

**INTERLOCAL AGREEMENT BETWEEN THE PORT OF BELLINGHAM, PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, AND WHATCOM COUNTY FOR FIBER OPTIC/BROADBAND COORDINATION**

This **FIBER OPTIC / BROADBAND INTERLOCAL AGREEMENT** (hereafter the “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY** (hereafter “the **PUD**”) and the **PORT OF BELLINGHAM** (hereafter “the **Port**”) and **WHATCOM COUNTY** (hereafter “the **County**”).

**WHEREAS**, there are areas of Whatcom County that are currently unserved and/or underserved with broadband services not meeting today’s residential, business, educational and other public service access needs; and

**WHEREAS**, RCW 53.08.370 grants authority to the Port to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate and maintain telecommunications facilities within or without the Port’s limits for its own use and/or for the provision of telecommunications services; and

**WHEREAS**, RCW 54.16.330 grants authority to the PUD to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate and maintain any telecommunications facilities within or without the PUD’s limits for its own use and/or for the provision of telecommunications services, and

**WHEREAS**, the Port and the PUD have the authority granted by the State of Washington to provide last mile and retail telecommunication services to the end user, as granted by the State of Washington, Chapter 293, Laws of 2021 and Chapter 294, Laws of 2021; and

**WHEREAS**, the parties will explore how to use their respective authority to maximize benefits to all of Whatcom County; and,

**WHEREAS**, the Port has developed a plan for constructing a publicly owned, open access dark fiber network throughout rural Whatcom County; and

**WHEREAS**, the PUD and the County are in support of the Port’s efforts to plan, engineer, design, finance and construct the fiber network throughout rural Whatcom County; and,

**WHEREAS**, the Port is seeking public partnership with the PUD and the County to provide opportunities to support the financing, operation, maintenance, and management of the fiber network, and utilization of the fiber network to provide mid mile infrastructure, or last mile infrastructure

**WHEREAS**, the PUD is seeking a public partnership with the Port and the County to develop, finance, operate, maintain, manage the fiber network and develop last mile infrastructure to residents, businesses, schools, and public safety agencies; and

**WHEREAS**, the PUD, in support of this broadband system and services development, offers technical expertise, potential funding support, operation, maintenance and last mile infrastructure; and

**WHEREAS**, the PUD owns and operates fiber infrastructure in Whatcom County for its own use in connecting its water and electric infrastructure, monitoring and managing said systems, and has expertise in maintaining fiber optic infrastructure; and

**WHEREAS**, on November, 2018, the Port and the PUD executed an Interlocal Agreement to engage in joint planning and a feasibility study for development of publicly owned, open access dark fiber network throughout rural Whatcom County; and

**WHEREAS**, the PUD recently received a Community Economic Revitalization Board (CERB) feasibility study grant to build off the 2018 report for development of last mile infrastructure; and

**WHEREAS**, the Port and the PUD are now seeking to expand their cooperative relationship by pursuing the following initial joint agency initiatives and potentially developing additional recommended initiatives (the “Joint Initiatives”) to:

- a) Build on and support the existing work the Port has done in the development of a strategic countywide broadband infrastructure plan that includes analysis and strategies, allows for the efficient utilization and expansion of existing infrastructure and strategic planning for the future development of new publicly owned infrastructure in support of residential, educational, commercial, industrial, general economic development, and agricultural activities with a goal of providing accessible and affordable high speed broadband service access to residences, businesses, schools, libraries, and medical facilities throughout unserved and underserved Whatcom County; and
- b) Pursue the development of a countywide, carrier grade, open access and non-discriminatory publicly owned dark fiber optic network. The network will be operated as an open access, multi-provider environment, such that private telecommunications providers are allowed access to the system, providing consumer choice, and competitive pricing for consumers; and
- c) Jointly seek funding for publicly owned broadband fiber optic infrastructure; and
- d) Develop operation, maintenance, and management plans of the publicly owned broadband fiber network; and

**WHEREAS**, the County provides public funding for broadband infrastructure and has an interest in ensuring digital equity across Whatcom County for access to economic opportunity, healthcare, education, and other community needs.

