto (the “Facility”), and together with the right of reasonable ingress to and egress from the Easement Area over the Grantor’s Property for the foregoing purposes in the event that access is not reasonably feasible directly from the public road right-of-way. The CITY shall not install or locate within the Easement Area any above-ground infrastructure, including but not limited to, hydrants, meters and boxes. All utility pipes shall be located no more than five (5) feet from the southern outside edge of the Easement Area to avoid creating an unnecessary burden on the Grantor’s Property. Also, all utility pipes shall have a minimum of three (3) feet of cover.

The GRANTOR, by executing this Easement Agreement, and the CITY by accepting and recording this Easement Agreement, do hereby mutually covenant and agree as follows:

1. The CITY shall, if either the Grantor’s Property or Easement Area is disturbed by the operation, improvement, maintenance, removal, repair, replacement or use of the Facility, restore the surface of the Grantor’s Property or Easement Area as nearly as possible to the condition in which it existed at the commencement of said operation, improvement, maintenance, removal, repair, replacement, use or other disturbance. In the event grass is disturbed, the CITY’S obligation to restore shall be limited to re-seeding disturbed grass. In the event vegetation such as plants, shrubs, or trees are disturbed, the CITY’S restoration obligation shall be deemed satisfied if it replaces the disturbed plants, shrubs, or trees with smaller or younger plants. The CITY is not required to replace disturbed grass, plants, shrubs, trees or other vegetation with the same species or variety as what was disturbed, but will make reasonable efforts to do so. In addition, the restoration of the soil in its original layers shall occur to ensure all topsoil is preserved on the Grantor’s Property. Notwithstanding the foregoing, there shall be a special restoration obligation with respect to disturbances to berry plants on Grantor’s Property growing *outside* the Easement

Area: in such cases the CITY shall replace said berry plants with similarly mature berry plants or, if replacement is not feasible, the CITY shall provide compensation to GRANTOR for the loss of the plant maturity. Disturbances to berry plants growing *within* the Easement Area are not subject to this special restoration obligation, provided that the City takes reasonable steps to minimize the disturbance to any berry plants.

Further, the CITY shall take all reasonable precautions and efforts to avoid unreasonable interference or obstruction of Grantor's Property while operating and maintaining the water line within the Easement Area, specifically including but not limited to, minimizing the creation of dust that could coat any plants growing on the Grantor's Property.

2. The CITY shall protect and save harmless GRANTOR from and against any and all claims, demands, loss, damage, expense and liability of every kind and description and for any damage to or loss or destruction of property suffered by GRANTOR, or by any persons, firms, or corporations, arising as a result of the CITY'S negligent acts and omissions in the maintenance of the Facility; provided, however, that this hold harmless provision shall not apply to GRANTOR'S negligence, or to any damage or injury resulting from a violation of Paragraph 5 herein.

3. The GRANTOR warrants that the GRANTOR has good title to the Grantor's Property and Easement Area and warrants the CITY title to, and quiet enjoyment of, the Easement conveyed hereby.

4. All right, title and interest which may be used and enjoyed without interfering with the easement rights conveyed are reserved to the GRANTOR.

5. The CITY understands that the GRANTOR is conducting farming activity on the Grantor's Property that involves digging, tunneling and other forms of construction activity, which could include but not be limited to the installation of underground irrigation lines and the installation of posts. These activities will continue within the Easement Area and on Grantor's Property. In an effort not to damage or disturb the Facility, unearth or undermine the Facility or endanger the lateral support to the Facility, the CITY will mark or flag the water line so that the location is clearly known.

6. In the event the Facility is interfering with GRANTOR's use of Grantor's Property and GRANTOR wishes to relocate the Facility to a new location on Grantor's Property, GRANTOR may do so only after obtaining the CITY's approval of the relocation in general and of the proposed new location in particular. Relocation of the Facility shall be at GRANTOR's sole cost and expense. Further, prior to relocation, GRANTOR shall prepare and record an addendum to this Easement Agreement containing a new legal description reflecting the new location of the Facility. All costs incurred in preparing and recording said addendum shall be borne by GRANTOR.

7. All routine and non-emergency work and activities within the Easement Area by the CITY shall be coordinated during the farming off-season to limit the impact to the GRANTOR'S operations. Said coordination may be conducted by telephone (at a number provided by GRANTOR) and shall take place by contacting the GRANTOR and arranging a mutually

agreeable date, time and duration for the work and activities. Provided, the CITY shall have the right to immediately access the Easement Area at any time and in any season for emergency maintenance purposes without prior notice to GRANTOR. The CITY shall, however, endeavor to notify GRANTOR of any emergency maintenance activity as soon as reasonably practicable.

8. Should either party hereto, or their heirs, successors or assigns, institute suit to enforce any covenant or right granted herein, the prevailing party shall recover its costs of litigation, including a reasonable attorney's fee.

9. This Easement Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Easement Agreement shall be in the Superior Court for Whatcom County, State of Washington.

10. The covenants contained herein are intended to and shall run with the land and shall benefit and bind the parties and their respective heirs, successors and assigns.

11. Should any provision of this Easement Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

12. The CITY shall pay any recording fees related to this Easement Agreement. Each party shall be solely responsible for their own attorney's fees related to the preparation of this Easement Agreement.

13. Nothing contained in this Easement Agreement grants a dedication of any portion of real property to the general public, except as may be specifically provided herein. This Easement Agreement shall be for the benefit of the City water utility.

14. The Easement shall commence upon the recording of this Easement Agreement with the Whatcom County Auditor.

15. The CITY shall at all times exercise its rights herein in accordance with the requirements (as from time-to-time amended) of all applicable statutes, laws, orders, rules, and regulations of any public authority have jurisdiction, including its own.

16. This Easement Agreement may be amended or terminated only by mutual written agreement of the parties.

17. This Easement Agreement may consist of two or more separately ratified counterparts, each of which constitutes a duplicate original of this Easement Agreement.

18. Failure of either party at any time to require performance of any provision of this Easement Agreement shall not limit such party's right to enforce such provision. Waiver of any breach of any provision of this Easement Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

19. This Easement Agreement constitutes the entire agreement between the parties as to the matters contained herein. No oral or written statements made by either party prior to or

following entry of this Easement Agreement shall be considered a part of this Easement Agreement unless expressly incorporated herein in writing.

20. Any notice, declaration, demand or communication to be given by a party to this Easement Agreement to the other, except for communication by telephone per Paragraph 7 herein, shall be in writing and transmitted to the other party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

To GRANTOR:

CMF Farming Properties, L.L.C.
Attn: Matt Maberry
697 Loomis Trail Road
Lynden, WA 98264

To CITY:

City of Lynden
Attn: Steve Banham
300 4th Street
Lynden, WA 98264

Dated this _____ day of _____, 2020.

GRANTOR:

CMF Farming Properties, L.L.C.

