

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202209005

Originating Department:	Executive Office
Division/Program: (i.e. Dept. Division and Program)	Non-Departmental
Contract or Grant Administrator:	Tyler Schroeder, Deputy Executive
Contractor's / Agency Name:	City of Lynden - S. Park Water and Sidewalk Improvements

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No
 Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____
 Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?
 Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded?
 Yes No If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Contract
 Yes No If yes, RFP and Bid number(s): _____ Cost Center: 332260

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency
- Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).
- Contract work is for less than 120 days. Work related subcontract less than \$25,000.
- Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 562,500 Loan + \$387,500 Grant
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ _____

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when:**

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance.
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope:

This EDI loan and grant funding will be used to replace a deficient water main and replace the non-ADA compliant sidewalks above the water main.

Term of Contract: _____ Expiration Date: December 2023

Contract Routing:	1. Prepared by: <u>Tawni Helms</u>	Date: <u>07/11/2022</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>8/31/2022</u>
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>✓</u>	Date: <u>9-16-22</u>
	6. Submitted to Exec.: <u>✓</u>	Date: _____
	7. Council approved (if necessary): <u>✓ AB2022-518</u>	Date: <u>9-27-22</u>
	8. Executive signed: <u>✓</u>	Date: <u>9-29-22</u>
	9. Original to Council: <u>✓</u>	Date: <u>9-30-22</u>

**Economic Development Investment Program
Interlocal Loan and Grant Agreement
City of Lynden - South Park Street, Water and Sidewalk Improvements Project**

I PARTIES

This Agreement is made by and between **Whatcom County** (hereinafter referred to as **the County**), and City of Lynden (hereinafter referred to as **the City**).

II TERM

This Agreement takes effect upon execution hereof by the authorized representatives of both parties and continues in effect until all payments required under Section V, MUTUAL CONSIDERATION, Subsection C, REPAYMENT OF COUNTY LOAN, have been made or until terminated as provided for in Section VIII, TERMINATION.

III PURPOSE

The purpose of this Agreement is to provide funding support for the South Park Water, Street, and Sidewalk Improvements Project (hereinafter referred to as **the Project**) using certain County funds designated for such infrastructure development. These funds will be used to complete the Project as outlined in the Economic Development Investment (EDI) Program Application as attached (Attachment B).

IV RECITALS

The Parties make this Agreement based on and in recognition of certain relevant facts and circumstances including:

A. Sales and use taxes are collected in and for the County under authority of RCW 82.14.370 and Whatcom County Code 2.130 for the purpose of financing public facilities in the County, and the proceeds are deposited in the Whatcom County Public Utilities Improvement Fund.

B. The **City of Lynden** will construct the Project. The Project will be partially funded by a **\$562,500 loan from the Whatcom County Public Utilities Improvement Fund, a \$387,500 grant from the Whatcom County Public Utilities Improvement Fund**, and the balance of the Project will be funded by the City of Lynden Transportation Benefit District, as outlined in Exhibit B. The Project improvements, when complete, will be owned and maintained by **City of Lynden**.

C. RCW 82.14.370 was adopted to serve the goals of promoting the ongoing operation of business in rural distressed areas, promoting the expansion of existing businesses in rural distressed areas, attracting and developing new businesses, and providing family wage jobs and the development of communities of excellence in such areas. The parties expect the Project to further these goals.

D. RCW 82.14.370 defines public facilities to include bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and facilities in the state of Washington.

E. The County has created the EDI Board to review applications for loans and grants from the Public Utilities Improvement Fund and to make recommendations for Public Utilities Improvement Fund investments based on commitment of other funds, potential for resulting job creation, and other factors.

F. The EDI Board has reviewed the application for Public Utilities Improvement Funds and has recommended approval to the Whatcom County Council.

G. The County EDI Board has reviewed and recommended this project application be approved with a recommendation of a loan in the amount of \$562,500 and a grant in the amount of \$387,500, for a total of \$950,000. A copy of the EDI application for this project is attached by reference to this Agreement (Attachment B).

H. The Whatcom County Council reviewed the recommendation and approved a loan to the **City of Lynden** from the Public Utilities Improvement Fund in the amount of \$562,500, and a grant to the **City of Lynden** from the Public Utilities Improvement Fund in the amount of \$387,500.

