

CITY OF LYNDEN

PUBLIC WORKS DEPARTMENT

Main Number: (360) 354-3446



Public Works Committee Meeting Agenda

City Hall - 300 Fourth Street

4:00 PM August 04, 2021

Call to Order

Action Items

1. Approve Minutes from from July 07, 2021

2. Recreation Center Siding Proposal

Brian Davidson has provided a proposal to staff to replace siding on the Lynden Rec Center and is requesting that City Council authorize him to proceed. The current agreement authorizes the Davidsons to be reimbursed up to \$250,000 per year for building improvements, upon approval of City Council.

3. Request for Franchise Agreement - Sound Internet Services dba Pogozone

The City has received a request for a franchise agreement from Pogozone, a provider of business and residential internet and phone service to Whatcom, Skagit, and Island counties. This is scheduled to be presented at the City Council meeting on August 16, 2021 to set a Public Hearing for September 6, 2021.

4. Sidewalk Obstruction - Revise Section 12.28 of LMC

This proposed amendment is due to a request from Overflow Taps to expand their outdoor seating area. Per City code, any obstructions must be five feet from the curb. However, the existing sidewalk code does not address outdoor dining.

5. Community Center Parking Lot Access Easement Agreement - Wes Herman / Upper End LLC

110 5th Street

Information Items

6. Darigold Expansion - Increased Wastewater Demand

Staff is working with a consultant to identify specific needs for improvements at the Wastewater Treatment Plant. Additional industries are currently looking at property in City limits which will increase wastewater treatment demands. Staff is looking at moving forward with some of the capital improvement projects identified in the General Sewer Plan. These projects will occur earlier than identified in the plan as a result of the expected increase on demand. Design and permitting to occur in 2021 and 2022 with construction planned for 2023.

7. West Lynden Stormwater

Staff is working with the following stormwater related projects in West Lynden:

- 1) Alliance Freeze Dried (purchasing the former PeaceHealth property in the West Lynden Business Park);
- 2) Dick Vandenberg and Lark Group (Canadian development company) on the remaining West Lynden Business Park property;
- 3) Staff is finalizing a Scope of Work for the \$40,000 analysis of downstream channel survey work using a Port of Bellingham grant (\$15,000);
- 4) Staff is finalizing the interlocal agreement with the Water Improvement and Drainage Districts to the north, west, and south of the City.

8. Traffic Impact Fees in the Pepin Creek Subarea

Public Works and Planning staff are working with Transpo Group to incorporate the Pepin Creek Project into the Traffic Impact Fee table. This data will be used in the development of Traffic Impact Fees that will be presented to City Council later this year.

9. PROJECTS

Pepin Sub-Area Design - Agreement Executed

Managed Aquifer Recharge - Met with Lummi Salmon Habitat Staff

Industrial Condensate Outfall - Shoreline Permit under review by Whatcom County

West Front Street - Developing Schedule for Advertisement and Bid

CIPP (Judson) - Finalizing Scope and Budget for Design

Decant Facility - Pre-Engineered Metal Building Arriving on August 13

Airport - 1970s Fuel Pump Failed and is Being Replaced (\$5,000 estimate)

Adjournment

Next Meeting: September 8, 2021

CITY OF LYNDEN

PUBLIC WORKS DEPARTMENT

Main Number: (360) 354-3446



Public Works Committee Meeting Minutes

City Hall - 300 Fourth Street

4:00 PM July 07, 2021

Call to Order

Roll Call

Members Present: Mayor Scott Korthuis, Councilors Gary Bode, Ron De Valois and Jerry Kuiken

Staff Present: Public Works Director Steve Banham, Programs Manager Mark Sandal, Sr.
Admin. Assistant Miriam Kentner

Public Present: Gary Vis

Action Items

1. Approve Minutes from June 09, 2021

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

Action:

The minutes from June 09, 2021, were approved.

2. Community Center Parking Lot Access Agreement - Wes Herman / Upper End LLC

Banham stated that he received an email from Wes Herman, owner of 110 5th Street and representing Upper End, LLC, requesting a parking agreement for the five spaces abutting the building. This building is located south of the Community Center parking lot and is not in the Historic Business District.

