

RESOLUTION NO. 1005

**A Resolution of the City Council of the City of Lynden to  
hold a Public Hearing on a potential street vacation of the  
current right of way for the 17<sup>th</sup> Street extension to Lynden.**

WHEREAS, City of Lynden ("City"), is considering the vacation of the right-of-way easement for the extension of 17<sup>th</sup> Street resulting from the Settlement between Marina Timmermans and the City of Lynden executed on or about October 29, 2013, a copy of which is attached hereto as EXHIBIT A; and

WHEREAS, the owners of the property underlying the proposed vacated easement and the City have agreed to exchange the vacated easement for a similar easement of equal value located slightly west of the easement being vacated, which agreement is attached hereto as Exhibit B; and

WHEREAS, Chapter 35.79 RCW and LMC 17.21.070 provide the City with the authority to vacate certain rights-of-way by resolution after a public hearing, and

WHEREAS, the City of Lynden will provide notice of the public hearing as set out in Section 17.21.030 B of the Lynden Municipal Code, and RCW 35.79.020 for the Proposed Right-of-Way Vacation; and

WHEREAS, if fifty percent of the abutting property owners as shown on Exhibit A file written objection to the Proposed Right-of-Way Vacation with the City Clerk, prior to the time of hearing, the City shall be prohibited from proceeding with the Proposed Right-of-Way Vacation;

NOW THEREFORE BE IT RESOLVED that the Mayor and the City Council of the City of Lynden will hold a public hearing on the Proposed Right-of-Way Vacation on July 15, 2019 at the Lynden City Council Chambers located at 205 4th Street.

APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK PAM BROWN

\_\_\_\_\_  
CITY ATTORNEY





2131003260  
 Page: 1 of 10  
 10/30/2013 3:07 PM  
 AGR \$81.00  
 Whatcom County, WA

Request of: ZERVAS LAW

**RETURN DOCUMENT TO:**

Greg Greenan  
Zender Thurston PS  
PO Box 5226  
B'ham, WA 98227

Use dark black ink and print legibly. Documents not legible will be rejected per RCW 65.04.045 & 65.04.047

**DOCUMENT TITLE(S):**

Agreement

**AUDITOR FILE NUMBER & VOL. & PG. NUMBERS OF DOCUMENT(S) BEING ASSIGNED OR RELEASED:**

N/A

Additional reference numbers can be found on page \_\_\_\_\_ of document.

**GRANTOR(S)/GRANTEES**

CITY OF LYNDEN  
MARINA A. TIMMERMAN

Additional grantor(s) can be found on page \_\_\_\_\_ of document.

**GRANTEE(S)**

(CITY OF LYNDEN,  
MARINA A. TIMMERMAN)

Additional grantee(s) can be found on page \_\_\_\_\_ of document.

**ABBREVIATED LEGAL DESCRIPTION: (Lot, block, plat name OR; qtr/qtr, section, township and range OR; unit, building and condo name.)**

LOT B TIMMERMAN LLA AS REC AF 2021003073;  
LOT C TIMMERMAN LLA AS REC AF 2021003073;  
LOT 3 TIMMERMAN SHORT PLATS REL BOOK  
13 SHORT PLATS PG 28

Additional legal(s) can be found on page \_\_\_\_\_ of document.

**ASSESSOR'S 16-DIGIT GEO-PARCEL NUMBER:** 400319 394429  
0000; 400319396411 0000; 400319 406430 0000

Additional numbers can be found on page \_\_\_\_\_

The Auditor/Recorder will rely on the information provided on this form. The responsibility for the accuracy of the indexing information is that of the document preparer.



FILED  
**SETTLEMENT AND RELEASE AGREEMENT**

2013 OCT 30 PM 2:35

**THIS SETTLEMENT AND RELEASE** ("Agreement") is entered into by and between Marina Timmermans ("Mrs. Timmermans"), a single person, and the City of Lynden ("Lynden"), a Washington municipal corporation, (collectively, "Parties"), and shall be effective as of the date of full execution entered below.

**WHEREAS**, the City of Lynden is a municipal corporation with a population of approximately 12,000 people, located in Whatcom County, Washington;

**WHEREAS**, Mrs. Timmermans owns property within Lynden, to wit: 1703 Main Street. Lynden, WA 98264, which is legally described as follows:

That portion of the East half of the Southwest quarter of the Northeast quarter, Section 19, Township 40 North, Range 3 East of W.M., described as follows: Commencing at a point on the North line of the Southwest quarter of the Northeast quarter of Section 19, Township 40 North, Range 3 East, 8 rods East of the Northwest corner of said East half of the Southwest quarter of the Northeast quarter; Thence South along a line parallel to and 8 rods East of the West line of the East half of the Southwest quarter of the Northeast quarter, a distance of 408 feet; Thence East parallel with the North line of said quarter quarter to a point 268 feet due West of the East line of said East half of the Southwest quarter of the Northeast quarter; Thence North to a point 230 feet South of the North line of the Southwest quarter of the Northeast quarter; Thence East 58 feet; Thence North to the center of a creek running along the Northeast corner of property; Thence Northerly following the center of said creek to the North line of the Southwest quarter of the Northeast quarter; Thence West along said North line of the Southwest quarter of the Northeast quarter to the point of beginning. EXCEPT Main Street (County Road No. 106).