CITY:

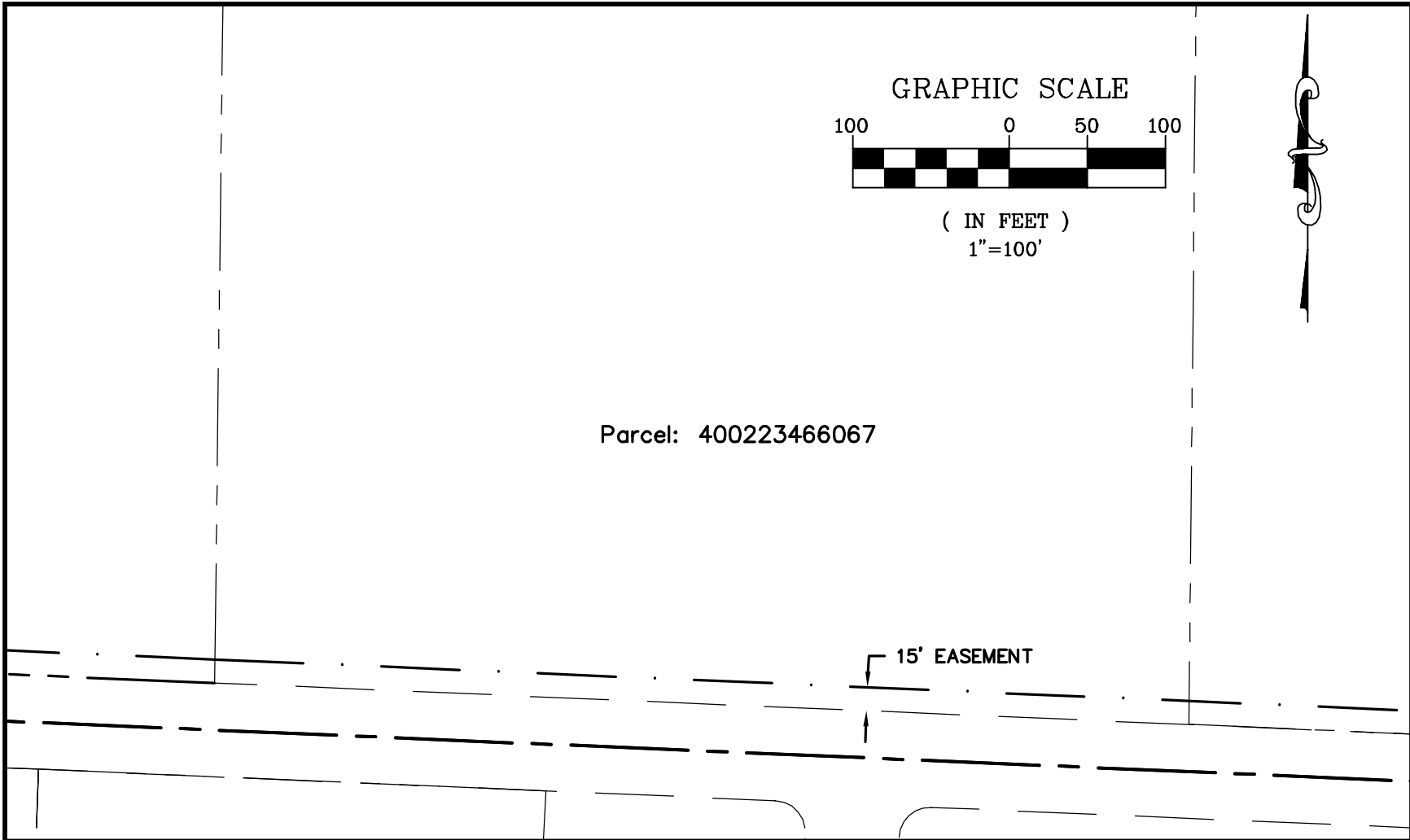
City of Lynden

By: _____
Its: _____

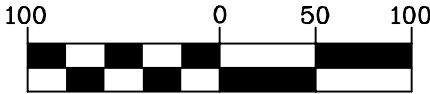
By: _____
Its: _____

EXHIBIT A
Description

EXHIBIT B
Depiction



GRAPHIC SCALE



(IN FEET)
1"=100'



Parcel: 400223466067

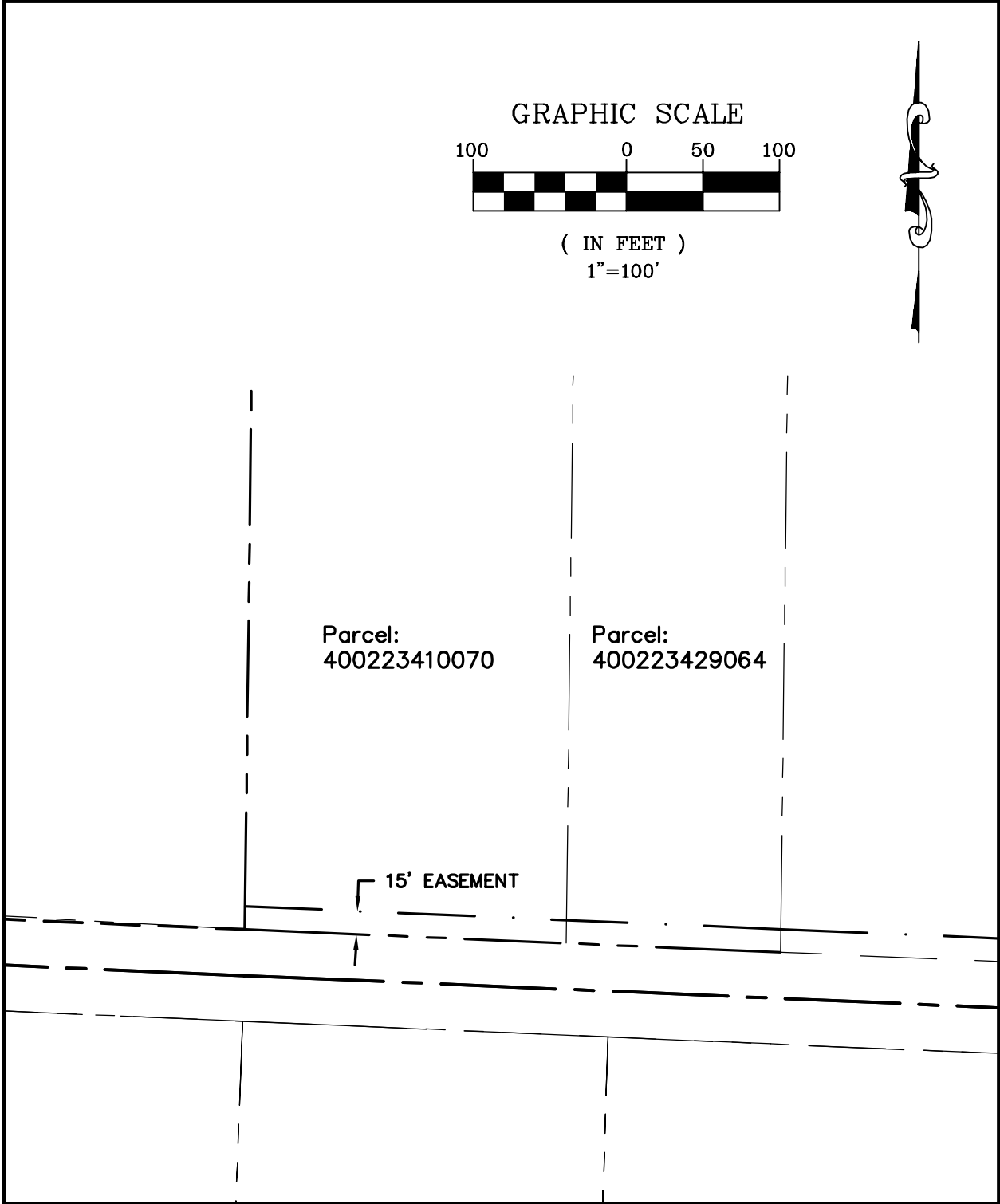
15' EASEMENT

R&E Reichhardt & Ebe
ENGINEERING INC

P.O. Box 978 | 423 Front Street
Lynden, WA 98264 (360) 354-3687

CMF FARMING PROPERTIES, LLC
EASEMENT ACQUISITION

DATE: 7/20/20 SCALE: 1" = 100' JOB# 020030.2



Reichhardt & Ebe
ENGINEERING INC

P.O. Box 978 | 423 Front Street
Lynden, WA 98264 (360) 354-3687

FAITH COMMUNITY CHURCH
EASEMENT ACQUISITION

DATE: 7/20/20 SCALE: 1" = 100' JOB# 020030.2

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 17 th , 2020	
Name of Agenda Item:	Public Hearing for Lynden Technical Security Audit	
Section of Agenda:		
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: <u> N/A </u>
		Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Performance Audit Report: "Opportunities to Improve City of Lynden's Information Security"	
Summary Statement:	<p>To help the City of Lynden protect its IT systems and secure the data it needs to operate, we conducted a performance audit designed to identify opportunities to improve IT security. This audit answered the following questions:</p> <ul style="list-style-type: none"> • Does the city have vulnerabilities in its IT environment that could lead to increased risk from external or internal threats? • Do the city's IT security practices align with selected security controls? 	
Recommended Action:	For information only.	



