

May 5, 2025 Council Hearing on Guide Sewer Latecomer Charges- Responses to Council Questions

Did Public Works gather property owners to communicate the impact of latecomer charges prior to construction of the sewer extension? Was the City intention known going in rather than after the fact?

Public Works did not hold a meeting to convey the City's intent to recover construction costs (at a future time of development) from property owners or future developers. The City's intention to recover these costs that are otherwise borne directly by the developer was discussed openly during negotiations about easements and other aspects of construction (Attachment 1).

Have we done this before? Do we always do before notice?

Recovering the cost of ratepayer-funded utility infrastructure that serves new development has been done before. An area-based latecomer assessment was used to extend sewer to East Lynden and Northwood/Kamm South. An area-based assessment was used to repay City costs of acquiring the West Lynden Stormwater Pond. A per-unit development assessment was charged to repay Sewer Utility ratepayer outlay for constructing Pump Station #15. A latecomer approach for recently completed Pump Station #17 has been intended since inception of the project. In all these cases, property owners/developers are informed when they engage Public Works that the City is developing latecomer charges to recover costs borne by existing ratepayers for system improvements that solely benefit future development in the new service area.

Can there be a proportional arrangement in which property owners are assessed by developed area or something that grows to final built configuration?

Not under current City code. The City's legal counsel is investigating whether assessments could be determined on a per-Equivalent Residential Unit ("ERU") basis. This inquiry was prompted by a considerations related to the upcoming Pump Station #17 latecomers assessment.

It is important to note that, if implemented, a per-ERU approach to establishing an assessment presents the possibility that the City will not recover all its potentially reimbursable expenses associated with the improvements. If the assessment is broken down and assessed on a per-ERU basis, and the maximum number of allowable ERUs are never developed on a particular property, the City will not recover the assessment amount associated with those unrealized ERUs.

It is worth noting that Pump Station #17 serves a mixed-use zone that includes a substantial amount of residential development, whereas the Guide Sewer extension does not. Trying to determine ERUs in a purely Commercial setting presents additional challenges.

Can we structure the assessment so that minimal development on existing business is not charged? What does law say about Council ability to reduce latecomer impact for development that has minimal addition to existing business?

RCW 35.91.060(2) provides that "Reimbursement may only occur when a property is developed or redeveloped in a manner requiring connection to or use of the water or sewer facilities, or when a property is requesting connection to or use of the water or

sewer facilities.” The trigger is not whether the development (or redevelopment) is minimal or significant, but rather whether water or sewer improvements would have been required as a condition of development had they not already been installed by someone else (in this case the City).

The City Council may structure the assessment in any way that is demonstrably fair and equitable, and meets the requirements of the relevant RCWs and Lynden Municipal Code provisions. An important consideration is that what is determined to be fair and equitable today becomes, to an extent, the measure of what is fair and equitable for future development.

Can we charge an upfront portion of assessment and delay part of future phases?

LMC 13.28.140 states that each assessment is “due in its entirety” prior to connection or use and must be paid to the city “in one lump sum.”

However, LMC 13.28.090 allows a developer who subdivides a property subject to a latecomers assessment to segregate the assessment among the lots created. The segregation between the lots must utilize the same methodology as was used when the assessment was originally established. There is a segregation fee associated with this process.

Is City planning to budget on these revenues or are they out in time enough to diminish impact to City funding?

No. Latecomer Assessments are not paid until time of development and hook-up; therefore, the City does not expect revenues to accrue until an unspecified future budget.

How does Council ask questions of property owners? Can those inquiries be included with Council packet, etc.? Example is how will Mr. Scholten choose to build out his sewer needs – City vs private?

The question is included here and will be forwarded directly to Mr. Scholten.

Does the situation requiring permitted septic to hook to sewer apply to other permits like a freezer replacement or minor renovation?

Not to our knowledge.

Can Council get copies of sewer easements with property owners?

Yes. Please see Attachment 2.

Who negotiated impact payments with affected property owners and how were those parts estimated?

Business owners were not paid for loss during construction. Compensation for easements was approved by Public Works using standard construction appraisals.

Attachment 1. Communications to property owners.

From: Tyler Buys <tbuys@recivil.com>
Sent: Thursday, April 10, 2025 2:48 PM
To: Mark Sandal <SandalM@LYNDENWA.ORG>
Subject: RE: Guide Sewer - Property Owner Notes

Mark,

I talked with John and he doesn't remember any issues. He said they were always wrapped up on time each morning, and that Pete with Faber was really good about keeping one of AM/PM's driveways open at all times.

Let me know if there is anything else you need from me.

Thanks!

Tyler Buys, P.E.

Greg

Mr. Baker Silo is required to run the sewer their frontage on the east side with their development. As properties develop to the north of Mt. Baker Silo they will also need to extend the sewer to their property line. This would include private extensions to the Border Patrol building.

Mark

Mark Sandal
Programs Manager

-----Original Message-----

From: Greg Faber <Greg@faberconstruction.com>
Sent: Tuesday, October 17, 2023 11:40 PM
To: Mark Sandal <SandalM@LYNDENWA.ORG>; Tyler Buys <tbuys@recivil.com>; Nathan Zylstra <nathanz@recivil.com>
Cc: Chris O'Day <ChrisO@faberconstruction.com>
Subject: FW: Sewer line

Gentleman, please see the e-mail below from a local owner/resident, is this something the city would like to continue? It sounds like he would be willing to participate?
I will leave with you to decide how to proceed or respond.
Thanks

Greg Faber | Faber Construction
C: 360.305.6206

-----Original Message-----

From: Serj Gosal <serj.gosal@gmail.com>
Sent: Friday, October 13, 2023 3:03 AM
To: Greg Faber <Greg@faberconstruction.com>
Subject: Re: Sewer line

Yes please Greg .

Thanks,

> On Oct 13, 2023, at 2:19 AM, Greg Faber <Greg@faberconstruction.com> wrote:
>
> Hey Owen,
>
> Currently under this contract I'm not aware of any plans to go north, but i can start the conversation if you like?
> LMK
>
> Greg Faber | Faber Construction
> C: 360.305.6206
>
> -----Original Message-----
> From: Serj Gosal <serj.gosal@gmail.com>
> Sent: Thursday, October 12, 2023 10:18 AM
> To: Greg Faber <Greg@faberconstruction.com>
> Subject: Sewer line
>
> Hi Greg ,
>
> It is my understanding City of Lynden is running a sewer line from Am/ Pm gas station under the guide meridian and they are going to stub it out on the east side of the road , we would like to know if future plan is to run it north towards old border station 8334 Guide ? As that is on private pump system .
>
> We are paying commercial property taxes and would like to be benefiting from commercial resources in lynden .
>
> Secondly are they going to run it north on the west side by the yellow house at 8311 Guide .
>
> Any help or guidance you can give would be greatly appreciated .
>
>
> Thanks,
>
> Owen
>

Fri 5/5/2023 9:20 AM

Brent Weg <brent@bakersilo.com>
To Jeff Davis
Cc Norm Heerspink; Mark Sandal

Good morning Jeff,

Just checking on the status of the COL sewer line extension. How are things going on the easements with Scholten and Arco??
Do you have a timeline for the project going out to bid??

As you are aware, our project hinges on the COL commitment to complete the sewer extension this summer/fall. Do you still anticipate this is a realistic timeline?
We are just trying to schedule with our site contractor.

Thanks,

Brent Weg
Baker Silo, LLC
360-201-0211

From: Mark Sandal <SandalM@LYNDENWA.ORG>

Sent: Wednesday, April 9, 2025 1:38 PM

To: Tyler Buys <tbuys@recivil.com>

Subject: RE: Guide Sewer - Property Owner Notes

Tyler

Did you talk with John to see what his memory is on both Scholten Equipment and AM-PM?