The Committee discussed the history of the building at length and reviewed the location and the draft "License Agreement for Shared Parking" presented by Banham. The Committee was enthusiastic about the redevelopment of the building and the ability of the City to support this by providing a parking agreement.

Banham stated staff is working with the City Attorney to review the agreement.

Action:

The Public Works Committee concurred and directed staff to work with Wes Herman and the City Attorney to finalize the License Agreement for Shared Parking.

3. Kode Kamp and Kamm PRD

Sandal explained that staff is working on an agreement for credit for water connection fees and transportation impact fees for those portions of the waterline and widened shoulder that are outside the developments but identified in each comprehensive plan.

Action:

The Public Works Committee concurred and directed staff to finalize the agreement for credit on water connection fees and transportation impact fees.

Information Items**4. Project Funding Results**

Surface Transportation Block Grant (STBG): The Whatcom Council of Governments (WCOG) Transportation Technical Advisory Group Committee recommended a grant of \$800,000 to the City for Benson Road improvements from Sunrise Drive to Badger Road. The WCOG Executive Board meets on July 14 to formally approve the funding. The project is scheduled to be coordinated with the WSDOT construction of a compact roundabout tentatively scheduled for 2023.

Department of Ecology Stormwater Grants: The Northwest Washington Fairgrounds (\$660,224 grant) and 8th Street (\$644,959 grant / \$214,986 loan at 1.2%) projects have been selected for funding. The fairgrounds will supply the 25% match to the requested DOE (75%) grant funds. The construction is expected to start in 2022.

5. Kon Tree Aire Apartments Water Supply Update

The Draft Report of Examination for Lynden's application (S1-29376) to supply water to Kon Tree Aire Apartments with a portion of the EDB water right has been posted to the Department of Ecology website for comment. The comment period is open to the public for 30 days, ending July 23, 2021. The City will be reimbursed by Kon Tree Aire Apartments for all its costs. Possible hook up expected in late fall.

6. Water Usage During Heat Wave

Banham presented an exhibit showing the 2021 Daily Water Use and Storage. The Committee discussed the response of the Water Treatment Plant and the water usage during the record heat wave of 100 degree and higher temperatures from June 26 to 28. The Water Treatment Plant had to go offline and rebalance chemicals to assure the water met quality standards. The water plant and raw water intake pumps were able to keep up with the high-water usage.

7. Wastewater In-Line Testing for COVID Ending

Covid-19 testing from the City's wastewater system contract ends July 31, 2021. No further extensions are planned. The City has collected a significant amount of data which has also been provided to the University of Washington.

8. Website Updates

Banham briefly explained that updates have been made to the city website.

Stormwater Management

Transportation Benefit District-funded projects

Cross Connection Control

Various Other Improvements

9. PROJECTS

Managed Aquifer Recharge

Banham and Sandal reviewed the concept of the project which will take high flows out of the Nooksack River and infiltrate them into a groundwater aquifer. Staff explained that two potential sites are being considered. These sites are located on Washington State Department of National

Resources Land (DNR) land. Staff is arranging meetings with local tribes to provide updates on this project.

Korthuis explained that the Whatcom County Executive is interested in this project and has offered his assistance.

Industrial Condensate Outfall

The Committee discussed the Small Works Roster project installing sanitary sewer manholes along Hannegan Road beginning at Riverview Road and extending south. The Hannegan Manhole is scheduled to be installed in August.

Fire Station Renovation

Banham stated paving is scheduled to occur Thursday, July 8th. Overall, the Fire Station Renovation project even with a few small delays is progressing on schedule.

West Front Street

Staff is planning to advertise for the West Front Street project this fall pending County funding approval and review of materials availability (currently shortages of PVC pipe).

10. Street-Bonded Project Work Session

Korthuis stated he is preparing the Street Capital Projects Bond document for City Council and will bring the draft to the August Public Works Committee Meeting. This is similar to the street improvements that were done in the early 2000's under the previous mayor.