Office of the Washington State Auditor

Pat McCarthy

Performance Audit

Opportunities to Improve City of Lynden's Information Security

July 30, 2020

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The mission of the State Auditor’s Office

Provide citizens with independent and transparent examinations of how state and local governments use public funds, and develop strategies that make government more efficient and effective.

The results of our work are widely distributed through a variety of reports, which are available on our website and through our free, electronic **subscription service**.

We take our role as partners in accountability seriously. We provide training and technical assistance to governments and have an extensive quality assurance program.

For more information about the State Auditor’s Office, visit www.sao.wa.gov.

Americans with Disabilities

In accordance with the Americans with Disabilities Act, this document will be made available in alternative formats. Please email Webmaster@sao.wa.gov for more information.

State Auditor’s Office contacts

State Auditor Pat McCarthy
564-999-0801, Pat.McCarthy@sao.wa.gov

Scott Frank – Director of Performance & IT Audit
564-999-0809, Scott.Frank@sao.wa.gov

Kelly Collins – Director of Local Audit
564-999-0807, Kelly.Collins@sao.wa.gov

Peg Bodin, CISA – Assistant Director of IT Audit
564-999-0965, Peggy.Bodin@sao.wa.gov

Kathleen Cooper – Director of Communications
564-999-0800, Kathleen.Cooper@sao.wa.gov

To request public records

Public Records Officer
564-999-0918, PublicRecords@sao.wa.gov

Introduction

Critical government services depend on IT systems with confidential information, which must be protected to avoid service disruptions and financial losses

Governments depend on information technology (IT) systems to deliver an array of critical functions. The security of IT systems and related data underpins the stability of government operations, and the safety and well-being of residents. Therefore, protecting these systems is paramount to public confidence, because the public expects governments to protect these systems from IT security incidents that could disrupt government services.

These IT systems also process and store confidential data. Aside from the loss of public confidence, a data breach involving this information can cause governments to face considerable tangible costs, including those associated with identifying and repairing damaged systems and notifying and helping victims.

Government IT systems and data are attractive targets for cyberattacks

Government IT systems present a particularly tempting target to cyber criminals. In addition to selling stolen information for financial gain, attackers often target government systems with ransomware, essentially rendering IT systems and data unavailable until the attackers are paid. Because government IT systems support critical operations, attacked governments are often placed in the difficult position of either failing to deliver core services or paying an expensive ransom to the attackers.

Government organizations across the country and around the world have been critically affected by cybercrime. Since 2017, the United Kingdom's National Health Service, the cities of Atlanta and Baltimore, Garfield County in Utah, the Texas judiciary, Texas Department of Transportation and 22 municipalities in Texas, to name a few, have been attacked with ransomware that crippled or disrupted their operations.

Washington governments have also been affected by cyberattacks. Since 2016 seven Washington governments have reported data breaches to the Washington State Attorney General's Office as a result of a cyber-attack. Multiple state and local governments have also reported cybersecurity incidents to the State Auditor's Office, including frauds that occurred as the result of cybersecurity activity and a city whose operations were crippled by ransomware.

To help Washington's local governments protect their IT systems, we offer them the opportunity to participate in a performance audit designed to identify opportunities to improve their IT systems.

The City of Lynden chose to participate in this audit.

IT security incident

Any unplanned or suspected event that could pose a threat to the confidentiality, integrity or availability of information assets.

Data breach

An IT security incident that results in the confirmed disclosure of confidential information to an unauthorized party.

This audit looked for opportunities to improve the city's information security

To help the City of Lynden protect its IT systems and secure the data it needs to operate, we conducted a performance audit designed to identify opportunities to improve IT security. This audit answered the following questions:

- Does the city have vulnerabilities in its IT environment that could lead to increased risk from external or internal threats?
- Do the city's IT security practices align with selected security controls?

Evaluating effective implementation of IT security practices

To determine if the city has implemented effective IT security practices, we conducted tests to determine if selected controls were implemented properly and functioning effectively.

Comparing the city's IT security program to leading practices

We assessed the city's IT security policies, procedures and practices to selected leading practices in this area to identify any improvements that could make them stronger. We selected leading practices from the Center for Information Security's *Critical Security Controls (CIS Controls)*, which were developed by a broad community of private and public sector stakeholders after examining the most common attack patterns. The *CIS Controls* are a prioritized list of control areas designed to help organizations with limited resources optimize their security defense efforts to achieve the highest return on investment.

We gave city management the results of the tests as they were completed.

Next steps

Our performance audits of local government programs and services are reviewed by the local government's legislative body and/or by other committees of the local government whose members wish to consider findings and recommendations on specific topics. The City of Lynden's legislative body will hold at least one public hearing to consider the findings of the audit. Please check the City of Lynden's website for the exact date, time and location. The State Auditor's Office conducts periodic follow-up evaluations to assess the status of recommendations, and may conduct follow-up audits at its discretion. See **Appendix A**, which addresses the I-900 areas covered in the audit. **Appendix B** contains more information about our methodology

Audit Results

The results of our audit work and recommendations were communicated to the City of Lynden's management for its review, response and action. We found that, while the city's IT policies and practices partially align with industry leading practices, there are areas where improvements can be made. The city has already addressed significant issues we identified, and is continuing to make improvements.

Because the public distribution of tests performed and test results could increase the risk to the city, distribution of this information is kept confidential under RCW 42.56.420 (4), and under Generally Accepted Government Auditing Standards, Sections 9.61-9.67. We shared detailed results with the city.

Recommendations

To help ensure the City of Lynden protects its IT systems and the information contained in those systems, we make the following recommendations:

- Continue remediating identified gaps
- Revise the city's IT security policies and procedures to align more closely with leading practices

Auditor's Remarks

The Washington State Auditor's Office recognizes the City of Lynden's willingness to volunteer to participate in this audit, demonstrating its dedication to making government work better. It is apparent the city's management and staff want to be accountable to the citizens and good stewards of public resources. Throughout the audit, they fostered a positive and professional working relationship with the State Auditor's Office.

CITY OF LYNDEN



ADMINISTRATION DEPARTMENT

Scott Korthuis, Mayor
(360) 354 – 1170, Option #5

July 27, 2020

Erin Laska
IT Security Audit Manager
302 Sid Snyder Avenue SW
Olympia, WA 98504

Dear Ms. Laska:

On behalf of the City of Lynden, thank you for the opportunity to review and respond to the *Information Technology Security Performance Audit* recently conducted by members of the State Auditor’s Office.