Mark

Mark Sandal

Programs Manager

From: Mark Sandal <SandalM@LYNDENWA.ORG>

Sent: Friday, August 4, 2023 1:04 PM

To: Lesa Starkenburg (starkenburgtkroontje@msn.com) <starkenburgtkroontje@msn.com>

Cc: Jon Hutchings <HutchingsJ@LYNDENWA.ORG>; Heather Sytsma <SytsmaH@LYNDENWA.ORG>

Subject: Scholten Easement

Lesa

Sorry to be a pain, but I wanted to follow up on our quick call today regarding the sewer easement on Duane Scholten's property on the Guide Meridian.

Do you think you may have an answer from Duane early next week?

The reason I ask, is that we would like to get the project advertised as soon as possible.

Thank you

Mark

Mark Sandal

Programs Manager

Fri 5/5/2023 1:59 PM

Hi Duane,

Thanks for meeting with me this morning. Attached is the exhibit we were looking at this morning in your office.

A couple of notes to follow up on our discussion:

1. The new easement would be between the existing water easement and WSDOT Right-of-Way.
2. The City would like to combine the existing water and the new easements into a single 'utility easement'.

Please let Mark or I know if you have any questions about these easements or anything else regarding the project. I'm happy to help where I can.

Thanks!

Tyler Buys, P.E.

Thu 5/4/2023 10:26 AM

Sounds good, Mark.

I just spoke with Duane and I'll be meeting with him tomorrow morning to discuss his easements, night work, hookup fees, etc.

As far as next week and meeting with AM/PM, the only meeting I currently have is for the Jim K Pre-Con on Thursday at 10:00, that you are involved in as well.

Thanks!

Tyler Buys, P.E.

From: Mark Sandal

Sent: Thursday, May 4, 2023 7:32 AM

To: Tyler Buys

Subject: RE: Guide Utilities - Easement Meeting

Tyler

My next couple of days are pretty much full.

It looks like it just you meeting with him.

What does your days look like next week to meet with AM-PM? I am off on Monday, so don't worry about meeting on that day.

Thank you

Mark

Mark Sandal

Programs Manager

From: Tyler Buys <tbuys@recivil.com>

Sent: Wednesday, May 3, 2023 4:37 PM

To: Mark Sandal <SandalM@LYNDENWA.ORG>

Subject: Guide Utilities - Easement Meeting

Hi Mark,

Can you let me know your availability for the next few days to meet with Duane? He is generally pretty flexible, especially if you are OK with going to his office. I can ask him to come to City Hall too if you want.

Please let me know.

Thanks!

Tyler Buys, P.E.

Wed 4/19/2023 8:39 AM

Thanks, Steve.

I'll use the discussion points below next time I talk with Duane.

Thanks!

Tyler Buys, P.E.

From: Steve Banham
Sent: Tuesday, April 18, 2023 6:36 PM
To: Tyler Buys ; sandalm@lyndenwa.org
Subject: RE: Guide Sewer - Scholten's Hookup Fees

I think I'm okay with doing the Scholten work at night if that's what it takes to seal the deal.

Steve Banham, P.E.
Public Works Director

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

From: Tyler Buys <tbuys@recivil.com>
Sent: Tuesday, April 18, 2023 10:47 AM
To: Mark Sandal <SandalM@LYNDENWA.ORG>; Steve Banham <BanhamS@LYNDENWA.ORG>
Subject: Guide Sewer - Scholten's Hookup Fees

Good morning, Mark and Steve.

We have had some previous discussions about the hookup fees that Duane wanted waived, and I wanted to summarize in an email here to make sure we are on the same page.

1. The City will waive the hookup fee for the single sewer service, for the house north of AM/PM on Duane's property.
2. The latecomers fee associated with the future development on any of Scholten's parcels in this area is not waived as part of this.
3. A relevant topic Duane will want to hear about is that the City plans on doing all work on Scholten's property at night.

We almost have an exhibit prepared that shows permanent easements to begin these discussions with Scholten's and AM/PM.

Please let me know if you have any questions or clarifications.

Tyler Buys, P.E.

From: Tyler Buys <tbuys@recivil.com>
Sent: Wednesday, March 8, 2023 6:07 AM
To: Mark Sandal <SandalM@LYNDENWA.ORG>; Steve Banham <BanhamS@LYNDENWA.ORG>
Subject: RE: Sewer updates?

Mark and Steve,

We did not discuss the differences of those two fees specifically. My interpretation of our conversation is that he would be excluded from the connection fee as well as latecomers fee for that house.

Would the latecomers fee be for the entire property? Or would there be a way to pay a latecomers fee for only that house, and wait to collect the latecomers fee for the larger property when it gets developed?

Obviously, that would greatly affect the cost of Duane's benefit from waiving the latecomers fee.

Please let me know.

Thanks!
Tyler Buys, P.E.

From: Mark Sandal <SandalM@LYNDENWA.ORG>
Sent: Tuesday, February 28, 2023 10:38 AM
To: banhams@lyndenwa.org; Tyler Buys <tbuys@recivil.com>
Subject: RE: Sewer updates?

Tyler

I rechecked. It is hidden in the trees

I think if we can get the easement for the allowed septic to sewer for the house only that is a great. The assessment amount is still required based on the acreage calculations.

Mark

Mark Sandal
Programs Manager

From: Mark Sandal
Sent: Tuesday, February 28, 2023 10:34 AM
To: Steve Banham <BanhamS@LYNDENWA.ORG>; Tyler Buys <tbuys@recivil.com>
Subject: RE: Sewer updates?

Steve

The house has been torn down

Mark

Mark Sandal
Programs Manager

From: Steve Banham <BanhamS@LYNDENWA.ORG>
Sent: Monday, February 27, 2023 6:07 PM
To: Tyler Buys <tbuys@recivil.com>
Cc: Mark Sandal <SandalM@LYNDENWA.ORG>
Subject: RE: Sewer updates?

Tyler,
If that house is currently on a septic system, the hook-up fee is waived under the septic to sewer program. Is he also hoping to exclude them from a Latecomer's fee?

Steve Banham, P.E.
[Public Works Director](#)

From: Tyler Buys <tbuys@recivil.com>
Sent: Monday, February 27, 2023 9:43 AM
To: Mark Sandal <SandalM@LYNDENWA.ORG>
Cc: Steve Banham <BanhamS@LYNDENWA.ORG>
Subject: RE: Sewer updates?

Good morning, Mark and Steve.

I spoke with Duane this morning, and he was good with night work and limiting his disruptions that way. He asked about putting asphalt back where he had recently put some near the corner, and I confirmed with him that we would put it back how we found it.

One additional request he had, was to waive the hookup fee for what he calls the 'Miller property'. This is the residence that is on his property, just to the north of AM/PM. My understanding is that it would be a single-family residence hookup. Would that be something the City would be willing to do?

Please let me know, and I can get back to him on that. I also discussed the next steps with him of reviewing specific easement areas with him as we progress our design.

Please let me know about the hookup fee, and if you have any questions for me.

Thanks!

Tyler Buys, P.E.

Norm

There may be ways for the City to participate for work that is done offsite from each property owners frontage. This would be a credit toward the sewer hook up fees for each lot. There would be no credit for the work in front of a developers lot.

Mark

Mark Sandal
Programs Manager

From: Mark Sandal
Sent: Monday, August 8, 2022 11:59 AM
To: Norm Heerspink ; Brent Weg ; 'Steve VanMiddendorp' ; Jeff Davis ; Heidi Gudde
Cc: 'Lane Stremler' ; Steve Banham
Subject: RE: Sewer line

Norm

Sorry I have not gotten back to you sooner. I think working with the group you mention below on a funding package would be easiest. If you involve the City in the construction it becomes prevailing wage and will add a lot to the cost. Cost distribution could be based on number of units possible, acreage, front foot. These are just a couple of quick thoughts.