I. The Public Utilities Improvement Fund balance is sufficient to make the requested loan and grant to the Project.

J. RCW 39.34 authorizes interlocal agreements whereby municipal governments may jointly exercise the powers granted to each.

V MUTUAL CONSIDERATION

The parties do not intend to create any new or separate legal or administrative entity by this Agreement but intend for this mutual Agreement to govern the County's financial support for the Project. The terms and conditions contained herein reflect the voluntary participation of the parties.

A. **City of Lynden RESPONSIBILITIES:** The **City of Lynden** hereby agrees as follows:

(i) If after the award of the construction contract, the scope of the Project or the Project budget has changed, the **City of Lynden** shall provide the

County the following updated documents: 1) a detailed description of the project; 2) a project budget itemizing major improvements together with the estimated cost of the improvements; and 3) a schedule showing sources and uses of funding for the project, if any of the aforementioned documents varies from those that were submitted with the **City of Lynden's** application for EDI funding.

- (ii) The **City of Lynden** shall be responsible for all aspects of the design and construction of the project.
- (iii) The **City of Lynden** shall be responsible for all aspects of the public works construction contract administration, which shall include, but not be limited to, advertising, bidding, and awarding the contract. The **City of Lynden** will comply with all applicable laws, rules and regulations relating to bidding the project. The County shall have no responsibility for the Project other than the funding set forth herein.
- (iv) The **City of Lynden** shall provide the County with a final report showing the actual cost of the project and the actual sources and uses of funding for the project.
- (v) The **City of Lynden** shall repay the loan in full in accordance with the terms of Section V.C below and the amortization schedule set forth in Attachment A, attached hereto.

B. WHATCOM COUNTY'S RESPONSIBILITIES: The County hereby agrees as follows:

- (i) COUNTY LOAN—The County shall *loan* Five Hundred Sixty-Two Thousand Five Hundred Dollars and Zero Cents (\$562,500) for the Project described herein (the "Loan"). The Loan shall be paid in accordance with Exhibit B.
- (ii) COUNTY GRANT—The County shall issue a grant to the City of Lynden for up to Three Hundred Eighty-Seven Thousand Five Hundred Dollars and Zero Cents (\$387,500) for the Project described herein. Disbursements of grant funding shall be made contingent upon and subject to the continued commitment of the other project funding sources. This amount shall be paid in accordance with Exhibit B.
- (iii) Unless the parties to this agreement mutually agree in writing to modify the consideration, the funding identified herein is all the County is obligated to pay towards this project. The **City of Lynden** agrees to protect the County from, hold it harmless from, and indemnify it for, any charges that may be levied in excess of the agreed amount.

C. REPAYMENT OF COUNTY LOAN—The **City of Lynden** shall repay the Loan as follows:

- (i) The term of the Loan shall be **20** years, commencing from the date that the County disburses the Loan proceeds to the **City of Lynden**. Interest shall

accrue on the unpaid principal at a rate of 1% per annum. Interest shall begin accruing from the date of disbursement of loan funds.

- (ii) The **City of Lynden** will make loan payments to the County annually on or before the anniversary date of receiving loan proceeds in accordance with the attached amortization schedule (Attachment A). Loan payments must be delivered to the Whatcom County Executive Department, Suite 108, 311 Grand Avenue, Bellingham, WA 98225.
- (iii) Failure to make the payment in the required amount by the date it is due according to the amortization schedule hereto attached shall constitute an event of default by the **City of Lynden**. In the event that the **City of Lynden** fails timely to make a Loan payment hereunder, the County shall notify the **City of Lynden** of the failure and the **City of Lynden** shall have fourteen (14) days to cure its failure. At the option of the County, such an event of default and the **City of Lynden's** failure to cure within the stated time period is a sufficient basis upon which the County may take action to collect the amount that is delinquent, and if the County takes action to collect pursuant to this provision, the **City of Lynden** shall pay to the County not only the amount owing, but also any collection of reasonable costs incurred by the County. Furthermore, if the **City of Lynden** fails to make a payment on the Loan within thirty (30) days of the date it is due, and if the County has provided the **City of Lynden** with the notice provided for in this section, then the County may choose to declare the remaining balance of the loan due and owing.
- (iv) There is no prepayment penalty should the **City of Lynden** desire to retire this debt early, either in whole or in part.