The feedback provided to our IT division will be invaluable as we strive to ensure the confidential information of our citizens and staff remains safeguarded, and that critical City operations are not disrupted. We have addressed several of the significant issues that were identified and are dedicated to making continued advancements.

It was a pleasure to work with you, Keith Drake, Michael Hjermsstad, and Nicholas Benfield from the State Auditor’s Office. We are grateful for your efforts to evaluate our security program and share your expertise in areas where there are opportunities for improvement.

We also appreciate your teams’ understanding of the unique IT security challenges that local governments encounter. Moving forward, the City of Lynden will continue to assess our security processes to align with leading IT security practices.

Sincerely,

Nicholas Miener
Network Administrator
City of Lynden

300 4th Street, Lynden, WA 98264
www.lyndenwa.org

Appendix A: Initiative 900

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor’s Office to conduct independent, comprehensive performance audits of state and local governments.

Specifically, the law directs the Auditor’s Office to “review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts.” Performance audits are to be conducted according to U.S. Government Accountability Office government auditing standards.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor’s Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the audit. Specific issues are discussed in the Results and Recommendations sections of this report.

I-900 element	Addressed in the audit
1. Identify cost savings	No. The audit did not identify measurable cost savings. However, strengthening IT security could help the city avoid or mitigate costs associated with a data breach or security incident.
2. Identify services that can be reduced or eliminated	No. The audit objectives did not address services that could be reduced or eliminated.
3. Identify programs or services that can be transferred to the private sector	No. We did not identify programs or services that could be transferred to the private sector.
4. Analyze gaps or overlaps in programs or services and provide recommendations to correct them	Yes. The audit compares the city’s IT security controls against leading practices and makes recommendations to align them.
5. Assess feasibility of pooling information technology systems within the department	No. The audit did not assess the feasibility of pooling information systems; it focused on the city’s IT security posture.
6. Analyze departmental roles and functions, and provide recommendations to change or eliminate them	Yes. The audit evaluates the roles and functions of IT security at the city and makes recommendations to better align them with leading practices.
7. Provide recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	No. The audit did not identify a need for statutory or regulatory change.
8. Analyze departmental performance, data performance measures, and self-assessment systems	Yes. Our audit examined and made recommendations to improve IT security control performance.
9. Identify relevant best practices	Yes. Our audit identified and used leading practices published by the Center of Internet Security to assess the city’s IT security controls.

Compliance with generally accepted government auditing standards

We conducted this performance audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with Generally Accepted Government Auditing Standards (July 2018 revision) issued by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B: Scope, Objectives and Methodology

Scope

The audit assessed the extent to which the City of Lynden’s IT security programs, including their implementation and documentation, aligned with selected *Center for Internet Security (CIS) Controls* and their supporting sub-controls. This audit did not assess the city’s alignment with federal or state special data-handling laws or requirements.

Objectives

To help the City of Lynden protect its IT systems and secure the data it needs to operate, we conducted a performance audit designed to identify opportunities to improve IT security. This audit answered the following questions:

- Does the city have vulnerabilities in its IT environment that could lead to increased risk from external or internal threats?
- Do the city’s IT security practices align with selected security controls?

Methodology

To answer the audit objectives, we conducted technical testing on the city’s internal network, and we compared the city’s IT security programs to selected leading practices.

Vulnerability testing

To determine if the city has vulnerabilities in its IT environment we conducted limited technical analysis of select portions of the city’s internal network. We performed this work in March 2020 using automated tools configured by our IT security specialists. This included identifying vulnerabilities and assessing them to determine whether they could be exploited.

Comparing the city’s IT security programs to leading practices

To determine whether the city’s IT security practices align with leading practices, we interviewed key city IT staff, reviewed the city’s IT security policies and procedures, observed city security practices and settings, and conducted limited technical analysis of city systems. This work was completed at the city between February and April 2020, with some additional follow-up afterwards.

We used selected controls from the *CIS Controls, version 7.1*, as our criteria to assess the city’s IT security programs and to identify areas that could be made stronger.

CIS is a nonprofit organization focused on safeguarding public and private organizations against cyber threats. Its *CIS Controls* are a prioritized set of leading practices for cyber defense created to stop the most pervasive and dangerous attacks, are informed by analysis of real-world attack data, and are developed and vetted across a broad community of government and industry practitioners. Contributors to the *CIS Controls* have included the U.S. Department of Defense, the National Security Agency, the U.S. Department of Energy national energy labs, law enforcement organizations, Verizon, HP and Symantec.

Each control consists of a series of sub-controls that are distinct and measurable tasks; when the sub-controls are implemented together, they fully meet the requirements of the overall control. We assessed the city against all applicable sub-controls to determine the alignment with each of the overall controls assessed. We did this by assessing the extent to which the city met each sub-control in three areas:

1. **Implementing** the sub-control
2. **Automating or technically enforcing** the sub-control, which minimizes the possibility of the sub-control failing due to human error or inconsistent processes
3. **Maintaining documentation** to support the sub-control, such as policies or procedures

We also assessed the extent to which the city’s IT management was **reporting** on the control to leadership.

Work on Internal Controls

This audit assessed the IT security internal controls at the City of Lynden. We used a selection of controls from the 20 *CIS Controls* as the internal control framework for the assessment. The *CIS Controls* are prioritized and the first six are considered among the most important controls to put in place to protect an organization. Based on an initial assessment, we selected three of the top six controls to include in the scope. To protect the city’s IT systems, and the confidential and sensitive information in those systems, this report does not identify the specific controls assessed during the audit. We completed our assessment for the purpose of identifying opportunities for the city to improve its internal IT security controls, but not to provide assurance on the city’s current IT security posture.

1607

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 17, 2020	
Name of Agenda Item:	Set the Public Hearing to Consider Extension of the Pepin Creek Moratorium	
Section of Agenda:	Consent	
Department:	Planning Department	
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 type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Moratorium Area Map, Ord 1607 Extending the Moratorium, Pepin Lite Summary Graphic		
Summary Statement:		
<p>The Pepin Creek moratorium has been in place since September of 2016. It was established in recognition of significant constraints associated with what is now known as the Pepin Creek Sub-area. Earlier this year the City Council approved the Pepin Creek Sub-Area Plan that addresses circulation, open space and assigned land use and zoning within the area.</p> <p>Because of the significant infrastructure improvements associated with the creek re-alignment and the improvement of Benson and Double Ditch Roads, Council has recognized that work must be undertaken in a phased approach. Given this approach, the engineering team, Public Works, and Planning departments are developing a plan which decreases the overall infrastructure cost associated with the creek realignment. This plan has become known as Pepin Lite. Pepin Lite is largely consistent with the concepts of the approved sub-area plan but focuses on portions of the sub-area already within the City and under moratorium. Cost estimates for this version of the creek realignment project have been reduced from approximately \$36 million to \$17 million.</p> <p>Using these estimates, a consultant team is developing a strategy for the financial assessment. Work in this area has been somewhat slowed by the disruptions of COVID-19. It is estimated that results of the mitigation study will be completed by the end of September 2020 and a subsequent course of action brought to the Council for approval. As these final elements are defined and executed, City staff recommends that the Council set a public hearing date of September 8 to consider an additional 6 months of moratorium.</p>		
Recommended Action:		
Motion to set a public hearing date of September 8, 2020 to consider a 6-month extension of the existing moratorium of development on those properties previously identified within the Pepin Creek Sub-area.		