New Business:

Front Street Pin Oaks

The Committee discussed the Pin Oak trees located on Front Street. Bode stated as they continue to grow taller and out of space, they potentially become a safety hazard. Banham stated that Public Works staff is working with an arborist to determine the health of the trees and necessary actions.

Foxtail Street

Banham stated certified letters have been mailed to residents abutting the street detailing a proposed latecomer agreement for water and sewer utility and sidewalk improvements. These will benefit future development along Foxtail Street. Residents have contacted him expressing concern; however, no hearings have been requested.

Plant Maintenance Shop and Chamber of Commerce Storage

Vis inquired about potentially using some portion of a future Water and Wastewater maintenance shop for Chamber of Commerce storage. The Committee discussed the existing maintenance shop at the Wastewater Treatment Plant. Public Works is looking into upgrading those workspaces. One alternative is to construct a new facility on the vacant property near the six-million-gallon tank. The Committee liked the idea of a new facility similar to the equipment storage building at the Public Works Shop.

Adjournment: The meeting was adjourned at 5:21 p.m.

Next Meeting: August 4, 2021

From: [Steve Banham](#)
To: [Brian Davidson](#)
Cc: [Jeannie Davidson](#); [Tyler Timmermans](#); [Heather Sytsma](#); [Ted Brouwer](#); [Heidi Gudde](#); [Dale Tevelde](#)
Subject: RE: Forge Siding Proposal Rev.1
Date: Friday, July 16, 2021 11:57:54 AM
Attachments: [Forge YMCA Siding Proposal Rev. 1.docx](#)

Brian,

Thanks for the attached proposal. We are excited to see the siding project moving forward. I'll need to bring this proposal to the August 4, Public Works Committee (PWC) for approval. Does that timing work for you?

It appears that only the entrance siding is Axiom and most of the siding is the Taylor metal product installed by BRBC. Am I reading this right? Is the Taylor metal product less expensive than the Axiom material? Did you get any other proposals from any other contractors? I'm trying to anticipate questions that might come up at committee.

Although I expect that this will not require a building permit, I would like to have Ted Brouwer (Building Official) take a quick look, since he is familiar with the problems with the existing siding.

I'm happy to meet with you in advance of the August meeting. I also recommend you attend the August 4th PWC meeting which begins at 4 pm here at City Hall (I'll also mail an invite).

Steve Banham, P.E.
 Public Works Director

City of Lynden, 300 4th Street, Lynden, WA 98264

Office: (360) 354-3446 <> Direct: (360) 255-5512 <> Cell: (360) 815-5728 <> Email: banhams@lyndenwa.org <> website: www.lyndenwa.org

My incoming and outgoing email messages are subject to public disclosure requirements

Our Vision: Cultivating Exceptional Service for Our Extraordinary Community
We Value: Community – Communication – Teamwork – Integrity – Excellence

From: Brian Davidson <brian.davidson@cnwnetting.com>
Sent: Thursday, July 15, 2021 9:04 AM
To: Mike Martin <MartinM@LYNDENWA.ORG>; Steve Banham <BanhamS@LYNDENWA.ORG>
Cc: Jeannie Davidson <jeannie@forgefitgym.com>
Subject: FW: Forge Siding Proposal Rev.1

I have contacted the contractors you recommended, plus several other.

Veldman didn't have the time or resources, most were booked through the winter.

The bid attached includes Bay Road doing all of the demolition, water proofing, and siding under the steel.

Axiom would be doing the Steel itself. The bid exceeds the authorized amount. I'll cover the shortfall

until next year's leasehold improvement allocation comes through.

With your permission I'd like to go forward.

Best Regards;
Brian Davidson
Pres. / CEO
www.cnwnetting.com
360.966.9605



From: Jeff Turner <jat5263@yahoo.com>
Sent: Wednesday, July 14, 2021 2:22 PM
To: Brian Davidson <brian.davidson@cnwnetting.com>
Subject: Forge Siding Proposal Rev.1

Here you go. If happens, best I can say about the schedule is starting some time in the fall.

