

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202209009

Originating Department:	Executive Office
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Non-Departmental/Public Utilities Improvement Fund/EDI
Contract or Grant Administrator:	Tyler Schroeder, Deputy Executive
Contractor's / Agency Name:	City of Ferndale - Metalworks SkateparkProject

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: 332264

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):
 \$ 200,000 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:

The City of Ferndale has received EDI funding to pay for costs associated with the design and construction of a community skatepark located in the downtown core. This new skatepark will help to encourage additional public and private investment in the downtown core.

Term of Contract: 1.5 years April 2023

Expiration Date: December 31, 2024

Contract Routing:	1. Prepared by: Tawni Helms	Date: 7/13/22
	2. Attorney signoff: Christopher Quinn	Date: 9/15/2022
	3. AS Finance reviewed: Bbennett	Date: 9/12/2022
	4. IT reviewed (if IT related):	Date:
	5. Contractor signed:	Date:
	6. Submitted to Exec.:	Date:
	7. Council approved (if necessary): AB2022-514	Date: 9-27-22
	8. Executive signed: ✓	Date: 9-28-22
	9. Original to Council: ✓	Date: 10-13-22

**Economic Development Investment Program
Interlocal Grant Agreement
City of Ferndale – Metalworks Skatepark Project**

I PARTIES

This Agreement is made by and between **Whatcom County** (hereinafter referred to as **the County**), and City of Ferndale (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 the project is complete and the final report required under Section V, MUTUAL CONSIDERATION A (iv) is received or until the contract terminated as provided for in Section VIII, TERMINATION.

III PURPOSE

The purpose of this Agreement is to provide funding support for the Metalworks Skatepark 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 A).

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 Ferndale** will construct the Project. The Project will be partially funded by a **\$200,000 grant from the Whatcom County Public Utilities Improvement Fund** and the balance of the Project will be funded by the City of Ferndale, as outlined in Exhibit B. The Project improvements, when complete, will be owned and maintained by **City of Ferndale**.

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 grant in the amount of \$200,000. A copy of the EDI application for this project is attached by reference to this Agreement (Attachment A).

H. The Whatcom County Council reviewed the recommendation and approved a grant to the **City of Ferndale** from the Public Utilities Improvement Fund in the amount of \$200,000.

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 Ferndale RESPONSIBILITIES:** The **City of Ferndale** 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 Ferndale** 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 Ferndale's** application for EDI funding.

- (ii) The **City of Ferndale** shall be responsible for all aspects of the design and construction of the project.
- (iii) The **City of Ferndale** 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 Ferndale** 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 Ferndale** 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.

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

- (i) COUNTY GRANT—The County shall issue a grant to the City of Ferndale for up to Two Hundred Thousand Dollars and Zero Cents (\$200,000) 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 A.
- (ii) 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 Ferndale** 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.

VI RECORDS, REPORTS AND AUDITS

The **City of Ferndale** 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 Ferndale** in the undertaking of a project of this nature. All **City of Ferndale** records pertaining to this Agreement and the Project work shall be retained by the **City of Ferndale** 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 Ferndale** 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 Ferndale** 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 Ferndale**. This agreement does not create, either implicitly or explicitly, any right, duty or obligation that is not expressly provided for herein.

The **City of Ferndale** 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 Ferndale** in its sole discretion) and authorized/permitted under State and/or local law to perform such services.

VIII TERMINATION

If the **City of Ferndale** 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 Ferndale** fails to comply with the terms and conditions of this Agreement, the County will give notice to the **City of Ferndale** in writing of its failure to comply. The **City of Ferndale** 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 Ferndale** 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 Ferndale** and a failure by the **City of Ferndale** 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 Ferndale** 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 Ferndale** 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 Ferndale

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 Ferndale** 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 Ferndale**, its agents, employees, or subcontractors pursuant to this Agreement.

XII ASSIGNABILITY

The **City of Ferndale** 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 Ferndale** 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 Ferndale**.

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 Ferndale**.

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 Ferndale: Jori Burnett, City Administrator
City of Ferndale
P.O. Box 936
Ferndale, WA 98248

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 Ferndale** 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 Ferndale** 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 Ferndale** have executed this Agreement as of the date and year last written below.


EXECUTED, this 30th day of SEPTEMBER, 2022, for the **City of Ferndale**:



Jori Burnett, City Administrator

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this 30th day of September, 2022, before me personally appeared **JORI BURNETT**, to me known to be the **CITY ADMINISTRATOR** of the **City of Ferndale** 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 Bellingham
My commission expires May 19, 2025.



**Exhibit A
SCOPE OF WORK**

City of Ferndale – Metalworks Skatepark Project

The City of Ferndale has requested grant funding from the Whatcom County Economic Development Investment (EDI) Fund. Funding is requested for the Metalworks Skatepark Project.

The City of Ferndale will construct an approximately 10,000 square foot skatepark within Pioneer Park, a City-owned park. The city has received funding from the Washington State Recreation and Conservation Office (RCO) and the Ferndale city Council has committed additional funds to support the construction of the park, which will be within a five-minute walk of Downtown Ferndale and dense residential development.

Pioneer Park is the City's largest park and is under-developed. By co-locating a variety of activities within the park, the facility will serve as a key anchor for additional public and private reinvestment within the downtown core.

Project Timeline: The project will begin in summer 2023 and completion is anticipated for early 2024.

**Exhibit B
BUDGET**

**City of Ferndale – Metalworks Skatepark Project
Grant Draw Down Requirements**

The **\$200,000 grant** funding will be disbursed as follows:

The **City of Ferndale** 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 receipts. Funds will be made available by warrant within 30 days following receipt of paid invoices and are for reimbursement of project expenses only. The request for grant funds should reference the Whatcom County assigned interlocal agreement number.

BUDGET

Funding Source	Amount
City of Ferndale Funds	\$ 500,000
Whatcom County EDI Fund (Grant)	\$ 200,000
Washington State RCO Funds	\$480,000
TOTAL	\$ 1,180,000
Project Budget	
Engineering Design	\$300,000
Construction	\$775,000
Construction Engineering/Management	\$105,000
TOTAL	\$ 1,180,000

**ATTACHMENT A
Funding Application**

**City of Ferndale – Metalworks Skatepark Project
Economic Development Investment (EDI) Program Application**



**Metalworks Skatepark
(City of Ferndale Washington)**

Funding Request: \$200,000 (Grant)

Scope: The City will construct a ~10,000 skatepark within Pioneer Park, a City-owned park. The City has received funding from the Washington State Recreation and Conservation Office (RCO), and the Ferndale City Council has committed additional funds to support the construction of the park, which will be within a five-minute walk of Downtown Ferndale and dense residential development. Pioneer Park is the City's largest park and is under-developed; by co-locating a variety of activities within the park, the facility will serve as a key anchor for additional public and private reinvestment within the Downtown core.

Timeline: The City anticipates commencing construction in 2Q 2023, with a project completion of 4Q 2024.

Budget: City of Ferndale has executed a design contract for \$300,000 with New Line Skateparks; design is currently at the 30% milestone. The City anticipates \$1.2 million for construction based on preliminary estimates.

Anticipated Reimbursables: Engineering design, project construction, materials