Mark

Mark Sandal
Programs Manager

From: Norm Heerspink <norm@bakersilo.com>
Sent: Monday, August 1, 2022 4:01 PM
To: Mark Sandal <SandalM@LYNDENWA.ORG>; Brent Weg <brent@bakersilo.com>; 'Steve VanMiddendorp' <steve@stremlergravel.net>; Jeff Davis <DavisJ@LYNDENWA.ORG>; Heidi Gudde <GuddeH@lyndenwa.org>
Cc: 'Lane Stremler' <lane@stremlergravel.net>
Subject: RE: Sewer line

Mark,

Thanks for sending over the preliminary alignment and profile. For budget purposes we had Stremler provide a cost per your attachment. How would this cost be distributed amongst the properties that benefit? Would this cost be shared solely by the property owners or does the city kick in as well?

Here are the properties I would imagine would benefit / share costs.

Baker Silo (Brent & I)
North Pacific (Marlin Zoerink)
The old Border Station (Owen)
AM PM Gas station
Possibly Scholten's Equipment house on the north end of the property

Any insight on this matter will help us decide what direction to take as we are getting close to submitting preliminary drawings.

Brent and I will be leaving town this Thursday and coming back on the 16th. Let me know if you have any questions before we leave.

Thanks,

Norm Heerspink
Baker Silo, LLC.
360.354.4940 **ph**
360.354.5647 **fax**

From: Mark Sandal <SandalM@LYNDENWA.ORG>
Sent: Friday, July 29, 2022 4:17 PM
To: Brent Weg <brent@bakersilo.com>; 'Steve VanMiddendorp' <steve@stremlergravel.net>; Jeff Davis <DavisJ@LYNDENWA.ORG>; Heidi Gudde <GuddeH@lyndenwa.org>
Cc: Norm Heerspink <norm@bakersilo.com>; 'Lane Stremler' <lane@stremlergravel.net>
Subject: RE: Sewer line

Brent

Thought I would follow up with you and see if you have any questions or thoughts on the alignment?

Thank you

Mark

Mark Sandal
Programs Manager

From: Mark Sandal
Sent: Wednesday, July 20, 2022 7:25 AM
To: Brent Weg <brent@bakersilo.com>; Steve VanMiddendorp <steve@stremlergravel.net>; Jeff Davis <DavisJ@LYNDENWA.ORG>; Heidi Gudde <GuddeH@lyndenwa.org>
Cc: Norm Heerspink <norm@bakersilo.com>; Lane Stremler <lane@stremlergravel.net>
Subject: RE: Sewer line

Brent

Here is our current preliminary alignment and profile. This plan is based on having the greatest ability to serve the area. It is approximately 10 feet deep in the area of your property (station 52+00). This should be able to serve your whole site with

gravity and continue on to the north. This alignment still requires an easement from Duane roughly from his office building north.

We will be able to work with you on a credit for your sewer hookup charges for offsite work.

I hope this helps. If you would like to meet on this, please let me know

Mark

Mark Sandal
Programs Manager

From: Brent Weg <brent@bakersilo.com>
Sent: Thursday, July 14, 2022 5:07 PM
To: Mark Sandal <SandalM@LYNDENWA.ORG>; Steve VanMiddendorp <steve@stremmlergravel.net>; Jeff Davis <DavisJ@LYNDENWA.ORG>; Heidi Gudde <GuddeH@lyndenwa.org>
Cc: Norm Heerspink <norm@bakersilo.com>; Lane Stremmler <lane@stremmlergravel.net>
Subject: RE: Sewer line

Yes, please! That would be great!

From: Mark Sandal <SandalM@LYNDENWA.ORG>
Sent: Thursday, July 14, 2022 4:53 PM
To: Steve VanMiddendorp <steve@stremmlergravel.net>; Brent Weg <brent@bakersilo.com>; Jeff Davis <DavisJ@LYNDENWA.ORG>; Heidi Gudde <GuddeH@lyndenwa.org>
Cc: Norm Heerspink <norm@bakersilo.com>; Lane Stremmler <lane@stremmlergravel.net>
Subject: RE: Sewer line

Brent

Sorry I did not get back to you sooner today.

We are already working on preliminary design for going up the west side of the Guide and have a rough profile developed. The pipe is right around what Steve mentions below, maybe a little deeper.

It sounds like there is good movement on easements across Duane's, which is good. If you would like I can send you the rough lay out we have.

Mark

Mark Sandal
Programs Manager

From: Steve VanMiddendorp <steve@stremmlergravel.net>
Sent: Thursday, July 14, 2022 3:10 PM
To: Brent Weg <brent@bakersilo.com>; Mark Sandal <SandalM@LYNDENWA.ORG>; Jeff Davis <DavisJ@LYNDENWA.ORG>; Heidi Gudde <GuddeH@lyndenwa.org>
Cc: Norm Heerspink <norm@bakersilo.com>; Lane Stremmler <lane@stremmlergravel.net>
Subject: RE: Sewer line

Devon has been looking into the Sangha portion, talking to Kuljit and meeting with Bannon at the City. Recapping the conversations with Sangha's, they are in the beginning stages of exploring an expansion of the mobile home park but are a long

way from anything resembling a plan. There were conditions that came out of the counsel meeting this week spelling out requirements on Sangha's to move forward with the expansion, but Devon has not been able to get any feedback if they looking to move on this any time soon.

Devon did meet with Steve Bannon at the City regarding this SS expansion though, and how it would/could be done. Knowing that route through Sangha's is not a done deal since they may or may not be moving on this soon, Bannon stated that the City would be open to installing the SS main E down W Front from the intersection of Duffner to the intersection of Guide and N along the WSDOT R/W in front of Scholten's. He said that Col would be willing to help facilitate the WSDOT permitting. They would love to see this happen and are willing to work with the owners with credits, but didn't elaborate on how much.

Devon and I ran some rough calculations and based on the depth of the SS at the intersection of Duffner there would be enough room to run the line from there to your property and have about 6'-7' of cover.

S.V.M.

From: Brent Weg <brent@bakersilo.com>

Sent: Thursday, July 14, 2022 8:50 AM

To: Mark Sandal <SandalM@LYNDENWA.ORG>; Jeff Davis <DavisJ@LYNDENWA.ORG>; Heidi Gudde <GuddeH@lyndenwa.org>

Cc: Norm Heerspink <norm@bakersilo.com>; Lane Stremmler <lane@stremmlergravel.net>; Steve VanMiddendorp <steve@stremmlergravel.net>

Subject: Sewer line

Good morning Mark,

Was curious if you are making any progress on the sewer line easement with the trailer park owner?

I've had a couple of conversations with Duane Scholten and he is open to the idea of going thru his property with the sewer line. We were thinking we could go through on the west side of his new building he is planning to build. (You should have a site plan showing the location of this new building). This would be the cleanest and most direct way to bring sewer to the north. There would be minimal issues with existing power and water lines using this route.

With the setback requirements for Duffner ditch, would there be adequate space to run the line west of his building?

Please advise if this would be permitted by the city, so we can continue to work towards a sewer solution for the development of our property.

Brent Weg
Baker Silo, LLC
360-201-0211

Attachment 2. Sewer Easements.

2023-0900197

09/05/2023 01:08 PM



AFTER RECORDING RETURN TO:

Robert A. Carmichael
Carmichael Clark, PS
PO Box 5226
Bellingham, WA 98227

DOCUMENT TITLE:

SEWER AND WATER UTILITY EASEMENT AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

AF No. 2020300160

GRANTOR:

CM VENTURES, INC., a Washington corporation

GRANTEE:

CITY OF LYNDEN, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

PTN NE ¼ SE ¼, SEC 24, TWP 40 N, R02E, W.M.

Full legal description at page 9 hereto.