VI RECORDS, REPORTS AND AUDITS

The **City of Lynden** agrees to maintain such records, make such reports and follow such procedures pertaining to this Agreement as may be reasonably required by the County and as are typically maintained and made by the **City of Lynden** in the undertaking of a project of this nature. All **City of Lynden** records pertaining to this Agreement and the Project work shall be retained by the **City of Lynden** for a period of three (3) years after final audit unless a longer period is required to resolve audit findings or litigation. The County and other authorized representatives of the State government shall have access to any books, documents, papers, and records of the **City of Lynden** which pertain to this Agreement or the Project work for the purpose of making audit, examination, excerpts, and transcriptions.

VII RELATIONSHIP OF PARTIES AND AGENTS

Neither the **City of Lynden** nor the County shall have authority to execute contracts or to make commitments on behalf of the other, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the **City of Lynden**. This agreement does not

create, either implicitly or explicitly, any right, duty or obligation that is not expressly provided for herein.

The **City of Lynden** represents that it has or will secure at its own expense all personnel, contractors, and/or subcontractors required in order to perform the Project work. Such personnel shall not be employees of, or contractors with the County for purposes of the project described herein. All such personnel, contractors, and/or subcontractors shall be fully qualified (as determined by the **City of Lynden** in its sole discretion) and authorized/permitted under State and/or local law to perform such services.

VIII TERMINATION

If the **City of Lynden** fails to comply with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including, but not limited to, the termination or closeout of this Agreement in the manner specified herein:

- A. **TERMINATION FOR CAUSE**— If the **City of Lynden** fails to comply with the terms and conditions of this Agreement, the County will give notice to the **City of Lynden** in writing of its failure to comply. The **City of Lynden** will be given thirty (30) days from date of notice to comply with the terms of the Agreement or submit a plan acceptable to the County to bring the **City of Lynden** into compliance with the Agreement within a time period reasonably acceptable to the County. Failure to comply with the terms and conditions of this Agreement by either party shall constitute an event of default. In the event of default by the **City of Lynden** and a failure by the **City of Lynden** to cure as provided for herein, the County may take such remedial actions under the law as are available to cure the default, including the imposition of the reasonable costs of collection. In the event of default by the County, the **City of Lynden** may take such remedial actions under the law as are available to cure the default, including specific performance.
- B. **TERMINATION FOR OTHER GROUNDS**—This Agreement may be terminated in whole or in part by mutual consent and written agreement between the parties, duly authorized and executed, setting forth the conditions of termination, including effective date and, in case of termination in part, that Portion to be terminated.

IX COMPLIANCE WITH LAWS

The County and the **City of Lynden** shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments with regard to the performance of this Agreement.

X INTEREST OF MEMBERS OF THE COUNTY AND THE City of Lynden

No member of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection

with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in this Agreement.

XI HOLD HARMLESS AND INDEMNITY

To the extent permitted by law, the **City of Lynden** shall indemnify and hold harmless the County, its officers, agents, and employees, from all liability, loss or damage, including costs of defense they may suffer as a result of claims, demands, actions, costs, or judgments which result from the activities to be performed by the **City of Lynden**, its agents, employees, or subcontractors pursuant to this Agreement.

XII ASSIGNABILITY

The **City of Lynden** shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the **City of Lynden** from the County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the **City of Lynden**.

XIII NON-WAIVER

The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

XIV CONTRACT MODIFICATIONS

No modification or waiver of any clause or condition of this Agreement shall be binding upon either party unless such modification or waiver is in writing and duly authorized and executed by the County and the **City of Lynden**.

XV SEVERABILITY

If any Portion of this Agreement is changed per mutual agreement or any Portion is held invalid, the remainder of this Agreement shall remain in full force and effect.

XVI NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

TO City of Lynden: Steve Banham, Public Works Director
City of Lynden
300 4th Street
Lynden, WA 98264

TO COUNTY: Brad Bennett, Finance Manager
c/o Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

XVII INTEGRATION

This Agreement contains all terms and conditions to which the County and the **City of Lynden** agreed, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this loan and grant transaction. There are no other oral or written agreements between the **City of Lynden** and County as to the loan and grant terms contained herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, duly authorized and executed by both parties.