ORDINANCE NO. 1607

INTERIM ORDINANCE EXTENDING THE MORATORIUM ON SUBDIVISION AND PLANNED RESIDENTIAL DEVELOPMENT APPLICATIONS AND CERTAIN BUILDING PERMIT APPLICATIONS FOR PROPERTY LOCATED WITHIN THE PEPIN CREEK PROJECT AREA

WHEREAS, on August 19, 2013, the City of Lynden (“City”) adopted the April 2009 Amendment to the January 1992 Stormwater Management Plan identifying the “Pepin Creek” project (“Pepin Creek Project” or “Project”); and

WHEREAS, the Pepin Creek Project includes the relocation and combination of surface water flows from Double Ditch and Benson Ditch between Badger Road and Main Street into one “new” watercourse known as Pepin Creek; and

WHEREAS, the general vicinity of the Pepin Creek Project has experienced instances of extreme flooding in recent years, causing hundreds of thousands of dollars in property damage, closing and damaging public roads and infrastructure, cutting residents off from emergency access, and damaging agricultural land; and

WHEREAS, the Pepin Creek Project is designed to implement a new drainage pattern to protect public roads and public road infrastructure, substantially reduce flooding, facilitate improved storm water control, and provide the ancillary benefit of natural fish and wildlife habitat; and

WHEREAS, the City has completed acquisition of several properties necessary to accommodate the new Pepin Creek corridor; and

WHEREAS, the City must continue to undertake numerous complex and detailed planning, funding, design, permitting, construction and other associated issues to complete the Pepin Creek Project (“Pepin Creek Project Issues”); and

WHEREAS, Pepin Creek Project Issues include without limitation:

- corridor design and permitting for the Pepin Creek Project;
- locating and increasing stormwater capacity and coordinating the associated street and utility infrastructure locations;
- design and permitting options associated with necessary downstream bank stabilization associated with the Pepin Creek Project;
- identifying financing and equitable allocation of system construction costs; and

WHEREAS, the Council has adopted, on October 16, 2017, Resolution No. 975, which is a Resolution of Intent outlining the strategies and corresponding timeline to resolve Pepin Creek Project Issues; and

WHEREAS, that area of the city believed to be affected by Pepin Creek Project Issues at this time and for purposes of this Ordinance include without limitation the area shown on Exhibit A (“Pepin Creek Project Area”), which is incorporated herein; and

WHEREAS, Ordinance No. 1509, *An Ordinance of the City of Lynden to provide Annexation to the City of Lynden* adopted on June 6, 2016 (“Ordinance No. 1509”), annexed property in the Pepin Creek Project Area into the City of Lynden; and

WHEREAS, Ordinance No. 1509 included a clause stating that the “City has identified the need for the completion of the Pepin Creek project prior to development” of the property annexed into the City; and

WHEREAS, except as set forth herein, property development within the Pepin Creek Project Area will likely disrupt the City’s ability to effectively address Pepin Creek Project Issues; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's regulatory authority and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Ordinance No. 1513, *Ordinance Establishing an Emergency Moratorium on Subdivision and Planned Residential Development Applications and Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 19, 2016; and

WHEREAS, Ordinance No. 1514, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 17, 2016; and

WHEREAS, Ordinance No. 1525, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on April 17, 2017; and

WHEREAS, Ordinance No. 1538, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 16, 2017; and

WHEREAS, Ordinance No. 1555, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on May 7, 2018; and

WHEREAS, Ordinance No. 1562, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building*

Permit Applications for Property Located Within the Pepin Creek Project Area, was adopted by the City on September 17, 2018; and

WHEREAS, Ordinance No. 1577, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 4, 2019; and

WHEREAS, Ordinance No. 1591, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 3, 2019; and

WHEREAS, Ordinance No. 1604, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 2, 2020; and

WHEREAS, the City held a public hearing on this proposed Ordinance 1607 on the 8th day of September 2020; and

WHEREAS, a continuation of the moratorium on development in the Pepin Creek Project Area is required to allow for proper planning and implementation of the Pepin Creek Project; and

WHEREAS, adoption of this ordinance extending the moratorium to assure that Pepin Creek Project Issues are resolved consistent with the Project addresses a public emergency and shall qualify as a public emergency ordinance; and

WHEREAS, the public emergency ordinance is necessary to protect the public health, safety, and welfare of the community, and public property; and

WHEREAS, this public emergency moratorium ordinance, as provided in RCW 35.A.12.130, when passed by a majority plus one of the whole membership of the council, is effective upon adoption; and

WHEREAS, the foregoing recitals are a material part of this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN DOES ORDAIN as follows:

Section 1. Findings of Fact. The City Council adopts the above “WHEREAS” recitals as findings of fact in support of this Ordinance. The Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Moratorium Established For New Subdivisions. The City shall not accept applications for any new subdivisions (including both short plats and long plats) or for any new planned residential developments for property located in whole or in part in the

Pepin Creek Project Area, for a period of one hundred eighty (180) days, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 3. Moratorium Established For Certain Building Permit Applications. The City shall not accept building permit applications in the Pepin Creek Project Area for new structures intended for human occupancy or for additions to existing residential structures of more than fifty percent (50%) in square footage, for a period of one hundred eighty (180) days, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 4. Resolution of Pepin Creek Project Issues. During the term of this interim ordinance the City shall work on resolving the following issues.

- A. Corridor Design. The Pepin Creek Project Area has demonstrated stormwater capacity deficiencies. The City must complete an analysis and design of a new stormwater system with adequate capacity to fully accommodate basin flow. This would also include locating the street and utility infrastructure to function with that new system.
- B. Downstream Stabilization. The existing Double Ditch channel downstream from Main Street to the confluence with Fishtrap Creek presently has unstable banks. The City intends to identify corrective options, including necessary design, permitting, and funding, and consider construction implementation of corrective options.
- C. Financial Strategy. The City must develop a financing plan and method for equitable allocation of system construction costs and responsibilities among property owners in the Pepin Creek Project Area.

Section 5. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 6. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. This Ordinance shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR on the _____ day of September 2020,

M A Y O R

ATTEST:

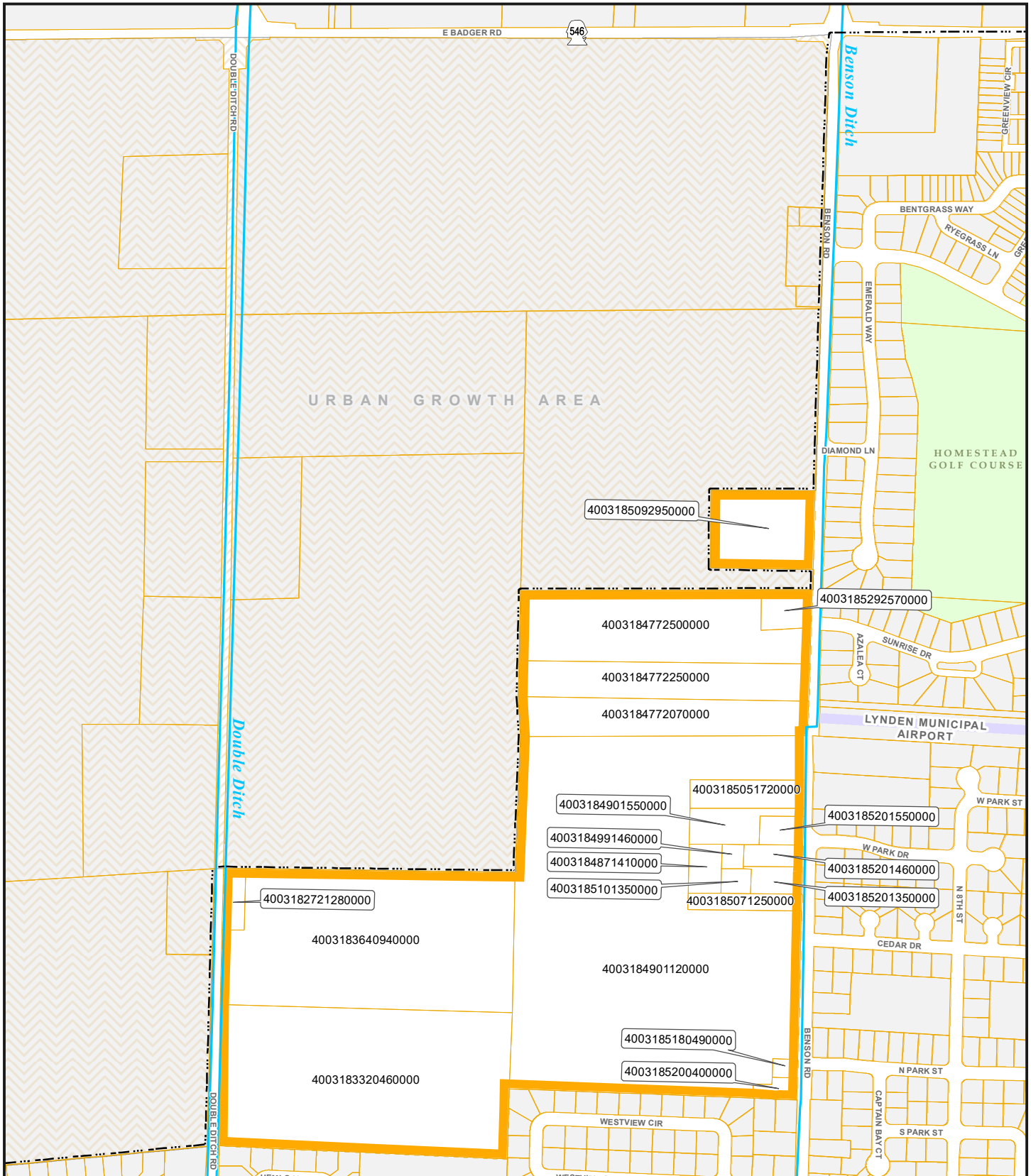
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

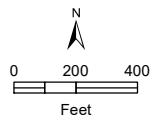
Exhibit A

Properties Located within Pepin Creek Project Area



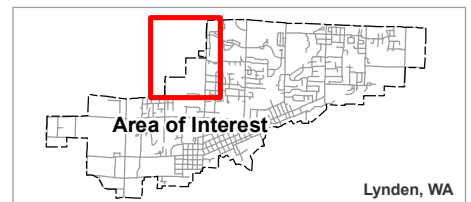
Map Key

- Properties in Pepin Creek Project Area
- Property Boundaries
- City Limit
- Urban Growth Area (Unincorporated)
- Waterway



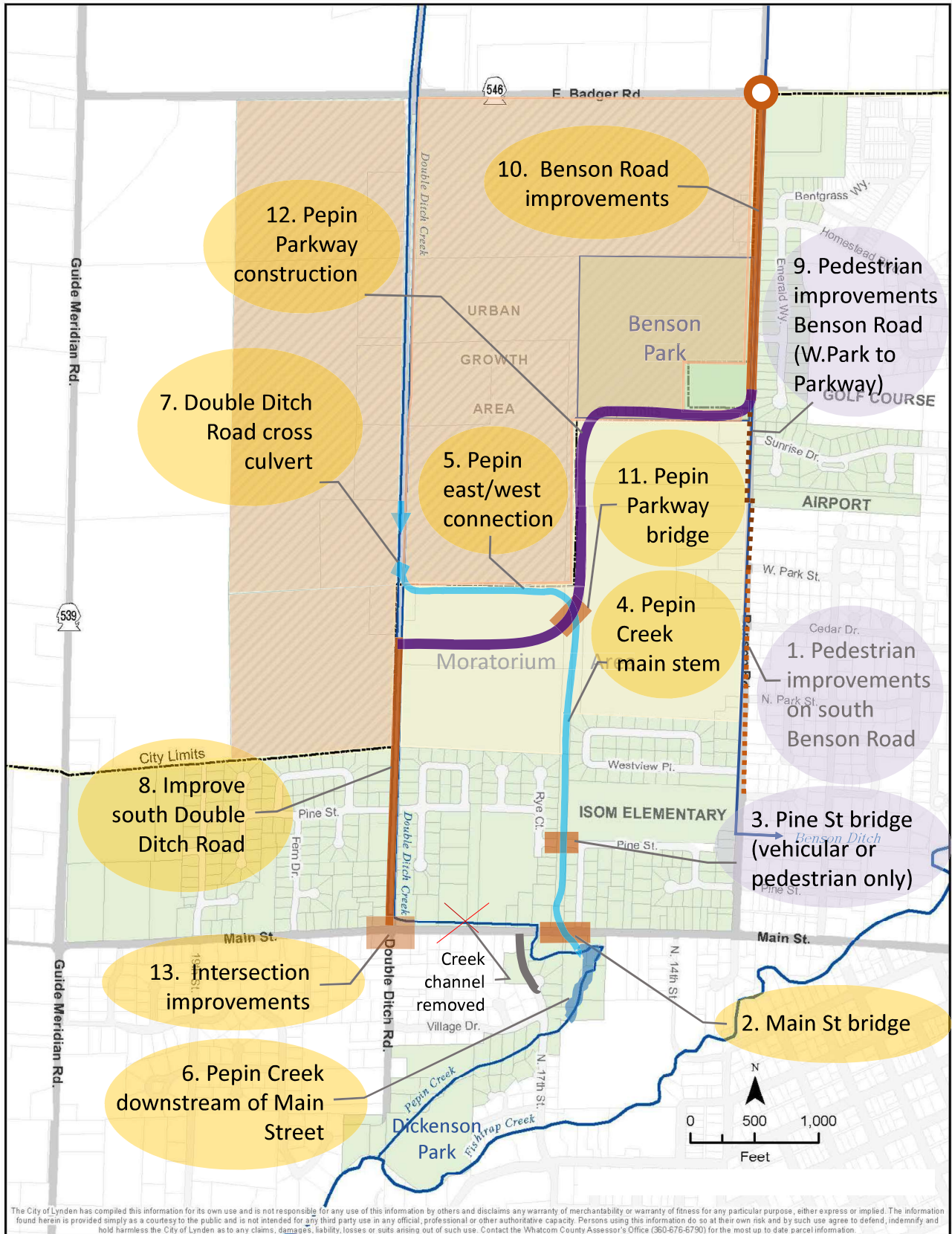
Updated: September 19, 2016

Doc. Path: \\Saturn\gis\Projects\Public Works\PeppinCreek\ExhibitA\COPY2.mxd



Lynden, WA

Pepin Lite: Fully Improved



The City of Lynden has compiled this information for its own use and is not responsible for any use of this information by others and disclaims any warranty of merchantability or warranty of fitness for any particular purpose, either express or implied. The information found herein is provided simply as a courtesy to the public and is not intended for any third party use in any official, professional or other authoritative capacity. Persons using this information do so at their own risk and by such use agree to defend, indemnify and hold harmless the City of Lynden as to any claims, damages, liability, losses or suits arising out of such use. Contact the Whatcom County Assessor's Office (360-676-6790) for the most up to date parcel information.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 17, 2020	
Name of Agenda Item:	Appointment to Planning Commission – Karen Timmer	
Section of Agenda:	New Business	
Department:	Planning Department	
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: <u>Mayor</u>
		Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Planning Commission Application of Karen Timmer		
Summary Statement:		
<p>The Mayor has appointed a new member, Karen Timmer, to fill a vacancy on the Planning Commission. This appointment is being brought forward at the August 17th City Council meeting for confirmation.</p> <p>The position recently opened up when Lynn Templeton stepped down from the position.</p> <p>Karen is a local real estate agent who has lived and worked in the Lynden area for years. Her depth of knowledge of the City and the real estate market will be a valuable asset to the Planning Commission.</p> <p>As we know, Title 2.08 of the Lynden Municipal Code describes the position. The Commission consists of seven members. Commission members are selected without respect to political affiliations and serve without compensation. At the time of appointment and throughout his term of office, the primary residence of each member of the Planning Commission must be within the city limits of Lynden. The term of office for each member is 4 years.</p> <p>Thank you to Karen for stepping into this vital volunteer role and serving the community in this way.</p>		
Recommended Action:		
Motion to confirm the appointment of Karen Timmer to the Lynden Planning Commission for a term beginning September 2020 and expiring September 2024.		