ASSESSOR'S TAX PARCEL NUMBER(S):

400224 539205 0000

SEWER AND WATER UTILITY EASEMENT AGREEMENT

THIS **SEWER AND WATER UTILITY EASEMENT AGREEMENT** ("**Agreement**") is made and entered into this 24th day of August, 2023, by and between CM VENTURES, INC., a Washington corporation (hereinafter "Grantor" or "CM Ventures") and the CITY OF LYNDEN (hereinafter "Grantee" or "City"). Grantor and Grantee may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Grantor is the sole owner of real property legally described in **Exhibit A** hereto and fully incorporated herein by reference ("Burdened Property"); and:

WHEREAS, Grantee is a Washington municipal corporation that operates municipal utilities, including municipal sewer and water service, for the benefit of all residents; and

WHEREAS, Grantor's predecessor in interest conveyed to Grantee an easement recorded under Whatcom County Auditor's File No. 2020300160, which established a water line easement burdening a portion of Grantor's Property ("Existing Easement"); and

WHEREAS, Grantee requires a permanent sewer utility easement for municipal sewer utility service purposes across the Burdened Property and has requested said easement from Grantor under threat of Condemnation for the benefit of the City's municipal sewer utility system; and

WHEREAS, to avoid the time and expense of Condemnation proceedings, the Parties negotiated just compensation for the easement in the amount set forth in Section 5; and

WHEREAS, has the Parties not reached said negotiated resolution on just compensation, the City would likely have initiated condemnation proceedings; and

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to acquire from Grantor, the aforementioned easement under the terms set forth herein; and

WHEREAS, the Parties desire to locate the existing water line and the new sewer line within the same easement area; and

WHEREAS, to accomplish this objective, the Existing Easement will be extinguished and replaced by a new combined Sewer and Water Utility Easement; and

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

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

1. Relinquishment and Extinguishment of Existing Easement. Grantee hereby relinquishes its rights in the Existing Easement and the Existing Easement is hereby extinguished.

2. **Grant of Easement.** Grantor hereby grants and conveys to Grantee a permanent, non-exclusive sewer and water utility easement for municipal sewer and water utility service purposes ("Easement") over, across, along, in, upon, through and under a portion of the Burdened Property as legally described in **Exhibit B** and as depicted in **Exhibit C**, both attached hereto and fully incorporated herein by reference ("Easement Area").

3. **Purpose.** This Easement shall be for the benefit of the municipal sewer and water utility service owned and operated by Grantee and its purpose shall be to provide Grantee with a perpetual and unlimited right to access and use the Easement for all municipal sewer and water utility purposes.


4. **Scope.** The scope of this Easement shall encompass all rights reasonably related to Grantee's provision of municipal sewer and water utility service, including without limitation rights of access, ingress and egress between the Burdened Property and the Easement Area, as well as installation, operation, maintenance, repair and replacement of the sewer and water lines along with all related appurtenances.

5. **Consideration.** Grantee will pay Grantor \$33,297.00 as just compensation for granting this Easement.

6. **Costs.** Grantee shall pay any recording fees related to this Agreement. Each Party shall be solely responsible for its own attorney's fees related to the preparation or legal review of this Agreement.

7. **Sanitary Sewer System Connection.** The Burdened Property is currently served by an on-site sewer system ("OSS"). Lynden Municipal Code 13.12.105(C) authorizes the Public Works Director to grant a waiver of the sewer general facilities charges to eligible properties. Attached as **Exhibit D** hereto and incorporated herein by reference is the Public Works Director's grant of a sewer general facilities charge waiver to the Burdened Property. The granting of this Easement is required as a condition of said waiver, pursuant to Lynden Municipal Code 13.12.105(D). This waiver applies to the sewer general facilities charge only. This waiver will not apply to future assessments of any kind against the Burdened Property including without limitation any assessment imposed pursuant to an improvement district established by the City for utilities installed within the Easement Area.

8. **Sewer General Facilities Charge Waiver Extension.** Pursuant to Lynden Municipal Code 13.12.105(F), the sewer general facilities charge waiver shall expire two years from the time the City provides written notification that sewer services are available, or from the time a property owner applies to connect to the city sewer system (whichever occurs first) unless an extension is requested in writing and approved by the Public Works Director. Grantor has requested such an extension, and this provision shall satisfy the requirement for a written request of extension. The Public Works Director hereby approves Grantor's waiver extension request. The sewer general facilities charge waiver shall expire at midnight on December 31st, 2029. Nothing contained in this provision shall prohibit Grantor from applying to the Public Works Director for a further waiver extension.



Public Works Director

8/24/23
Date

9. Commencement of Easement. This Agreement and Easement shall commence upon the recording of this Agreement with the Whatcom County Auditor.

10. Grantee's Rights & Obligations.

10.1 Advance Notice Unnecessary. Grantee may at any time and without advance notice to Grantor access and utilize the Easement Area in any manner consistent with the purpose and scope of the Easement. Grantor expressly grants to Grantee the right to use additional areas on the Burdened Property immediately adjacent to the Easement Area without notice as necessary for inspecting or performing work on sewer or water lines, and any other components of the water system or sewer system, provided that such use of additional areas is held to a minimum and restored pursuant to Section 10.3 below.

10.2 Incompatible Use Prohibited. No use of the Easement shall be made which is incompatible with its purpose and scope.

10.3 Restoration of Easement Area. If Grantee disturbs the Easement Area or other portions of the Burdened Property during the course of utilizing the Easement, Grantee shall restore the surface of the Easement Area or Burdened Property as nearly as reasonably feasible to the condition in which it existed at the commencement of said utilization at its sole expense and within a reasonable time. In the event grass is disturbed, Grantee's obligation to restore the disturbed ground shall be limited to re-seeding disturbed grass. In the event vegetation such as shrubs or trees are disturbed, Grantee's restoration obligation shall be deemed satisfied if it replaces the disturbed shrubs or trees with smaller or younger plants. Grantee is not required to replace disturbed grass, shrubs, trees or other vegetation with the same species or variety as what was disturbed but will make reasonable efforts to do so. Notwithstanding the foregoing, Grantee reserves the right to remove without replacing any structures, objects, trees or other vegetation which, in Grantee's sole judgment and discretion, may interfere with its rights under this Agreement and may do so without advance notice to Grantor.

11. Grantor's Rights & Obligations.

11.1 Grantor Bears Risk. Grantor erects structures and allows growth of vegetation in the Easement Area at its own risk.

11.2 Interference Prohibited Generally. In general, landscaping, improvements or uses which impair Grantee's use of the Easement Area, including those existing outside the Easement Area but causing interference within, are prohibited.

11.3 Structural Interference Prohibited. Grantor may not construct, install, or maintain permanent structures or structures that cannot be easily removed within the Easement Area. Grantor also may not construct, install, or maintain any structures outside the Easement Area but which interfere with Grantee's exercise of its rights under this Agreement.

11.4 Construction Interference Prohibited. Grantor may not dig, tunnel, perform any construction activity, or allow any condition to occur that might disturb or damage the sewer and water utility infrastructure within the Easement Area.

11.5 Landscaping Interference Prohibited. Grantor may not allow the growth of vegetation within the Easement Area, except for small plants such as grass or other groundcovers that do not prevent Grantee from exercising its rights under this Agreement and do not have the potential to damage the sewer and water utility infrastructure within the Easement Area.

11.6 Removal of Encroachments. Grantor shall remove any encroachments on the Easement Area or encroachments interfering with Grantee's use of the Easement at its own expense. Additionally, any such encroachments may be removed by Grantee without notice to Grantor and at Grantor's expense.

11.7 Rights Reserved by Grantor. All right, title and interest which may be used and enjoyed without interfering with the easement rights conveyed by this Agreement are reserved to Grantor.

12. Binding on Successors & Run with the Land. This Agreement and all rights, restrictions, covenants, easements, and obligations described in this Agreement are perpetual and shall run with the land and are appurtenant to the Burdened Property and shall be binding on the heirs, successors and assigns of the Parties and on all persons or entities having or acquiring any right, title or interest in the Burdened Property or any part thereof.

13. Notice. Any notice, declaration, demand, or communication to be given by one Party to the other pursuant to this Agreement shall be in writing and transmitted by personal service or by U.S. mail, postage prepaid, certified with return receipt requested, and addressed as follows:

To Grantor:

CM Ventures
Attn: Jaswinder Mahil
205 79th Place
Everett, WA 98203

To Grantee:

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

Notices, declarations, demands, or communications sent by mail shall be deemed to have been given and delivered two (2) business days following proper mailing thereof and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

14. Indemnification & Hold Harmless. The Parties shall hold harmless and indemnify one another (including each other's contractors, subcontractors, employees, agents or invitees) from and against any and all claims, losses, liabilities, demands, suits, judgments, damages and expenses (including reasonable attorney's fees and costs) arising wholly or partially from any negligent act, action, omission or default of a Party (including that Party's contractors, subcontractors, employees, agents or invitees)

pertaining to activities or conditions within the Easement Area, except that a Party's indemnification obligation shall be proportionally reduced by any negligent act, action, omission or default of the other Party (including that Party's contractors, subcontractors, employees, agents or invitees).