Best Regards,

Jeff Turner
Bay Rd. Building & Consulting LLC
360-815-3109

Bay Road Building & Consulting LLC

4626 Bay Road, Blaine, WA 98230

360.815.3109 · jat5263@yahoo.com



Item #2.

July 14, 2021

To: Brian & Jeannie Davidson

Re: Forge Fitness 100 Drayton St. Exterior Renovations

Brian & Jeannie, Thanks for the opportunity to continue quoting your projects. Included in this quote for re-siding the Forge – YMCA building are the following:

- 1] Demolition and disposal of existing T1-11 siding.
- 2] Demolition and disposal of existing composition roof areas on the south side of the building.
- 3] Sheeting all walls and comp roof areas as needed with 7/16 OSB.
- 4] Waterproofing walls with Sopraseal VP system and roof areas with ice & water dam.
- 5] Re-siding with Taylor Metal Products HR-34 26ga wall panels with all required flashings including wrapping barge, fascia and soffit systems. Front buck outs and entry would be re-sided with Axiom's Phoenix Panel Systems 4mm route & return panel in Metallic Silver.
- 6] Re-roofing sloped areas on the south side of the building with Taylor Streamline standing seam panels.
- 7] Replacing gutters & downspouts.

Any structural rot repair or replacing of rotten or damaged barge or fascia would be billed at \$55.00 per man hour + material cost + 10%.

Broken Hardi panels above the berm would be replaced with pressure treated plywood and siding would extend to 3 to 6 inches above grade. I estimate the work to take approximately 8 weeks for a crew of 4 men.

Exclusions:

- 1] Removing the berm or any landscaping.
- 2] Covering CMU walls.

Proposal Total: \$255,411.00 + sales tax

Re – siding with a Hardi plank type system would provide significant savings and we would be happy to price the project but I fear it would be a pretty residential look.

Bay Road Building & Consulting LLC

4626 Bay Road, Blaine, WA 98230

360.815.3109 · jat5263@yahoo.com



Item #2.

Due to market volatility, this proposal may be withdrawn if not accepted within 25 days.

Accepted Date: ----- Signature: -----

Best Regards,

Jeff Turner

ORDINANCE NO. xxxx

AN ORDINANCE OF THE CITY OF LYNDEN, AMENDING SECTION 12.28
SIDEWALK OBSTRUCTIONS

WHEREAS, Section 12.28 of the Lynden Municipal Code regulates sidewalk obstructions and use of planting strips, including infractions for violations; and

WHEREAS, ~~from time to time certain chapters of the Lynden Municipal Code need updating in order provide clarification and to reflect minor changes needed in order to accurately reflect changes in parking needs~~The City has determined that additional guidance is required to identify which obstructions are allowed without permits and which obstructions require permits; and

WHEREAS, The City of Lynden seeks to provide opportunity for outdoor dining areas to be placed on sidewalks adjacent to, and operated by the restaurants provided that safe pedestrian access can be maintained; ~~and;~~

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WHEREAS, The City seeks to provide clarification on the permit application process required for sidewalk obstructions that require permits;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section1. Section 12.28 of the Lynden Municipal Code is hereby repealed and replaced as follows:

Chapter 12.28 - SIDEWALK OBSTRUCTIONS

12.28.010 - Sidewalk obstructions prohibited—When.

Nothing shall be placed on any sidewalk in the city which either partially or totally obstructs or impedes the flow of pedestrian traffic except as specifically permitted in this chapter.

(Ord. 812 § A(part), 1989).

12.28.020 - ~~Authorized partial o~~Sidewalk Obstructions – Exceptions without permit.

The following obstructions shall be permitted on public sidewalks where a minimum continuous unobstructed width of 5 feet for pedestrian travel is maintained.