XVIII GOVERNING LAW AND VENUE

All questions of the validity, construction, and application of this Agreement shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Agreement shall be the Superior Court of the State of Washington in and for Skagit County, Washington.

XIX RECORDING

Upon execution of this agreement by the parties hereto, the County shall cause it to be posted on the county web site, or otherwise published pursuant to the requirement contained within RCW 39.34.040.

IN WITNESS WHEREOF, the County and the **City of Lynden** have executed this Agreement as of the date and year last written below.


EXECUTED, this 16th day of September, 2022, for the **City of Lynden**:



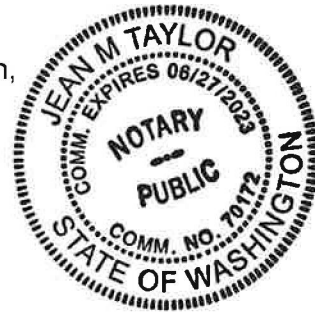
Scott Korthuis, Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this 16th day of September, 2022, before me personally appeared **SCOTT KORTHUIS**, to me known to be the **MAYOR** of the **City of Lynden** and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



NOTARY PUBLIC in and for the State of Washington,
residing at Lynden.
My commission expires 6.22.2023.




EXECUTED, this 29th day of September, 2022, for **WHATCOM COUNTY**:

Approved: Accepted for Whatcom County:

 FOR ss
 Satpal Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
 COUNTY OF WHATCOM)

Tyler Schroeder ← On this 29th day of September, 2022, before me personally appeared SATPAL SIDHU, to me known to be the Deputy **COUNTY EXECUTIVE** of **Whatcom County**, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.


 NOTARY PUBLIC in and for the State of Washington,
 residing at Billingsham
 My commission expires 12-31-22.



Approved as to form:

 Christopher Quinn per email 08/31/22
~~Chief~~ Civil Deputy Prosecutor Date

Exhibit A

SCOPE OF WORK

City of Lynden – South Park Street, Water and Sidewalk Improvements

The City of Lynden has requested grant and loan funding from the Whatcom County Economic Development Investment (EDI) Fund. Funding is requested for the South Park Street, Street, Water & Sidewalk improvement project.

The City of Lynden has a ¼ mile section of water main located beneath South Park Street that is undersized and has deteriorated, no longer providing adequate fire flow as evidenced through flow testing. This deficiency creates a life safety concern the neighborhood and community as a whole. In addition to the water main deterioration the sidewalks on the same section of the street do not meet Federal and City American with Disabilities Act (ADA) standards.

This project will upgrade the water main to City standards to provide adequate fire flow and add fire hydrants for required fire protection to the neighborhood. After upgrading the below-street utilities, the existing old and deteriorated street will be reconstructed with new asphalt and pedestrian sidewalks and ramps to meet current Federal and City ADA standards.

The project will begin 4th quarter of 2022 and completion is anticipated for the end of 2023.

Exhibit B

**City of Lynden – South Park Street, Water and Sidewalk Improvements
Loan and Grant Draw Down Requirements**

The **\$387,500 grant** funding will be disbursed prior to any loan funding, as follows:

The **City of Lynden** will send invoices for project expenses to Whatcom County Executive’s Office, 311 Grand Avenue, Suite 108, Bellingham, WA 98225. Invoices will include copies of paid invoices for project costs. Funds will be made available by warrant within 30 days following receipt of invoice and are for reimbursement of project expenses only. The request for grant funds should reference the Whatcom County assigned interlocal agreement number.

The **\$562,000 loan** will be disbursed as follows:

Following the disbursement of all grant funds, the loan funds will be made available for application to the project by warrant within 30 days of receipt of written request from **Scott Korthuis, Mayor of the City of Lynden**, and sent to the Whatcom County Executive’s office, 311 Grand Avenue, Suite 108, Bellingham, WA 98225. The request will include the full loan amount (**\$562,000**), and a reference to the contract number assigned to this Interlocal Agreement. Repayment of the loan will begin one year from the disbursement date and follow the schedule noted in Attachment A.