15. Not a Public Dedication. Nothing contained in this Agreement grants a dedication of any portion of real property to the general public or for any public use, except as may be specifically provided herein. No other right, privilege, or immunity of any Party shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.

16. Compliance with Laws and Rules. Grantee 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 having jurisdiction, including its own.

17. Nonwaiver of Breach. Failure of either Party to require performance of any provision of this Agreement shall not limit the 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.

18. Applicable Law/Construction/Venue. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Agreement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in the Whatcom County Superior Court, Whatcom County, Washington.

19. Expenses and Attorney's Fees. The prevailing party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of its reasonable attorney's fees, costs, and expenses.

20. Modification or Termination Must be in Writing. No oral or written statements made prior to or following execution of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing. This Agreement may not be modified or terminated except by written agreement of the Parties.

21. Counterparts. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement and all of which together will constitute a single Agreement.

22. Severability. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

23. Number/Gender/Headings. As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine,


feminine and neuter, as the context requires. All paragraph headings and/or captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

24. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. There are no other representations, warranties, covenants, agreements, collateral agreements or other conditions affecting this Agreement other than those set forth herein. No oral or written statements made by either Party prior to or following execution of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

GRANTOR:

CM VENTURES, INC.


By: Jaswinder Mahil
Its: OWNER

GRANTEE:

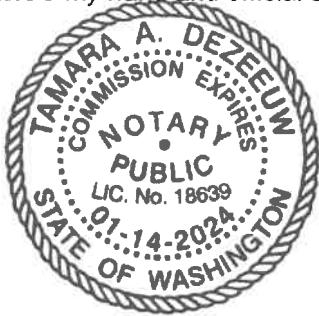
CITY OF LYNDEN


Scott Korthuis
Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 24 day of August, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jaswinder Mahil, the owner of CM VENTURES, INC., a Washington 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.

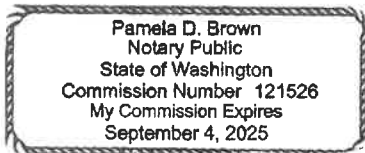


Tamara A. DeZeeuw
Print Name: Tamara A. DeZeeuw
Notary Public in and for the State of Washington
Residing at: Lynden, WA
My commission expires: 01-14-24

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 24 day of August, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Scott Korthuis, the Mayor 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.



Pamela D. Brown
Print Name: Pamela D. Brown
Notary Public in and for the State of Washington
Residing at: Whatcom County
My commission expires: 9/4/2025

EXHIBT A

Tax Parcel Number: 400224 539205 0000

That portion of the Northeast Quarter of the Southeast Quarter of Section 24, Township 40 North, Range 2, East of W.M., except the North 30 rods thereof; except the South 26 rods and 7 feet thereof, and except Guide Meridian Road along Easterly boundary thereof, described as follows:

Beginning at the Northeast corner of the above described tract, thence South along the West line of the Guide Meridian Road 222 feet to a point; thence West 220 feet; thence North 213 feet more or less to the South line of the North 30 rods of the Northeast Quarter of the Southeast Quarter thereof, thence East along said South line 220 feet to the point of beginning.

Except that portion deeded to the State of Washington for road purposes by deed recorded on August 30, 1938 under Whatcom County Auditor's File No. 499571.

Situate in Whatcom County, Washington.

EXHIBIT "B"

DESCRIPTION OF EASEMENT AREA (APN 400224 539205 0000)

AN EASEMENT OVER, UNDER AND ACROSS THE WEST 30 FEET OF THE EAST 60 FEET OF THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., LYING WITHIN THE FOLLOWING DESCRIBED TRACT:

A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE NORTH 30 RODS THEREOF; EXCEPT THE SOUTH 26 RODS AND 7 FEET THEREOF AND EXCEPT GUIDE MERIDIAN ALONG THE EASTERLY LINE THEREOF; SAID PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE ABOVE DESCRIBED TRACT; THENCE SOUTH ALONG THE WEST LINE OF THE GUIDE MERIDIAN ROAD 222 FEET TO A POINT; THENCE WEST 220 FEET; THENCE NORTH 213 MORE OR LESS TO THE SOUTH LINE OF THE NORTH 30 RODS OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER THEREOF, THENCE EAST ALONG SAID SOUTH LINE 220 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DEEDED TO THE STATE OF WASHINGTON FOR ROAD PURPOSES BY DEED RECORDED ON AUGUST 30, 1938 UNDER WHATCOM COUNTY AUDITOR'S FILE No.499571.

LESS ROADS.

AS DEPICTED ON EXHIBIT "C" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE.



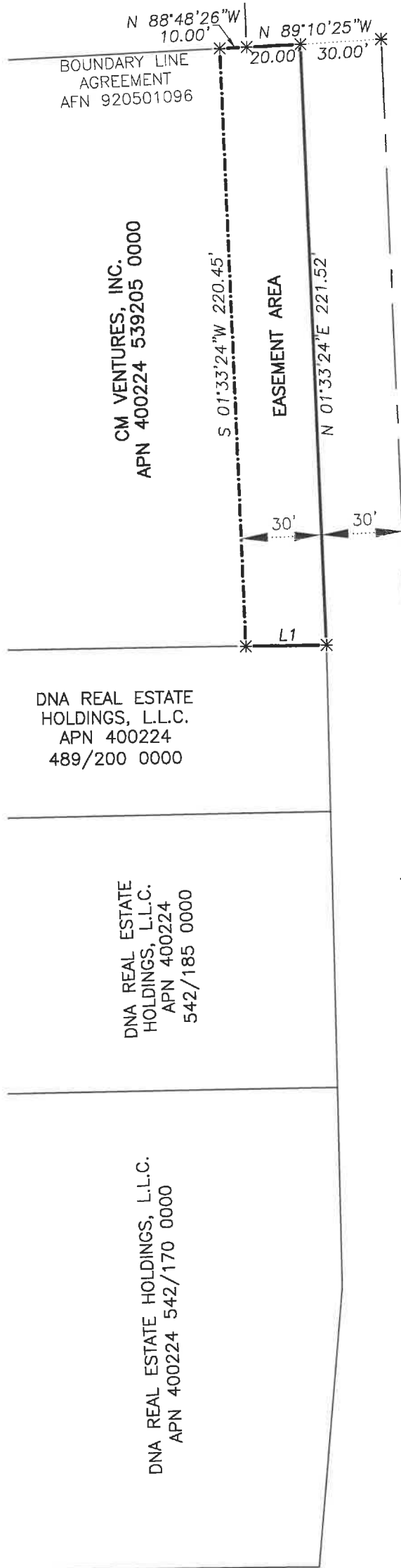


EXHIBIT "C"
DEPICTING EASEMENT AREA
PTN: SE 1/4 OF THE SE 1/4 OF SECTION 24,
TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M.,
WITHIN THE CITY OF LYNDEN,
WHATCOM COUNTY, WASHINGTON



Course	Bearing	Distance
L1	S 86°46'27" E	30.01'

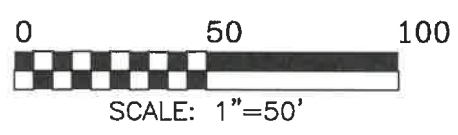


EXHIBIT D

CITY OF LYNDEN

PUBLIC WORKS DEPARTMENT
Jon Hutchings, Public Works Director
(360) 354 - 3446



Septic to Sewer Connection Incentive Program Waiver of Sewer General Facilities Charge

Date: 07/31/2023

Property Owner: CM Ventures, Inc.