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	8-17-2020	
Name of Agenda Item:	IT Department (Exempt) – Out of Schedule Compensation and Costing Policy	
Section of Agenda:	New Business	
Department:	Administration (HR)	
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: Not Reviewed
		Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:		
1) IT Department (Exempt) – Out of Schedule Compensation and Costing Policy		
Summary Statement:		
To recognize the work of IT Department exempt employees that are required beyond traditional work schedule to meet department needs and emergency events. To cost this expense to appropriate departments when implemented.		
That Council approve (by motion) to accept the IT Department (Exempt) – Out of Schedule Compensation and Costing policy		

CITY OF LYNDEN

ADMINISTRATION DEPARTMENT



HR-5.3.00 IT Department (Exempt) - Out of Schedule Compensation and Costing

PURPOSE: To recognize the work of IT Department exempt employees that are required beyond traditional work schedule to meet department needs and emergency events. To cost this expense to appropriate departments when implemented.

DEPARTMENTS AFFECTED: All department/divisions.

REFERENCES: Washington State L&I, Federal Fair Labor Standards Act (FLSA)

PROCEDURES:

A) Compensatory Hours or Pay for Additional Hours Worked

Exempt IT employees who are called back to work on a scheduled day off or after leaving the premises following completion of their shift, will be paid a minimum of two (2) hours pay at 1.5 of their hourly rate. Work that extends beyond two (2) hours will be paid at the actual hours worked at 1.5 of their hourly rate. Employee may choose to accrue a compensatory 1.5 hours for hours worked in lieu of pay. Up to a maximum balance of 40 compensatory hours may be held for time off during periods of lesser work demand or for personal needs. The scheduling of the use of such compensatory hours shall be with the approval of the department head based upon departmental staffing needs. Compensatory hours can be cashed out at any time throughout the year and shall be paid out at separation from service. With adequate notice to the department head, the employee may use compensatory hours during the period immediately prior to separation from service.

B) Employee will be paid for travel time and mileage will be paid at the applicable IRS mileage allowance(roundtrip) using their own vehicle to respond to out of schedule work from home location to City location.

C) Cost for labor under this policy will be coded directly to the department to which the employee has been called to work.

Doc # HR – 5.3.00	Title: IT Department Out Of Schedule Compensation and Costing	
Revision # 1	Prepared By: Denise Bosman – HR Manager	Date Prepared: 04/07/2020
Effective Date:	Reviewed By:	Date Reviewed:
	Approved By:	Date Approved:

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 17, 2020	
Name of Agenda Item:	Public Works Committee Meeting Minutes August 5, 2020	
Section of Agenda:	Approval of Minutes	
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:	August 5, 2020 Draft Public Works Committee Meeting Minutes	
Summary Statement:	Draft minutes for the August 5, 2020 Public Works Committee meeting.	
Recommended Action:	For Review	



PUBLIC WORKS COMMITTEE MINUTES

4:15 PM August 5, 2020
Microsoft Teams Virtual Meeting
City Hall 2nd Floor Large Conference Room

1. ROLL CALL

- Members Present: Mayor Scott Korthuis; Councilors Gary Bode, Ron De Valois
- Members Absent: Gerald Kuiken with notice
- Staff Present: City Administrator Mike Martin, Public Works Director Steve Banham, Programs Manager Mark Sandal, Sr. Admin. Assistant Miriam Kentner
- Public Present: Gary Vis, Chris Pickering

2. ACTION ITEMS

A. **Approve Minutes from July 8, 2020**

Bode motioned to approve the minutes and De Valois seconded the motion.

Action

The minutes from July 8, 2020 were approved.

B. **Request for Crosswalk on Grover Street near Edaleen Dairy (1011 East Grover Street)**

Banham stated that staff recently received an email from Gayle Scott, 1400 Elm Street, expressing concern for the high number of pedestrians crossing Grover Street at Edaleen Dairy, 1011 E. Grover Street. She requested that staff consider installing a crosswalk in this area.

Action

The Public Works Committee concurred that staff should continue to observe the area for pedestrian and vehicle traffic, but not install a sidewalk at this time. This request will also be forwarded to the Public Safety Committee for review.

C. **Request for Reduced Speed on Depot Rd (Sunrise Drive to Badger Road)**

Banham stated that staff received an email from Sonya Lyons, Island Green Commons Board of Directors, requesting the speed limit be reduced to 25 miles per hour on Depot Road north of Sunrise Drive.

The Public Works Committee concurred to recommend approval of the request to reduce the speed limit to 25 miles per hour on Depot Road north of Sunrise Drive. This request will also be forwarded to the Public Safety Committee for review.

D. Faith Community Church Waterline Easement

Banham reminded the Committee that Faith Community Church has requested to connect to City water for the purpose of fire protection. Banham explained that the plan is to extend a 12-inch waterline across their frontage. They were required to obtain an easement from the adjacent property owner. The Developer Extension Agreement and Easement Agreement are included in the packet. These are required to be presented to City Council for approval.

Bode clarified that their water service will still be provided by the Berthusen Water Association.

Action

The Public Works Committee concurred to recommend approval of the Developer Extension Agreement and the Easement Agreement to City Council.

E. Lynden Municipal Airport PAPI Light Replacement Bid Award

Banham presented the three bids that were received for the PAPI Light replacement at the Lynden Municipal Airport. The lowest bidder was Colvico of Spokane. Bode expressed concern at the disparity between Colvico and the other two bidders. Banham noted that the engineer, Precision Approach, did talk with Colvico to get assurance that their bid was what they intended. Banham stated the difference is in the labor, and it could be an owner-operator situation.

Banham stated the cost of these repairs will be fully covered by the aircraft's insurance company.

Action

The Public Works Committee concurred with proceeding with the replacement of the PAPI Light at the Lynden Municipal Airport.

F. Young Long Plat (Double Ditch Road) Request to Cash Out Water Improvements on Double Ditch Road

Sandal explained that long plats generally are required to improve the utilities across their frontage. In this situation, the Young Long Plat has requested to pay the City directly for the certified cost of improvements rather than performing the work themselves. Banham stated that the pipe upgrade would be only 60 feet.

Action

The Public Works Committee concurred and recommended that staff accept the request by the Young Long Plat to cash out the water improvements associated with their plat, in lieu of performing the work.

G. Proposal to Extend Northwest Washington Fair to Ten Days in 2021

Bode introduced Chris Pickering, Northwest Washington Fair Manager. Pickering is proposing a ten-day fair in 2021, an increase from the six-day fair held in the past. He explained that this has been considered for years, and now staff has an additional year to plan for an extended fair. Pickering explained he received initial support from the Fire and Police Departments, the carnival company, and most food vendors. Pickering is in the initial planning stages and will continue to work on the fine details such as a possible Sunday church event, transportation, and lodging details for fair goers.