A. Fire hydrants.

B. Planters and other landscaping placed by the city.

- C. Benches and bicycle racks placed by the city.
- D. Communication and light poles placed either by the city or pursuant to franchise granted by the city.
- E. Flagpoles or standards therefor placed by the city or community business groups recognized by the city.
- F. Traffic-control devices placed by the city.
- G. Refuse containers, either placed directly by the city, or where the location of the container is on a sidewalk or planting strip as required by the city.
- H. Postal boxes, either individual or group, erected according to city and post office specifications.
- I. Public Art placed by the city or community business groups working with the city.
- J. New awnings or canopies that comply with the provisions of LMC 19.23.070.
- K. Hanging planters attached to city poles or otherwise overhanging the sidewalk with a minimum clearance of seven feet above sidewalks.
- L. Merchandise being moved into or out of an adjacent business; provided, that such merchandise does not remain on the sidewalk or planting strip for more than 30 minutes.
- M. Merchandise located within thirty-two (32) inches of the building façade and maintaining a continuous 5-foot unobstructed width for pedestrians.
- N. Sandwich board signs or similar which may be placed only by the owner or lessee of adjacent property, provided they are less than 36 inches tall and not visually obstructing views at the intersection.

12.28.020 – Sidewalk Obstructions – Permit required.

Obstructions of public sidewalks not covered by section 12.28.010 may be placed by private parties, if a permit is obtained from the city public works department. Partial obstructions may only occur on sidewalks with sufficient width to allow a continuous minimum of width of 5 feet to remain unobstructed for pedestrian travel. These partial obstructions can include:

- A. Merchandise displays, limited to special sales events of no more than seven days continuously abutting the business offering such merchandise in such a way that an unobstructed pedestrian corridor is maintained at a minimum width of five feet;

- B. Facades for buildings built up to the right-of-way line of the public street; provided, that such addition shall not exceed six inches in depth as measured perpendicular to the existing façade.
- C. Temporary obstructions occurring as part of a city permitted special event. A description of the obstruction must be included with the special event permit request and reviewed by public works.
- D. Outdoor Dining areas may be permitted which comply with the following conditions:
- a. The dining area must be adjacent to the permit applicant's property and written concurrence must be obtained from the adjacent businesses and submitted with the application.
 - b. Business must utilize sturdy furniture and provide trash receptacles of good quality and attractive appearance consistent with the streetscape and adjacent architecture.
 - c. No elements including railings, tables, signs, or umbrellas may be permanently affixed to the sidewalk.
 - d. If patio-style umbrellas are used, they should be placed within an outdoor dining table, and not protrude into the unobstructed sidewalk area outlined in this section.
 - e. Outdoor railings, partitions, or fences may not be taller than forty-two inches in height.
 - f. If alcohol is to be served, the applicant must have a liquor license and comply with all provisions of WAC 314-02-125.
 - g. Applications for outdoor dining shall include:
 - i. Proof of insurance and covenant. The business must continually maintain during the term of the permit, a certificate of insurance naming the City as an additional insured, with respect to liability, and providing that it shall be primary as to any other policy of insurance. The policy must contain the additional insured statement, coverage amounts of no less than \$1,000,000 and cancellation notification.
 - ii. A copy of City of Lynden business license.
 - iii. A copy of Whatcom County Health Department approval.
 - iv. If alcohol is to be served, a copy of approval by the Washington State Liquor and Cannabis Board per WAC 314-02-125.
 - v. The proposed site plan, that shows the location, number, and dimension of all seating, dining, signs, and barriers, such as railings or planters within the dining area and the dimension of clear zone(s) which are contiguous with the clear zones or the adjacent properties.

- h. The applicant shall sign a covenant to hold harmless and indemnify the City to be retained by the City for the duration of the business activity

E. Revocation

- a. All permits approved under this chapter shall be temporary, shall vest no permanent right and may in any case be revoked at the sole discretion of the City upon 30 days' notice, or without notice in the event any such use or occupation shall become dangerous; any structure or obstruction so permitted shall become insecure or unsafe; shall become a public nuisance; or shall not be constructed, maintained or used in accordance with the provisions of this chapter or the application materials submitted for review. The determination by the City Building Official that a structure is dangerous, insecure, unsafe, a nuisance or has not been constructed, used or maintained in accord with this chapter and applicable codes and standards shall be conclusive.
- b. Permits shall also be revoked if:
- i. Following written notice of the lapse of an insurance policy required to be maintained by LMC 12.28.020, the permittee fails to supply a valid certificate of insurance; or
 - ii. Following written notice of the lapse of the annual renewal, or any associated renewal fee, or fees for the exclusive use of the right-of-way, the permittee fails to bring fees current.
- c. If any such obstructions, or use occupancy is not discontinued on notice to do so by the City and with the time period designated, the City may remove any structure or obstruction, or make such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, at the expense of the permittee, or his successor, and such expense may be recorded as a lien and otherwise collected in the manner provided by law.