Property Address: 8247 Guide Meridian, Lynden, WA 98264

Parcel ID: 400224 539205 0000

Category (Check One):

- ☐ Property consisting of only one single-family home (LMC 13.12.105(B))
☒ Other eligible property (LMC 13.12.105(C))

Complete this section if waiver is being granted under LMC 13.12.105(C) (other eligible property):

☒ The Public Works Director finds that granting a waiver of the city sewer general facilities charge will promote the public interest.

Comments: Sewer main being installed on Guide Meridian to promote commercial development. This property is located adjacent to the sewer line.

☒ The Public Works Director finds that granting a waiver of the city sewer general facilities charge will not result in an undue financial burden for the utility.

Comments: Parcel subject to ULID at future development.

☒ This waiver is subject to the following conditions:

Fee waiver is based on existing meter size of three-quarter inch (3/4").


Public Works Director

08/01/2023

Date

Notes:

1. To be eligible for the septic to sewer incentive program, properties must be located within city limits and must be currently served by an on-site sewage system.
2. By granting this waiver, the Public Works Director requires the property owner to properly decommission the existing on-site sewage system and pipe all wastewater to the city sanitary sewer system (LMC 13.12.105(D)).
3. If the property is located in the East Lynden/Line Road Sub-Basin, this waiver does not impact the Property Owner's obligation to pay the sewer surcharge as required by LMC 13.12.055 (LMC 13.12.105(E)).
4. This waiver shall expire two years from the time of official written notification by the city that sewer services are available, or from the time a property owner applies to connect to the city sewer system, whichever occurs first. Any request for extension must be made in writing and approved by the Public Works Director (LMC 13.12.105(F)).



AFTER RECORDING RETURN TO:

Robert A. Carmichael
Carmichael Clark, PS
PO Box 5226
Bellingham, WA 98227

DOCUMENT TITLE:

SEWER AND WATER UTILITY EASEMENT AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

AF No. 201201990

GRANTOR:

DNA REAL ESTATE HOLDINGS, LLC, a Washington limited liability company

GRANTEE:

CITY OF LYNDEN, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTIONS:

PTN NE SE SEC 24, TWP 40 N, R03E, W.M.

Full legal descriptions at pages 9-10 hereto.

ASSESSOR'S TAX PARCEL NUMBER(S):

400224 489200 0000
400224 542185 0000
400224 542170 0000

SEWER AND WATER UTILITY EASEMENT AGREEMENT

THIS **SEWER AND WATER UTILITY EASEMENT AGREEMENT** ("**Agreement**") is made and entered into this 24th day of August, 2023, by and between DNA REAL ESTATE HOLDINGS, LLC a Washington limited liability company (hereinafter "Grantor" or "DNA") and the CITY OF LYNDEN (hereinafter "Grantee" or "City"). Grantor and Grantee may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Grantor is the sole owner of three adjacent parcels of real property in Whatcom County, legally described in **EXHIBIT A** hereto and fully incorporated herein by reference ("Burdened Properties"); and

WHEREAS, Grantee is a Washington municipal corporation that operates municipal utilities, including municipal sewer and water service, for the benefit of all residents; and

WHEREAS, Grantor's predecessor in interest conveyed to Grantee an easement recorded under Whatcom County Auditor's File No. 201201990, which established a water line easement burdening a portion of two of the Burdened Properties: 400224 542185 0000 and 400224 542170 0000 ("Existing Easement"); and

WHEREAS, Grantee requires a permanent sewer utility easement for municipal sewer utility service purposes across the Burdened Properties and has requested said easement from Grantor under threat of Condemnation for the benefit of the City's municipal sewer utility system; and

WHEREAS, to avoid the time and expense of Condemnation proceedings, the Parties negotiated just compensation for an easement including sewer utilities, in the amount set forth in Section 5 herein; and

WHEREAS, had the Parties not reached said negotiated resolution on just compensation, the City would likely have initiated Condemnation proceedings; and

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to acquire from Grantor, the aforementioned easement under the terms set forth herein; and

WHEREAS, the Parties desire to combine the existing water line and the new sewer line into the same easement; and

WHEREAS, to accomplish this objective, the Existing Easement will be extinguished and replaced by a new combined Sewer and Water Utility Easement; and

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

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

1. **Relinquishment and Extinguishment of Existing Easement.** Grantee hereby relinquishes its rights in the Existing Easement and the Existing Easement is hereby extinguished.

2. **Grant of Easement.** Grantor hereby grants and conveys to Grantee a permanent, non-exclusive sewer and water utility easement for municipal sewer and water utility service purposes ("Easement") over, across, along, in, upon, through and under a portion of the Burdened Properties as legally described in **Exhibit B** and as depicted in **Exhibit C**, both attached hereto and fully incorporated herein by reference ("Easement Area").

3. **Purpose.** This Easement shall be for the benefit of the municipal sewer and water utility service owned and operated by Grantee and its purpose shall be to provide Grantee with a perpetual and unlimited right to access and use the Easement for all municipal sewer and water utility purposes.

4. **Scope.** The scope of this Easement shall encompass all rights reasonably related to Grantee's provision of municipal sewer and water utility service, including without limitation rights of access, ingress and egress between the Burdened Properties and the Easement Area, as well as installation, operation, maintenance, repair and replacement of the sewer and water lines along with all related appurtenances.

5. **Consideration.** Grantee will pay Grantor the following amount as just compensation for granting this Easement:

Parcel 400224 489200 0000:	\$9,691.00
Parcel 400224 542185 0000:	\$14,124.00
Parcel 400224 542170 0000:	\$13,794.00
Total Compensation:	\$37,609.00

6. **Costs.** Grantee shall pay any recording fees related to this Agreement. Each Party shall be solely responsible for its own attorney's fees related to the preparation or legal review of this Agreement.

7. **Commencement of Easement.** This Agreement and Easement shall commence upon the recording of this Agreement with the Whatcom County Auditor.

8. **Grantee's Rights & Obligations.**

8.1 **Advance Notice Unnecessary.** Grantee may at any time and without advance notice to Grantor access and utilize the Easement Area in any manner consistent with the purpose and scope of the Easement.

8.2 **Incompatible Use Prohibited.** No use of the Easement shall be made which is incompatible with its purpose and scope.

8.3 **Restoration of Easement Area.** If Grantee disturbs the Easement Area or other portions of the Burdened Properties during the course of utilizing the Easement, Grantee shall restore the surface of the Easement Area or Burdened Properties as nearly as reasonably feasible to the condition in which it existed at the commencement of said

utilization at its sole expense and within a reasonable time. In the event grass is disturbed, Grantee's obligation to restore the disturbed ground shall be limited to re-seeding disturbed grass. In the event vegetation such as shrubs or trees are disturbed, Grantee's restoration obligation shall be deemed satisfied if it replaces the disturbed shrubs or trees with smaller or younger plants. Grantee is not required to replace disturbed grass, shrubs, trees or other vegetation with the same species or variety as what was disturbed but will make reasonable efforts to do so. Notwithstanding the foregoing, Grantee reserves the right to remove without replacing any structures, objects, trees, or other vegetation which, in Grantee's sole judgment and discretion, may interfere with its rights under this Agreement and may do so without advance notice to Grantor.

8.4 Utility Infrastructure. Grantee shall ensure the following occurs:

- a. The utility infrastructure installed within the Easement shall be adequately sized to fully service the Burdened Property.
- b. Size of the utility stub(s) to the Burdened Property, shall be agreed to by the Grantor and the stubs shall be installed in locations agreed to by Grantor and shall extend beyond the constructed utility lines within the Easement. The purpose of this requirement is to prevent having to undermine the utility infrastructure in the future.
- c. Any infrastructure shall be located and constructed in such a manner to allow the current access points to the Guide Meridian to remain.

9. Grantor's Rights & Obligations.

9.1 Grantor Bears Risk. Grantor erects structures and allows growth of vegetation in the Easement Area at its own risk.

9.2 Interference Prohibited Generally. In general, landscaping, improvements or uses which impair Grantee's use of the Easement Area, including those existing outside the Easement Area but causing interference within, are prohibited.