**WHEREAS**, the Port, the County, and the PUD believe that the establishment of a joint interagency steering committee to manage, oversee, develop recommendations, and direct actions related to the Joint Initiatives is an efficient utilization of public resources while

maintaining appropriate financial and final strategic decision making and/or oversight by the agencies; and

**WHEREAS**, Chapter 39.34, Revised Code of Washington provides for cooperation between local governmental entities through contractual agreement.

**NOW, THEREFORE**, it is agreed by and between the Port and the County and the PUD as follows:

**1. Purpose.** The purpose of this Agreement is to establish procedures whereby the Parties can combine, share, and use their respective skills and assets and authority granted to the Parties by the State of Washington, thereby reducing the financial and administrative costs. The goal of this Agreement is to plan for a countywide high speed broadband system providing access to areas that are currently unserved or underserved. The cooperative efforts enabled by this Agreement are intended to reduce the cost of related services over what would otherwise be achieved if the Parties acted independently.

**2. Joint PUD/Port/County Steering Committee and Decisions:**

2.1 Committee Establishment and Purpose. A joint PUD, County, and Port Broadband Steering Committee is created for the purpose of facilitating and providing joint decision making on a publicly owned rural broadband fiber network. This Steering Committee shall be known as the "Joint PUD/Port/County Rural Broadband Steering Committee" or the "Broadband Steering Committee".

2.2. Steering Committee Meetings. The Steering Committee shall establish its own rules of conduct, meeting schedule, and process for setting a meeting agenda and decision making. The Steering committee will meet on a monthly basis at a minimum unless deemed necessary to meet on a more or less frequent basis. The Steering Committee will make decisions as they pertain to joint tasks, projects, scope of works, funding, and policies for a broadband fiber network.

2.3 Steering Committee Composition/Members. The Steering committee shall consist of the following members:

PUD: General Manager and their staff designee.

Port: Executive Director and their staff designee.

County: Strategic Initiatives Manager or Deputy Executive

Support for facilitating the meeting and can carrying out any necessary tasks will be provided by staff.

2.4 Steering Committee Recommendations. The Steering Committee will make recommendations to the Port and PUD Commissioners and Whatcom County Councilmembers as necessary on policy level decisions and on such matters as financial commitments, retaining consultants, and construction projects that require action by the individual agency. The Steering

Committee does not have the authority to enter into binding contracts without the approval of the PUD, Port Commissions, and Whatcom County Council.

**3. General Scope of Services.** During the term of this Agreement, the Parties may seek to obtain grant assistance, engineering, design and/or consulting services agreements, public works, or other services agreements.

3.1 Outside Contracting for Services. In the event it becomes necessary to contract with a third party to provide for joint services of the type described in Section 3 of this Agreement, the Steering Committee shall either:

- a) Enter into a separate interlocal agreement for joint funding of the services, or
- b) Unanimously select one Party to contract for services at the sole cost of the contracting party

**4. Compensation for Services.** Unless otherwise agreed to by the Parties and approved pursuant to Whatcom County Purchasing Policies (Whatcom County Code 3.08), services provided by staff of either Party pursuant to this Agreement shall be at the cost of the Party providing the services. In the event a Party seeks to enter into a contract with another Party, a separate interlocal agreement shall be executed.

**5. Contact Persons.** The following persons, referred to as Contact Person(s), are responsible for the administration of this Agreement for each Party:

For the Port: Executive Director and their staff designee

For the PUD: General Manager and their staff designee

For the County: Deputy Executive and Strategic Initiatives Manager

or such other persons as may be specified from time to time in writing by either Party.