F. Denial

- a. The Public Works Director or their designee may reject or deny an Outdoor Dining Permit application when he/she determines that any of the following apply:
- i. Encroachment into the public right-of-way at the location proposed is prohibited by recorded documents associated with the property;
 - ii. The Lynden Municipal Code, the Lynden Development Standards and/or other adopted codes, regulations and standard prohibit encroachment of the type and/or quality proposed.
 - iii. Insufficient area exists to preserve a five foot clear zone and automobile ingress/egress.
 - iv. An obstruction would result in a threat to life or safety.
 - v. An encroachment would result in cost prohibitive City maintenance costs.

- vi. The permit application includes information that is false, misleading, or is intentionally erroneous.
- vii. Work proposed is within a right-of-way not controlled by the City at the time of application, either as the result of separate ownership or as part of an ongoing project in which state or federal control supersedes.
- viii. An alternative design or location is available to the applicant that would reduce or eliminate potential impacts to the City, and would not cause a hardship to the applicant.

G. Appeal. Final decisions of the Public Work Director or their designee may be appealed pursuant to LMC Chapter 17.11.

H. Violation. Enforcement procedures and penalties resulting from violations of this chapter shall be administered pursuant to LMC Chapter 12.28.060.

I. Fees. All application fees for sidewalk obstruction permits shall be established by the City Council and shall be paid prior to issuance of any permit

12.28.~~030-040~~ - Use of planting strips.

Sandwich board signs, garbage cans, merchandise, flower containers, benches and/or newspaper stands may be placed on a planting strip between the street and sidewalk in CS, CSC, RS and I zones; provided, that they are at least twenty feet from any street intersection, are less than fifty inches high and do not constitute a safety hazard in the opinion of the Lynden police and public works departments. No fee shall be charged for the permit which is issued by public works. Use of the planting strip shall not interfere with ~~LID-BMP~~city stormwater facilities or infiltration functions.

(Ord. 812 § A(part), 1989).

~~12.28.040 – Placement of bike racks, benches or newspaper stands.~~

~~Bicycle racks, benches or newspaper stands may be placed only at locations approved in advance by the public works director.~~

~~(Ord. 812 § A(part), 1989).~~

12.28.050 - ~~Existing signs allowed.~~ **Reserved**

~~Sandwich board signs in place before October 1, 1988, may remain in place even though they violate Section 12.28.020 or 12.28.030; provided, that they do not, in the opinion of the Lynden police department, constitute a traffic safety hazard.~~

(Ord. 812 § A(part), 1989).

12.28.060 - Penalty.

The penalty per violation of this chapter shall be ~~as follows~~at the rates set forth in the adopted annual budget:

- ~~A. — First offense within one year — Twenty five dollars;~~
- ~~B. — Second offense within one year — Seventy five dollars;~~
- ~~C. — Third and subsequent offense within one year — Three hundred dollars.~~

(Ord. 812 § A(part), 1989).

Section 2 – Severability.

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

Section 3 – Effective Date.

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, otherwise as provided by law, five days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, ____ IN FAVOR ____ AGAINST AND SIGNED BY THE MAYOR THIS ____ DAY OF _____, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

After recording return document to:

City of Lynden
Planning Department
300 4TH Street
Lynden WA 98264

DOCUMENT TITLE:
LICENSE AGREEMENT FOR PARKING

REFERENCE NUMBER OF RELATED DOCUMENT:
N/A

GRANTORS:
CITY OF LYNDEN, a municipal corporation

GRANTEES:
UPPER END, LLC

ABBREVIATED LEGAL DESCRIPTION:
Insert legal description
ASSESSOR'S TAX PARCEL NUMBER(S):
Insert tax parcel number(s)

LICENSE AGREEMENT FOR SHARED PARKING

THIS LICENSE AGREEMENT FOR SHARED PARKING (“Agreement” or “License”) is made and entered into this ____ day of _____, 2021, by and between the City of Lynden, a municipal corporation organized under the laws of the state of Washington (“City” or “Lynden”) and Upper End, LLC, organized under the laws of the state of Washington (“Upper End”) (together, “Parties”).