BUDGET

Funding Source	Amount	
City of Lynden Funds	\$ 750,000	
Whatcom County EDI Fund (Loan)	\$ 562,500	
Whatcom County EDI Fund (Grant)	\$ 387,500	
TOTAL	\$ 1,700,000	
Project Budget		
Design (<i>not included</i>)	<i>Done (\$105,250)</i>	
Right-of-Way Acquisition	\$ 1,550,000	
Construction	\$ 150,000	
TOTAL	\$1,700,000	

Attachment A
Amortization Schedule

WHATCOM COUNTY						
EDI Loan City of Lynden						
South Park Street, Street Water and Sidewalk Improvements						
		Principal			\$562,500	
		Interest Rate			1.00%	
		Term (20 years)			20	
#	Year	Beginning Balance	Payment	Interest	Principal	Ending Balance
1	2024	\$562,500	(\$31,171)	5,625	(\$25,546)	\$536,954
2	2025	\$536,954	(\$31,171)	5,370	(\$25,801)	\$511,153
3	2026	\$511,153	(\$31,171)	5,112	(\$26,059)	\$485,094
4	2027	\$485,094	(\$31,171)	4,851	(\$26,320)	\$458,774
5	2028	\$458,774	(\$31,171)	4,588	(\$26,583)	\$432,191
6	2029	\$432,191	(\$31,171)	4,322	(\$26,849)	\$405,342
7	2030	\$405,342	(\$31,171)	4,053	(\$27,118)	\$378,224
8	2031	\$378,224	(\$31,171)	3,782	(\$27,389)	\$350,835
9	2032	\$350,835	(\$31,171)	3,508	(\$27,663)	\$323,172
10	2033	\$323,172	(\$31,171)	3,232	(\$27,939)	\$295,233
11	2034	\$295,233	(\$31,171)	2,952	(\$28,219)	\$267,014
12	2035	\$267,014	(\$31,171)	2,670	(\$28,501)	\$238,513
13	2036	\$238,513	(\$31,171)	2,385	(\$28,786)	\$209,727
14	2037	\$209,727	(\$31,171)	2,097	(\$29,074)	\$180,653
15	2038	\$180,653	(\$31,171)	1,807	(\$29,364)	\$151,289
16	2039	\$151,289	(\$31,171)	1,513	(\$29,658)	\$121,631
17	2040	\$121,631	(\$31,171)	1,216	(\$29,955)	\$91,676
18	2041	\$91,676	(\$31,171)	917	(\$30,254)	\$61,422
19	2042	\$61,422	(\$31,171)	614	(\$30,557)	\$30,865
20	2043	\$30,865	(\$31,174)	309	(\$30,865)	\$0

**ATTACHMENT B
Funding Application**

**City of Lynden – South Park Water, Street, and Sidewalk Improvements
Economic Development Investment (EDI) Program Application**

**South Park Water, Street, & Sidewalk
Improvements**

Funding Request: \$700,000



Request: The City of Lynden is requesting Whatcom County Economic Development Investment (EDI) funds in the amount of \$700,000 to complete water and street improvements on South Park Street. This City neighborhood collector has an undersized water main that doesn't provide adequate fire flow. Further, the street is old with non-ADA compliant sidewalks. The requested funds would be matched with \$1,000,000 in City funds.

Issue: The ¼ mile section of water main beneath South Park Street is old, deteriorated, and doesn't meet current City standard. Flow testing has shown that the existing water main does not provide adequate fire flow which makes this a life safety concern for this neighborhood. The South Park roadway and sidewalk are also in poor condition and are logical candidates for replacement and upgrading to current Federal Americans with Disabilities Act (ADA) standards. South Park is a local neighborhood street connector between 8th Street and Depot Road, the major collector. This deficiency has been identified in the City's adopted Water System Plan.

Solution: This project will upgrade the water main to City standards to provide adequate fire flow and add fire hydrants for required fire protection to the neighborhood. After upgrading the below-street utilities, the existing old and deteriorated street will be reconstructed with new asphalt and pedestrian sidewalks and ramps to meet current Federal and City ADA standards.

The aerial photo below highlights the section of South Park Street that would receive new upgraded water main, street and pedestrian reconstruction to City ADA standards.