Situated in Whatcom County, Washington.

**WHEREAS**, in order to complete the extension of 17<sup>th</sup> Street north to Main Street in the City of Lynden it is necessary to route the street through Mrs. Timmermans' property;

**WHEREAS**, in connection with the Timmermans' October 2, 1985, Short Plat, and anticipating its future need for a portion of the Timmermans' property for the eventual street extension, the City imposed a covenant barring the development of any structures within a delineated portion of Lot B; because the location of the street extension has been changed, the City no longer needs the covenanted area;

**WHEREAS**, on April 12, 2007, Lynden filed a condemnation petition (Petition) in the Superior Court of the State of Washington in and for Whatcom County naming Mrs. Timmermans as respondent for the purpose of condemning an easement for the 17<sup>th</sup> Street right-of-way through Mrs. Timmermans' property;

**WHEREAS**, on July 16, 2010, the parties filed a stipulated order on public use and necessity wherein they agreed that (a) the actual right-of-way would be shifted eastward, and (b) before trial, the City could elect to base just compensation on the area delineated in the Petition or on the actual agreed-to right-of-way location;

**WHEREAS**, In response to the Petition, Mrs. Timmermans filed two claims for inverse condemnation based upon denial of a short plat application occurring before the filing of the petition and alleged delay following the filing of the petition, which claims were dismissed—the first by the parties' stipulation, and the second by the court;

**WHEREAS**, the parties agreed on a resolution of the issue of just compensation as set forth below;

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Transfer of Easement.** Concomitant with the payment described in Section 2, the parties will execute and file (with the Court and the Whatcom County Assessor's Office) the stipulated judgment and decree of appropriation attached hereto as Exhibit A, thereby transferring to the City of Lynden the easement contemplated in the Stipulation on Public Use and Necessity.

**2. Timing of Payment.** Lynden shall deliver or cause delivery of its payment of Two Hundred and Fifty Thousand Dollars (\$250,000.00), by check made payable to IOLTA, Zervas Law, P.S., to the offices of Zervas Law located at 1909 Broadway, Bellingham, WA, on or before close of business on October 31, 2013, in payment for the easement referenced in Paragraph 1.

**3. Dismissal.** The Parties shall move for dismissal of the condemnation action with prejudice and without costs or fees to either party except as otherwise provided herein, no later than 10 days after the disbursal of funds to Mrs. Timmerman. Dismissal shall occur upon entry of an order of dismissal by the court consistent with the terms of this Agreement.

**4. Release, Cancel and Void No-build Covenant.** The City shall also cancel, release and void the covenant against building any structures that was imposed in connection with the October 3, 1985, Timmermans Short Plat. Should it be determined that any further



action by the City is required to complete the covenant's cancellation, release and void, the City will undertake such action without undue delay.

**5. Mutual Release.** For and in consideration of the payment of the sum of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) and the easement conveyed in consideration thereof, the undersigned parties herewith release and forever discharge each other and their respective insurers, predecessors, successors and affiliated companies, as well as all of their agents, employees, owners, and attorneys from all claims in any way relating to the lawsuit entitled *City of Lynden, Petitioner v. Marina A. Timmermans, Respondent*, Cause Number 07 2 00866 3, except as set out in the October 7, 2013, Order Granting Petitioner's Motion for Partial Summary Judgment.

The City of Lynden agrees to pay Mrs. Timmermans the sum of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) by delivering to Zervas Law, P.S., a check for the full amount that is made payable to IOLTA Zervas Law, P.S. on or before the close of business on October 31, 2013, and Maria Timmermans agrees to convey the easement described in Exhibit A.

As part of the consideration of the agreed settlement of the above case Mrs. Timmermans herewith warrants that no other person or entity has an ownership interest in the Timmermans property that is the subject of this agreement that would entitle that person to share in any award for just compensation for the interest therein condemned by the City of Lynden.

This is a compromised settlement of disputed claims and is not an admission of fault or liability by anyone.