WHEREAS, the Vision Statement for the City Comprehensive Plan promotes cooperation between business owners, citizens and city officials to encourage economic vitality in the City; and

WHEREAS, the City Downtown Development Plan calls for economic enhancement of the Historic Business District of Lynden by encouraging diversity and mixed uses, improving

economics for business owners, encouraging joint public/private partnerships, making the Historic Business District attractive to visitors, and increasing the community's tax base; and

WHEREAS, Upper End is in the process of redeveloping 110 5th Street in the downtown Historic Business District; and

WHEREAS, the existing building has five (5) angled parking spaces on the north side of the building which are partially on 110 5th Street and partially on the City Community Center Parking Lot which have historically been used for parking by the 110 5th Street business; and

WHEREAS, the City owns the parking lot which is used mostly reserved for Community Center patrons but has also historically allowed these spaces within the lot to be used by the occupant of 110 5th Street and accessed from the parking lot driveway access; and

WHEREAS the Parties desire to provide for mutual parking for the various uses of their respective properties identified herein; and

WHEREAS, the City owned property burdened by this Agreement consist of the five angled parking stalls depicted on Exhibit A, attached hereto (collectively, "City Parking Property"); and

WHEREAS, the Upper End property benefited by this Agreement is identified and legally described on Exhibit B, attached hereto ("Upper End"); and

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

NOW THEREFORE IN CONSIDERATION of the mutual benefits to them, the Parties come now and agree as follows:

1. Grant of License. The City grants Upper End a license for purposes of ingress, egress, and nonexclusive possession for automobile parking purposes in the five City designated parking spaces at the City Community Center Parking Lot ("License"). The rights set forth in this License for non-exclusive use of the City Community Center Parking Lot does not guarantee such parking will be available at any given time, particularly during special events, nor does it provide

Upper End the right to remove or cause the removal of vehicles parked at the City Community Center Parking Lot. The License shall be terminable or revocable only as set forth herein and shall be assignable by Upper End only as set forth herein.

2. Scope. The scope of the License is to allow Upper End patrons to park in these five designated parking spaces within the City Community Center Parking Lot.

3. This License shall be granted for two consecutive ten (10) year terms provided that termination shall occur only upon at least one (1) year prior written notice by the City. Following expiration of the second ten (10) year period, the License may be terminated at any time following provision of one hundred eighty (180) days prior written notice.

4. Indemnification. Upper End shall fully indemnify and hold the City harmless from any claims, losses, liabilities, damages, and expenses (including reasonable attorney's fees) arising out of ingress, egress, use or occupation of the City Community Center Parking Lot by an owner, employee, guest, invitee of a guest, agent, contractor, or subcontractor of the owner or operator of the Upper End Property or by any person doing business with the Upper End Property or other commercial or non-profit tenant located at the Upper End Property.

5. Insurance. Upper End shall maintain, at its own expense, for the benefit of itself and the City, insurance against liability for property damage or loss and against liability for personal injury or death, arising from acts or omissions of Upper End, its owners, agents, subcontractors, employees, guests, invitees of guests or person doing business with the Upper End Property or other commercial or non-profit tenant located at the Upper End Property. Prior to the commencement of this Agreement, Upper End shall deliver to the City certificates or binders evidencing the existence of the insurance required herein. Such policy or policies shall name the City as an additional insured and shall contain a provision whereby the City must receive at least thirty (30) days' prior written notice of any cancellation or reduction in Upper End insurance coverage. In addition, should Upper End be notified or have reason to expect a termination or cancellation action by its insurance company, Upper End will provide the City with at least thirty (30) days advance written notice. Any reduction or cancellation in the coverage or limits shown here, or any failure to provide proof of the required insurance or to timely provide the notice required herein shall constitute a material breach of this Agreement and cause for termination.