Action

This item was for information only.

H. County Wide Water Conservation Plan

Banham presented the Proposed Whatcom County Enhanced Water Conservation Program Budget for 2021 to 2023, using funds set aside by the County as a result of the Hirst settlement to address water conservation.

Action

The Public Works Committee concurred to support participation in this water conservation program.

3. INFORMATION ITEMS

A. Covid-19 Wastewater Testing Status Update

Banham Stated that the initial samples of wastewater have been received at the testing facility and the City is waiting for the first round of results.

B. Proposed Funding Application for 2021 and 2022 Projects

Banham stated that staff will be applying for the following 2021 and 2022 projects:

- TIB Pavement Preservation (2021): Vinup (Bradley to Badger)
- DOE Water Quality Grant (2022): (three applications)
 - Pepin Lite,
 - Judson/8th/9th/10th Stormwater LID,
 - Fairgrounds Stormwater LID, Stormwater Capacity Grant.

Banham noted that sidewalks and ramps, including improvements related to ADA, will be addressed with the Vinup Road project like Grover.

The Committee discussed eliminating the center turn lane to allow for on-street parking and possibly adding a wider shoulder for bicycles lane on Vinup Road. Korthuis stated there are already bike lanes on Vinup. De Valois concurred, noting that is one reason why people cannot park on Vinup Road. Banham stated he will revisit the striping on Vinup Road when the roadway project is in the design phase.

C. Downtown Bike Racks

Sandal stated that Ken Stapp, of the Downtown Business Association, was supposed to provide a diagram of the bike racks. Sandal explained that the proposal is to place two at the 7th Street intersection, two at the 5th Street intersection, and some mid-block racks ere proposed. The Committee noted that mid-block bike racks are a liability to pedestrians and bicycles are not allowed on downtown sidewalks. The Committee expressed disapproval of any bike racks being placed mid-block. Banham stated that staff will convey this to the Downtown Business Association.

D. PROJECT – 7th Street Extension Project Before and After Photos

Banham presented the 7th Street Extension Project before and after photos, noting that this project resulted in additional parking spaces and added power and water service to the parking lot.

E. PROJECT: WWTP Outfall Project Before and After Photos

Banham presented the before and after photos of the Wastewater Treatment Plant Outfall Project and explained that due to the new construction some effluent pumping energy demand has been reduced, which will lower the electric bill.

F. PROJECT: 17th Street Extension

Sandal presented a map showing the re-design of the crosswalk location for the 17th Street Extension project. The crosswalk has been relocated to where the trail around Fisher School reaches 17th Street, causing a natural place for people to want to cross.

De Valois asked where all the excavated materials went. Sandal stated that some residents took material. Other materials were removed by Stremler Gravel for their use.

G. PROJECT: Foxtail Street Gap Elimination

Banham presented the preliminary plans for the Foxtail Street Gap Elimination project. He noted that there needs to be an assessment reimbursement area established, assessing existing and future property owners the cost of the frontage of their utilities once the property is developed or a utility connection is requested. Properties will pay based on the length of their frontage. The Committee discussed the cost of utilities and impact fees and how to establish a new policy that could be used for all new construction. The Committee recommended including the cost of new sidewalks and discussed using this same approach to get reimbursement from the undeveloped properties on 17th Street.

H. PROJECT: East Grover Overlay

Banham stated the East Grover Overlay project is in progress. Sandal added that sewer has been stubbed out.

I. PROJECT: Benson Road Pedestrian Improvements

Banham stated the Benson Road Pedestrian Improvements project is on schedule. Sandal stated this should be done by the end of August. Korhuis stated his church would be interested in a sidewalk across their frontage. Sandal stated he should contact the construction company.

J. PROJECT: Berthusen Park Restrooms

Banham stated that the invitation to bid for the Berthusen Park Restrooms project was distributed today to select contractors from the City's Small Works Roster. A pre-bid meeting will be held on-site August 13, and bids are due August 20.

The meeting was adjourned at 5:46 p.m.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 17, 2020	
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 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:	Outlook Calendar	
Summary Statement:	See next page.	
Recommended Action:	None	

August 17, 2020

Monday

4:00 PM - 5:00 PM

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

August 19, 2020

Wednesday

9:00 AM - 11:00 AM

Technical Review Committee Meeting NOTE DATE CHANGE -- City Hall 2nd Floor Large Conference Room

[Join Microsoft Teams Meeting](#)

[+1 253-948-9362](#) United States, Tacoma (Toll)

Conference ID: 474 433 851#

[Local numbers](#) | [Reset PIN](#) | [Learn more about Teams](#) | [Meeting options](#)

Hi Everyone, Please note the date change from Thursday, August 20 to Wednesday, August 19.

12:00 PM - 4:00 PM

Restitution Hearing -- Annex Council Chamber; Annex East Training Room; Annex South East Conference Room; Annex North East Conference Room

4:00 PM - 6:00 PM

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

7:00 PM - 8:30 PM

Board of Adjustment -- City Hall 2nd Floor Large Conference Room

August 21, 2020

Friday

8:30 AM - 9:30 AM

Check In-Mike/Anthony -- Mike's Office

August 24, 2020

Monday

9:00 AM - 10:00 AM

Mike/Vern 1/1 -- Mike's Office

August 25, 2020

Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- Annex Council Chamber
Meeting will be at Annex until further notice.

August 26, 2020

Wednesday

All Day

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

9:00 AM - 10:00 AM

Check-In Mark/Mike -- Mike's Office

7:00 PM - 10:00 PM

Lynden Virtual Planning Commission Meeting -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room; City Hall 2nd Floor Large Conference Room; City Hall 1st Floor Large Conference Room

August 27, 2020

Thursday

7:00 PM - 10:00 PM

Lynden Virtual Planning Commission Meeting -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room; City Hall 2nd Floor Large Conference Room; City Hall 1st Floor Large Conference Room

August 28, 2020

Friday

11:00 AM - 12:00 PM

Check0In Heidi/Mike -- Mike's Office

August 31, 2020

Monday

7:00 PM - 10:00 PM

Lynden Virtual Planning Commission Meeting -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room; City Hall 2nd Floor Large Conference Room; City Hall 1st Floor Large Conference Room

September 1, 2020

Tuesday

8:30 AM - 9:30 AM

**Leadership Team Meeting -- Annex Council Chamber
LT in Annex until further notice.**

5:00 PM - 6:30 PM

Design Review Board -- Annex South East Conference Room

7:00 PM - 10:00 PM

**Lynden Virtual Planning Commission Meeting -- Annex Council Chamber; Annex East Training Room;
Annex North East Conference Room; Annex South East Conference Room; City Hall 2nd Floor Large
Conference Room; City Hall 1st Floor Large Conference Room**

September 2, 2020

Wednesday

10:00 AM - 11:00 AM

Check-In Mike/Nic -- Mike's Office

September 3, 2020

Thursday

9:00 AM - 11:00 AM

Technical Review Committee Meeting -- City Hall 2nd Floor Large Conference Room

4:00 PM - 5:00 PM

Public Safety Committee Meeting -- Police Training Room

September 4, 2020

Friday

8:30 AM - 9:30 AM

Check In-Mike/Anthony -- Mike's Office

September 7, 2020

Monday

All Day

Labor Day -- United States

September 8, 2020

Tuesday

8:30 AM - 9:30 AM

**Leadership Team Meeting -- Annex Council Chamber
LT in Annex until further notice.**