The undersigned warrant and represent that they have not sold, assigned, granted or transferred to any person, firm, or corporation any claim, demand, action or cause of action, or any part thereof, which could affect their right to execute this Agreement. The undersigned warrant and represent that they have full authority to do so, and bind themselves to this Agreement.

The preparation of this Agreement has been a joint effort and the resulting document shall not be construed more severely against any one of the parties than against the other.

**6. Remedy for Breach.** For any breach of this Agreement all remedies in law and equity shall be available including the remedy of specific performance.

**7. Reasonable Costs and Attorney's Fees.** In the event it becomes necessary for either party to retain an attorney to undertake action to induce or enforce or defend a claim under this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs related to the enforcement or defense of a claim under this Agreement.

**8. Amendment.** This Agreement may not be modified or amended except by the written agreement of the parties.

9. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Washington.

10. **Complete Agreement.** This Agreement, including its Exhibits, and the Purchase and Sale Agreement of even date is a fully integrated and complete Agreement and supersedes all prior or contemporaneous oral or written agreements or understandings between the parties apart from the terms and provisions expressly set forth or incorporated herein.

11. **Severability.** If any section, subsection, sentence, clause, or phrase in this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. **Complete Understanding.** The undersigned hereby declare that the terms of this Settlement and Release Agreement have been completely read and are fully understood and voluntarily accepted, following ample opportunity to confer with legal counsel, for the purpose of making a full and final compromise and settlement of any and all claims or potential claims, disputed or otherwise arising prior to the date of this Settlement and Release Agreement.

13. **Authorization.** Each person signing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of and to bind the party represented, and that any necessary conditions precedent to the execution of this Agreement on behalf of the party represented have been satisfied.

14. **Counterparts.** This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument and as if all of the parties to the counterparts had signed the same instrument. Electronic facsimile signatures and/or electronically scanned signatures shall be sufficient to demonstrate a party's assent to this Agreement. If the counterparts are not signed on the same day, the effective date of this Agreement shall be the latter date of the two dates.

15. **Effective Date.** This Agreement shall be effective as of the as of the date of full execution entered below.

DATED: 10-26-013  
Marina Timmermans

Marina Timmermans

DATED: 10-29-2013  
City of Lynden

By: Scott Kachura

Title: Mayer

**Exhibit A**



FILED

2013 OCT 30 PM 2:35

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF WHATCOM

CITY OF LYNDEN, a non-charter code city,

Petitioner,

v.

MARINA A. TIMMERMANS,

Respondent.

No. 07 2 00866 3

**STIPULATED JUDGMENT AND  
DECREE OF APPROPRIATION**

Judge Snyder

**JUDGMENT SUMMARY**

Judgment Creditor:	MARINA A. TIMMERMANS
Attorney For Judgment Creditor:	DOMINIQUE ZERVAS
Judgment Debtor:	CITY OF LYNDEN
Principal Judgment Amount Due:	\$250,000.000
Interest to date of Judgment:	included in Principal Judgment amount
Attorney Fees:	included in Principal Judgment amount
Expert Witness Fees:	included in Principal Judgment amount
Evaluation Costs:	included in Principal Judgment amount
Other Amounts:	included in Principal Judgment amount

THIS MATTER coming on before the above-entitled court, Petitioner the City of Lynden appearing by T. Gregory Greenan, Zender Thurston PS, and Respondent Marina A. Timmermans, appearing by and through Dominique Zervas, Zervas Law, P.S.; and the undersigned parties having agreed that TWO HUNDRED FIFTY THOUSAND and 00/100

1 Dollars (\$250,000.00) is just compensation for the taking and/or damaging of the property  
2 and/or property rights as described in Exhibit "A", now, therefore,

3 IT IS ORDERED, ADJUDGED AND DECREED that upon entry of this stipulated order,  
4 the State shall become the owner of the property and/or property rights as described in the  
5 attached Exhibit "A."

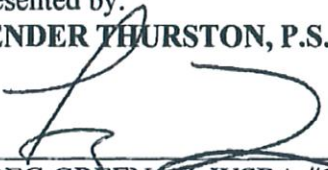
6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that entry of this decree  
7 terminates all further litigation in this matter except for any proceedings that may be necessary  
8 to determine entitlement to these funds and any orders necessary to disburse the funds.  
9

10 DONE IN OPEN COURT this 30 day of October, 2013.  
11

12 **Charles R. Snyder**

13 JUDGE SNYDER  
14 Whatcom County Superior Court

15 Presented by:  
16 **ZENDER THURSTON, P.S.**

17   
18 GREG GREENAN, WSBA #16094  
19 BRYAN L. PAGE, WSBA #38358  
20 Attorney for Petitioner