**6. Treatment of Assets and Property.** No fixed assets or personal or real property are anticipated to be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement, except that the Strategic Plans, and all drafts, work product, data, information, analysis or similar produced in relation to the Strategic Plans shall be deemed the property of the Parties to this agreement even if stored and retained by the Port, the County, or the PUD.

**7. Term of Agreement.** This Agreement shall be effective on the date of such recording ("Effective Date") and shall terminate on December 31, 2025.

**8. Termination.** The Port the County or the PUD may withdraw from this Agreement by providing thirty (30) days written notice to the other Parties.

**9. Assignment.** This Agreement shall not be assigned by any Party to any third Party without the prior written consent of the other Parties, which consent may be withheld for any reason or no reason.

**10. Release and Indemnify.** To the extent permitted by law, each Party agrees to release, defend, indemnify, and hold harmless the other Parties, its officers, agents, employees, and representatives (Port/PUD/County) from all claims, actions, suits, losses, harm, liabilities, damages, costs, and expenses, including but not limited to, reasonable attorneys' fees arising out of the negligent acts or omissions arising in connection with performance of this Agreement. Where negligence by all Parties is concurrent and contributes to a claim, the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude any Party from pursuing any remedy against a third Party.

**11. Public Records Act.** All records received by the Parties pursuant to this Agreement shall be a public record and therefore subject to the Public Records Act.

**12. Miscellaneous Provisions.**

a. Notices. Any notice, request, authorization, direction, or other communication as required under this Agreement shall be given in writing and shall be delivered in person or by first class United States mail, properly addressed and stamped with the required postage, to the intended recipient as follows:

Port of Bellingham  
1801 Roeder Avenue  
Bellingham, WA 98225  
Attention: Rob Fix, Executive Director

Public Utility District No. 1 of Whatcom County  
1705 Trigg Road / Post Office Box 2308  
Ferndale, WA 98248  
Attention: Chris Heimgartner, General Manager

Whatcom County  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225  
Attention: Tyler Schroeder, Deputy Executive

Any Party may change its address specified above by giving the other Parties notice of such change in accordance with this Section. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provided in this Section or personally delivered to the other Parties.

b. Governmental Authority. This Agreement is subject to the rules, regulations, orders, and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, and/or the Parties, or either of them.

c. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liabilities of any Party. Furthermore, no Party shall have any

right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Parties.

d. Nonwaiver. The failure of any Party to insist upon or enforce strict performance by the other Parties of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

e. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. This Agreement supersedes all prior and contemporaneous agreements and understandings between the Parties with respect to such subject matter. This Agreement may be amended only by a subsequent writing signed by all Parties and expressly stating the intention to amend this Agreement.

f. No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any rights or interest on anyone other than the Parties, their respective successors, assigns, and legal representatives.

g. Amendment. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by all Parties.

h. Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement, and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

i. Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

j. Applicable Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington, except to the extent such laws may be pre-empted by the laws of the United States of America.

k. Venue. The venue of any litigation arising out of this Agreement shall be in Whatcom County, State of Washington, or such other place as all Parties may agree to in writing.

l. Interpretation and Fair Construction of Contract. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and shall not be construed either for or against either Party as the drafter.

m. Recordation. Upon execution of this Agreement, it shall be recorded with the office of its County Auditor pursuant to the requirements of RCW 39.34; PROVIDED, that any delay in effecting compliance with this Section shall not affect the stated term, expiration or renewal dates hereof.

**IN WITNESS WHEREOF**, the Port, the PUD, and the County have executed this Agreement as of the day and year according to the signatures below.

**EXECUTED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**PORT OF BELLINGHAM:**

**PUBLIC UTILITY DISTRICT NO. 1  
OF WHATCOM COUNTY:**

\_\_\_\_\_  
Rob Fix  
Executive Director

\_\_\_\_\_  
Chris Heimgartner  
General Manager

**WHATCOM COUNTY:**

\_\_\_\_\_  
Satpal Sidhu  
Whatcom County Executive