9.3 Structural Interference Prohibited. Grantor may not construct, install, or maintain permanent structures or structures that cannot be easily removed within the Easement Area. Grantor also may not construct, install, or maintain any structures within the Easement Area which interfere with Grantee's exercise of its rights under this Agreement.

9.4 Construction Interference Prohibited. Grantor may not dig, tunnel, perform any construction activity, or allow any condition to occur that might disturb or damage the sewer and water utility infrastructure within the Easement Area.

9.5 Landscaping Interference Prohibited. Grantor may not allow the growth of vegetation within the Easement Area, which prevents Grantee from exercising its rights under this Agreement and has the potential to damage the sewer and water utility infrastructure within the Easement Area.

9.6 Removal of Encroachments. Grantor shall remove any encroachments on the Easement Area or encroachments interfering with Grantee's use of the Easement at

its own expense provided said encroachments are placed on the Burdened Property after the date of this Agreement and were not agreed to by the Grantee. Additionally, any such encroachments may be removed by Grantee without notice to Grantor and at Grantor's expense.

9.7 **Rights Reserved by Grantor.** All right, title and interest which may be used and enjoyed without interfering with the easement rights conveyed by this Agreement are reserved to Grantor. Included in the rights reserved by Grantor and agreed to by Grantee are the following provisions:

- a. the Easement Area can be utilized to meet the landscaping requirements of the City of Lynden Code, subject to Section 8.5 above.
- b. the setback areas for any future development are measured from the Burdened Property boundary, not the outside edge of the Easement Area.
- c. any portion of the Easement Area that is a pervious surface and open space will be considered pervious surface and open space for any development activity on the Burdened Property.
- d. Additional access points to the Burdened Property may be allowed to cross the Easement Area provided that they don't interfere with the function of the Grantee's utility infrastructure.

10. **Binding on Successors & Run with the Land.** This Agreement and all rights, restrictions, covenants, easements, and obligations described in this Agreement are perpetual and shall run with the land and are appurtenant to the Burdened Properties and shall be binding on the heirs, successors and assigns of the Parties and on all persons or entities having or acquiring any right, title or interest in the Burdened Properties or any part thereof.

11. **Notice.** Any notice, declaration, demand, or communication to be given by one Party to the other pursuant to this Agreement shall be in writing and transmitted by personal service or by U.S. mail, postage prepaid, certified with return receipt requested, and addressed as follows:

To Grantor:

DNA Real Estate Holdings, LLC
8223 Guide Meridian
Lynden, WA 98264

To Grantee:

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

Notices, declarations, demands, or communications sent by mail shall be deemed to have been given and delivered two (2) business days following proper mailing thereof and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

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13. Not a Public Dedication. Nothing contained in this Agreement grants a dedication of any portion of real property to the general public or for any public use, except as may be specifically provided herein. No other right, privilege, or immunity of any Party shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.

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15. Nonwaiver of Breach. Failure of either Party to require performance of any provision of this Agreement shall not limit the 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.

16. Applicable Law/Construction/Venue. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Agreement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in the Whatcom County Superior Court, Whatcom County, Washington.

17. Expenses and Attorney's Fees. The prevailing party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of its reasonable attorney's fees, costs, and expenses.

18. Modification or Termination Must be in Writing. No oral or written statements made prior to or following execution of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing. This Agreement may not be modified or terminated except by written agreement of the Parties.

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invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

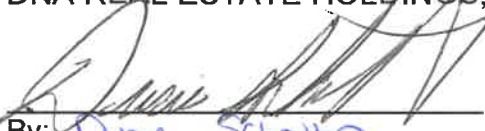
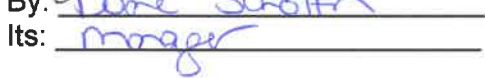
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22. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting this Agreement other than those set forth herein. No oral or written statements made by either Party prior to or following execution of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.


GRANTOR:

DNA REAL ESTATE HOLDINGS, LLC

By: 
Its: 

GRANTEE:

CITY OF LYNDEN


Scott Korthuis
Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 21st day of August, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Duane Scholten, the manager of DNA REAL ESTATE HOLDINGS, LLC, a Washington limited liability company, 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.

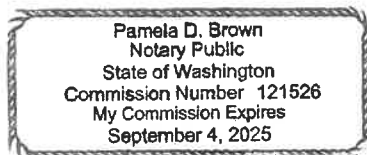


[Signature]
Print Name: Les R. Starker
Notary Public in and for the State of Washington
Residing at: Lynden
My commission expires: 1/25/25

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 24 day of August, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared SCOTT KORTHUIS, the MAYOR 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.



Pamela D. Brown
Print Name: Pamela D. Brown
Notary Public in and for the State of Washington
Residing at: Whatcom County
My commission expires: 9/4/2025

EXHIBT A

Legal Descriptions of Burdened Properties

400224 489200 0000

The Northeast quarter of the Southeast quarter of Section 24, Township 40 North, Range 2 East of W.M., except the North 30 rods thereof, and except the South 26 rods and 7 feet thereof, and except Guide Meridian Road along the Easterly boundary thereof. Also, except the South 102 feet of the East 220 feet thereof, and except a portion of said premises in the Northeast corner, more particularly described as follows:

Beginning at the Northeast corner of the above-described tract; thence South along the West line of the Guide Meridian Road, 222 feet to a point; thence West 220 feet; thence North 213 feet, more or less, to the South line of the North 30 rods of the Northeast quarter of the Southeast quarter thereof; thence East along said South line, 220 feet to the point of beginning.

Situate in Whatcom County, Washington.

400224 542185 0000

The South 102.00 feet of the East 220.00 feet of the following described tract:

The Northeast quarter of the Southeast quarter of Section 24, Township 40 North, Range 2 East of W.M., except the North 30 rods and except the South 26 rods and 7.00 feet thereof, and except right-of-way for Guide Meridian Road lying along the East line thereof. Except that portion deeded to the State of Washington for road purposes by deed recorded on August 30, 1938, under Whatcom County Auditor's File No. 499571. Except that portion conveyed to the City of Lynden, a municipal corporation, under Whatcom County Auditor's File No. 2001201989, described as follows:

A tract of land within the Northeast quarter of the Southeast quarter of said Section 24, more particularly described as follows:

Beginning at a point 260.00 feet North and 30.00 feet West of the Southeast corner of said Northeast quarter of the Southeast quarter of said Section 24, said point being on the West right-of-way line of Guide Meridian Road and being the Southeast corner of that certain tract of land as described on Statutory Warranty Deed recorded under Whatcom County Auditor's File No. 930602205; thence North 01°33'24" East parallel with the East line of said Northeast quarter of the Southeast quarter of said Section 24, a distance of 104.00 feet to a point, said point to be referred to hereafter as "Point A"; thence continuing North 01°33'24" East, a distance of 105.00 feet to a point, said point to be referred to hereafter as "Point B"; thence continuing North 01°33'24" East, a distance of 134.00 feet, more or less, to the North line of certain tract of land as described on Statutory Warranty Deed recorded under Whatcom County Auditor's File No. 930602205; thence Southerly to a point 3.00 feet West of aforesaid Point B; thence Southerly to a point 4.50 feet West of aforesaid Point A; thence Southerly to a point 17.75 feet West of the point of beginning; said point being on the South line of that certain tract of land as

described on Statutory Warranty Deed recorded under Whatcom County Auditor's File No. 930602205; thence East 17.75 feet to the point of beginning.

Situate in Whatcom County, Washington.