21 Copy Received; Approved for Entry:  
22 **ZERVAS LAW, P.S.**


23  10.26-13  
24 DOMINIQUE ZERVAS, WSBA #34098  
25 Attorney for Respondent



EXHIBIT A  
LEGAL DESCRIPTION, AND MAP DEPICTING, EASEMENT

**Exhibit A**  
**Easement Description**

A tract of land within the Southwest quarter of the Northeast quarter of Section 19, Township 40 North, Range 3 East of W.M., being a portion of Lot B and Lot A of "Timmermans Lot Line Adjustment" as per the map thereof recorded under Whatcom County Auditor's File Number 2021003073 and also being a portion of Lot 3 of "Timmermans Short Plat" as per the map thereof recorded under Whatcom County Auditor's File Number 1630446 and being more particularly described as follows:

Commencing at the northwest corner of Lot B of "Timmermans Lot Line Adjustment" as per the map thereof recorded under Whatcom County Auditor's File Number 2021003073; thence North 89°05'32" East along the north line of Lot B a distance of 98.10 feet to the *True Point of Beginning*; thence Southerly on a tangent curve to the right, having a radius of 13.00 feet, through a central angle of 90°00'00" an arc distance of 20.42 feet to a point of tangency; thence South 00°54'28" East a distance of 113.82 feet to a point on the south line of Lot B, being also the north line of Lot C of said Lot Line Adjustment; thence continuing South 00°54'28" East a distance of 75.98 feet to the beginning of a tangent curve to the left, thence southerly along said curve to the left, having a radius of 220.00 feet, through a central angle of 42°34'22" an arc distance of 163.47 feet to the beginning of a tangent reverse curve with a radius of 470.00 feet; thence southerly along said curve to the right through a angle of 4°13'35" an arc length of 34.67 feet to the southeast corner of Lot C, "Timmermans Lot Line Adjustment"; thence North 00°20'22" East along the east line of Lot C a distance of 93.39 feet to the beginning of a non tangent curve to the right, which radius point bears North 58°19'48" East; thence northerly along said curve to the right, having a radius of 160.00 feet, through a central angle of 30°45'45" an arc distance of 85.90 feet to a point of tangency; thence North 00°54'28" West a distance of 89.82 feet to the north line of Lot C, "Timmermans Lot Line Adjustment" being also the south line of Lot 3, "Timmermans Short Plat" thence continuing North 00°54'28" West a distance of 99.97 feet to the beginning of a tangent curve to the right; thence northeasterly along said curve, having a radius of 13.00 feet; through a central angle of 90°00'00" an arc distance of 20.42 feet to a point of tangency on the north line of Lot 3 "Timmermans Short Plat"; thence South 89°05'32" West along the north line of Lot 3 and along the north line of Lot B, "Timmermans Short Plat" a distance of 86.00 feet to the *True Point of Beginning*.







Exhibit B.

Filed for Record at Request of:  
CARMICHAEL CLARK, PS  
P.O. Box 5226  
Bellingham, Washington 98227  
(360) 647-1500

**DOCUMENT TITLE:**  
RIGHT-OF-WAY GRANT

**REFERENCE NUMBER OF RELATED DOCUMENT:**

**GRANTOR:**  
<>

**GRANTEE:**  
<>

**ABBREVIATED LEGAL DESCRIPTION:**  
<>  
Full legal description at page 2 hereto

**ASSESSOR'S TAX PARCEL NUMBER:**  
<>





RIGHT-OF-WAY GRANT

THIS RIGHT-OF-WAY GRANT ("Grant") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by <> ("Grantor") to the CITY OF LYNDEN, a Washington municipal corporation (hereinafter "Grantee" or "City").

The GRANTOR, for and in consideration of public interest and other good and valuable consideration, grants, dedicates and conveys to the GRANTEE, a perpetual and exclusive public easement over the following described real property situated in the City of Lynden, County of Whatcom, State of Washington:

See **Exhibit A** attached hereto, and fully incorporated herein by reference (the "Property").

The purpose of this Right-of-Way Grant is to provide the Grantee with an exclusive, perpetual and unlimited right-of-way for public ingress, egress, utilities, curbs, gutters, sidewalks and all public right-of-way purposes for the Property described at Exhibit A and depicted at **Exhibit B** hereto.

The Right-of-Way Easement shall constitute covenants running with the land, and shall be binding on the undersigned and all successors, assignees, devisees, or transferees of the parties and shall in all respects attach to the individual properties legally described in this Right-of-Way Grant.

GRANTOR:

GRANTEE:

CITY OF LYNDEN, a Washington municipal

\_\_\_\_\_

\_\_\_\_\_

<>

By: Scott Korthuis  
Its: Mayor

<>

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF WHATCOM     )

I certify that I know or have satisfactory evidence that <> is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_