Upper End shall possess the following insurance with coverage amounts not less than as specified below:

<u>Type</u>	<u>Amount</u>
Worker's Compensation	Statutory
Professional Liability	\$ One Million (errors and omissions) (On a claims-made, annual aggregate basis)
General and Excess Liability	\$ One Million per occurrence/ \$ Two Million aggregate

6. Non-Waiver of Breach. 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.

7. Governing Law and Venue. Any dispute arising out of this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Whatcom County Superior Court.

8. Attorney's Fee and Costs. In the event of any cause of action or litigation arising out of an alleged breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs from the other Party.

9. Modification in Writing. This Agreement may not be modified or amended except by the written agreement of the Parties.

IN WITNESS WHEREOF the parties hereto have executed this Agreement at Lynden, Washington, Whatcom County.

CITY OF LYNDEN:

UPPER END

By _____
Its _____

By _____
Its _____

EXHIBIT A
CITY PARKING PROPERTY

401 Grover Street: Parcel Numbers 400320 262330 and 400320 254328

The northwesterly 94 feet of lots 1 and 2; the easterly 29 feet of the southerly 56 feet of the northerly half of Lot 2; and the northerly half of lots 3, 4 and 5 all of Block 11 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M.

EXHIBIT B
UPPER END PROPERTY

The south half of Lots 1 and 2 in Block 11 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M.

COMMUNICATION
MANHOLE RIM

SDCB RIM
(TYPICAL)

WATER
METER

5th STREET

CONCRETE WALK

N 23°28'06"W 56.00'

CONCRETE WALK

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

PARKING STRIPE

CONCRETE WALK

CONCRETE
PAD

WATER
SPIGOT

COVERED
ENTRANCE

BUILDING

S 66°32'24"W 71.02'

COMMUNICATION
VAULT

SEWER
MANHOLE RIM

CABLE
INTERFACE

SERVICE
POLE WITH
DROPS

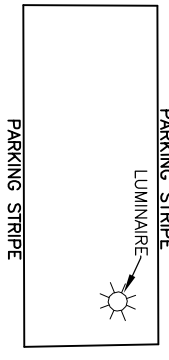
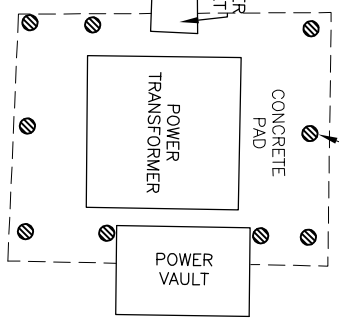
NATURAL GAS
REGULATOR
AND METER

S 23°28'15"E 56.00'

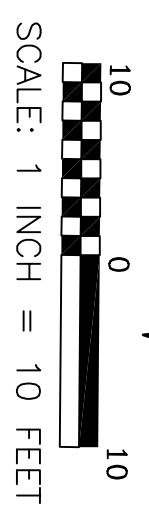
CONCRETE STEM WALL

POWER
VAULT

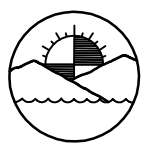
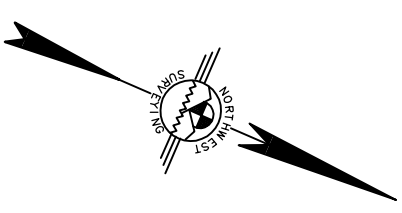
POWER
VAULT



Page 23



BASIS OF BEARING =
CITY OF LYNDEN SURVEY
MONUMENT NETWORK



NORTHWEST SURVEYING & GPS, INC.
407 5TH STREET, LYNDEN, WA 98264
PH. (360) 354-1950 NWSURVEY.COM

TOPOGRAPHY AND BOUNDARY MAP
FOR WES HERMAN
PORTION OF THE SW 1/4, NE 1/4, SECTION 20,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.
WHATCOM COUNTY, WASHINGTON