400224 542170 0000

A tract of land in the Northeast quarter of the Southeast quarter of Section 24, Township 40 North, Range 2 East of W.M., described as follows:

A tract of land within the Northeast quarter of the Southeast quarter of said Section 24, more particularly described as follows:

Beginning at a point on the West line of the Guide Meridian Road, 436 feet North of the South line of the Northeast quarter of the Southeast quarter; thence West 220 feet; thence South parallel to said Guide Meridian Road, 176 feet; thence East 220 feet to the West line of said Guide Meridian Road; thence along said West line of said road, 176 feet to the true point of beginning. Except right-of-way for Guide Meridian lying along the East line thereof. Except that portion deeded to the State of Washington for road purposes by deed recorded August 30, 1938, under Whatcom County Auditor's File No. 499571. Except that portion conveyed to the City of Lynden, a municipal corporation, under Whatcom County Auditor's File No. 2001201989, described as follows:

Beginning at a point 260.00 feet North and 30.00 feet West of the Southeast corner of said Northeast quarter of the Southeast quarter of said Section 24, said point being on the West right-of-way line of the Guide Meridian Road and being the Southeast corner of that certain tract of land as described on Statutory Warranty Deed recorded under Whatcom County Auditor's File No. 930602205; thence North 01°33'24" East parallel with the East line of said Northeast quarter of the Southeast quarter of said Section 24, a distance of 104.00 feet to a point, said point to be referred to hereafter as "Point A"; thence continuing North 01°33'23" East, a distance of 105.00 feet to a point, said point to be referred to hereafter as "Point B"; thence continuing North 01°33'24" East, a distance of 134.00 feet, more or less, to the North line of certain tract of land as described on Statutory Warranty Deed recorded under Whatcom County Auditor's File No. 930602205; thence Southerly to a point 3.00 feet West of aforesaid Point B; thence Southerly to a point 4.50 feet West of aforesaid Point A; thence Southerly to a point 17.75 feet West of the point of beginning, said point being on the South line of that certain tract of land as described on Statutory Warranty Deed recorded under Whatcom County Auditor's File No. 930602205; thence East 17.75 feet to the point of beginning.

Situate in Whatcom County, Washington.

EXHIBIT "B"

DESCRIPTION OF EASEMENT AREA #1 (APN 400224 489200 0000)

AN EASEMENT OVER, UNDER AND ACROSS THE WEST 30 FEET OF THE EAST 60 FEET OF THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., LYING WITHIN THE FOLLOWING DESCRIBED TRACT:

A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M. EXCEPT THE NORTH 30 RODS THEREOF; EXCEPT THE SOUTH 26 RODS AND 7 FEET THEREOF AND EXCEPT GUIDE MERIDIAN ALONG THE EASTERLY LINE THEREOF. ALSO, EXCEPT THE SOUTH 102 FEET OF THE EAST 220 FEET THEREOF AND EXCEPT A PORTION OF SAID PREMISES IN THE NORTHEAST CORNER, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE ABOVE DESCRIBED TRACT; THENCE SOUTH ALONG THE WEST LINE OF THE GUIDE MERIDIAN ROAD 222 FEET TO A POINT; THENCE WEST 220 FEET; THENCE NORTH 213 MORE OR LESS TO THE SOUTH LINE OF THE NORTH 30 RODS OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER THEREOF, THENCE EAST ALONG SAID SOUTH LINE 220 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO THE CITY OF LYNDEN, A MUNICIPAL CORPORATION, UNDER WHATCOM COUNTY AUDITOR'S FILE No. 2001201989.

LESS ROADS.

AS DEPICTED ON EXHIBIT "C" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE.

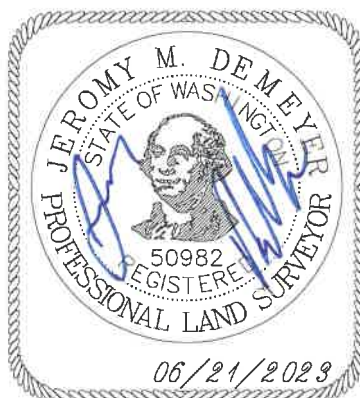


EXHIBIT "B"

DESCRIPTION OF EASEMENT AREA #2 (APN 400224 542185 0000)

AN EASEMENT OVER, UNDER AND ACROSS THE WEST 30 FEET OF THE EAST 60 FEET OF THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., LYING WITHIN THE FOLLOWING DESCRIBED TRACT:

THE SOUTH 102.00 FEET OF THE EAST 220.00 FEET OF THE FOLLOWING DESCRIBED TRACT:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE NORTH 30 RODS AND EXCEPT THE SOUTH 26 RODS AND 7.00 FEET THEREOF, AND EXCEPT RIGHT-OF-WAY FOR GUIDE MERIDIAN ROAD LYING ALONG THE EAST LINE THEREOF. EXCEPT THAT PORTION DEEDED TO THE STATE OF WASHINGTON FOR ROAD PURPOSES BY DEED RECORDED ON AUGUST 30, 1938, UNDER WHATCOM COUNTY AUDITOR'S FILE No. 499571. EXCEPT THAT PORTION CONVEYED TO THE CITY OF LYNDEN, A MUNICIPAL CORPORATION, UNDER WHATCOM COUNTY AUDITOR'S FILE No. 2001201989.

LESS ROADS.

AS DEPICTED ON EXHIBIT "C" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE.



EXHIBIT "B"

DESCRIPTION OF EASEMENT AREA #3 (APN 400224 542170 0000)

AN EASEMENT OVER, UNDER AND ACROSS THE WEST 30 FEET OF THE EAST 60 FEET OF THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., LYING WITHIN THE FOLLOWING DESCRIBED TRACT:

A TRACT OF LAND WITHIN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24, MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT A POINT ON THE WEST LINE OF THE GUIDE MERIDIAN ROAD, 436 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE WEST 220 FEET; THENCE SOUTH PARALLEL TO SAID GUIDE MERIDIAN ROAD, 176 FEET; THENCE EAST 220 FEET TO THE WEST LINE OF SAID GUIDE MERIDIAN ROAD; THENCE ALONG SAID WEST LINE OF SAID ROAD, 176 FEET TO THE TRUE POINT OF BEGINNING. EXCEPT RIGHT-OF-WAY FOR GUIDE MERIDIAN LYING ALONG THE EAST LINE THEREOF. EXCEPT THAT PORTION DEEDED TO THE STATE OF WASHINGTON FOR ROAD PURPOSES BY DEED RECORDED AUGUST 30, 1938, UNDER WHATCOM COUNTY AUDITOR'S FILE No. 499571. EXCEPT THAT PORTION CONVEYED TO THE CITY OF LYNDEN, A MUNICIPAL CORPORATION, UNDER WHATCOM COUNTY AUDITOR'S FILE No. 2001201989.

LESS ROADS.

AS DEPICTED ON EXHIBIT "C" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE.



BOUNDARY LINE
AGREEMENT
AFN 920501096

CM VENTURES, INC.
APN 400224 539205 0000

DNA REAL ESTATE
HOLDINGS, L.L.C.
APN 400224
489/200 0000

DNA REAL ESTATE
HOLDINGS, L.L.C.
APN 400224
542/185 0000

DNA REAL ESTATE HOLDINGS, L.L.C.
APN 400224 542/170 0000

N 89°10'25"W
30.00'

S 01°33'24"W
61.71'

S 01°33'24"W 102.03'

S 01°33'24"W 177.29'

L1
EASEMENT
AREA #1
61.59'
N 02°38'31"E

L2
EASEMENT
AREA #2

L3
EASEMENT
AREA #3

N 02°38'31"E 102.00'
N 02°38'31"E 74.00'
N 08°44'54"E 103.85'

N 01°33'24"E 676.70'

GUIDE MERIDIAN - SR 539

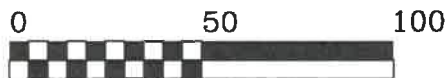
EXHIBIT "C"

DEPICTING EASEMENT AREAS

PTN: SE 1/4 OF THE SE 1/4 OF SECTION 24,
TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M.,
WITHIN THE CITY OF LYNDEN,
WHATCOM COUNTY, WASHINGTON



Course	Bearing	Distance
L1	S 86°46'27" E	30.01'
L2	S 86°58'00" E	28.84'
L3	S 86°58'00" E	26.91'
L4	S 86°30'13" E	12.51'



SCALE: 1"=50'