

**Economic Development Investment Program
Interlocal Grant Agreement
City of Lynden - Trail Connector Depot Road to 8th Street 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 and reports required under Section V, MUTUAL CONSIDERATION have been received by the County or until terminated as provided for in Section VIII, TERMINATION.

III PURPOSE

The purpose of this Agreement is to provide funding support for the **Jim Kaemingk Sr. Trail Connector: Depot Road to 8th Street 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 Lynden** will construct the Project. The Project will be partially funded by a **\$500,000 grant from the Whatcom County Public Utilities Improvement Fund**, and the balance of the Project will be funded by the City of Lynden, a Washington State Commerce Grant, and other sources 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 grant in the amount of \$500,000. 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 Lynden** from the Public Utilities Improvement Fund in the amount of \$500,000.

I. The Public Utilities Improvement Fund balance is sufficient to make the requested 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.

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

- (i) COUNTY GRANT—The County shall issue a grant to the City of Lynden for up to Five Hundred Thousand Dollars and Zero Cents (\$500,000) 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 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.

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 _____ day of _____, 2022, for the **City of Lynden**:

Scott Korthuis, Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this _____ day of _____, 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 _____.
My commission expires _____.

EXECUTED, this _____ day of _____, 2022, for **WHATCOM COUNTY**:

Approved: Accepted for Whatcom County:

Satpal Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 2022, before me personally appeared **SATPAL SIDHU**, to me known to be the **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 _____.
My commission expires _____.

Approved as to form:

Christopher Quinn per email 08/31/2022
Chief Civil Deputy Prosecutor Date

Exhibit A
Scope of Work

City of Lynden – Jim Kaemingk Sr. Trail Connector: Depot Road to 8th Street
Grant Draw Down Requirements

The **\$500,000** grant funding will be disbursed as follows:

The **City of Lynden** requested \$500,000 from the Whatcom County Economic Development Investment (EDI) Fund to complete its existing east-west trail network. The section of trail will follow along Fishtrap Creek between Depot Road and North 8th Street and includes a bridge over Fishtrap Creek.

PROJECT TIMELINE: The project will begin Fall 2022 and completion is anticipated for before the end of 2023.

The EDI funding will be utilized for the construction phase of the project and invoices will be submitted 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 invoice and are for reimbursement of project expenses only. The request for grant funds should reference the Whatcom County assigned interlocal agreement number.

**EXHIBIT B
BUDGET**

City of LYNDEN – Jim Kaemingk Sr. Trail Connector: Depot Road to 8th Street

Grant Draw Down Requirements

The **\$500,000** grant funding will be disbursed as follows:

The City 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 expenses. 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	
Lynden City Parks Fund	\$ 180,000	
State Commerce Grant	\$ 190,000	
Whatcom County EDI Fund (Grant only)	\$ 500,000	
TOTAL	\$870,000	
Project Budget		
Materials and Labor	\$870,000	
TOTAL	\$870,000	

Attachment A

City of Lynden – Jim Kaemingk Sr. Trail Connector: Depot Road to 8th Street
Economic Development Investment (EDI) Program Application

Jim Kaemingk Sr. Trail Connector:
Depot Road to 8th Street

Funding Request: \$500,000



Request: The City of Lynden is requesting Whatcom County Economic Development Investment (EDI) funds in the amount of \$500,000 to complete the trail extension from Depot Road to North 8th Street. This project will construct the final 5,000 feet of the 12-foot wide multi-modal east-west trail transportation system in Lynden. This section will follow along Fishtrap Creek between Depot Road and North 8th Street and includes a bridge over Fishtrap Creek. The requested funds would be matched with \$500,000 in City Parks funds and a \$200,000 State Department of Commerce Grant.

Issue: The City is seeking funding to complete its existing east-west trail network. The Jim Kaemingk Sr. Trail currently ends at Depot Road after meandering through the Lynden City Park along Fishtrap Creek. The trail does not begin again until approximately one mile later. As walking and biking have become more popular activities throughout the COVID-19 pandemic, the need for a continuous trail system has become more evident. Pedestrians currently must cross multiple streets to reach the final segment of the trail network. Additionally, this route is in the vicinity of multiple schools and the highly used Bender Fields. The existing trail network is a popular way for students to travel to and from school or athletic events on foot or by bicycle. The ability to provide off-street, safe travel for all while promoting health is a high priority in Lynden.

Solution: This project constructs 5,000 feet of 12-foot wide ADA-compliant trail to fill a gap in the City-wide multi-modal trail system. It provides educational and recreational opportunities along Fishtrap Creek in the central core of Lynden between Depot Road and North 8th Street. It provides multi-modal pedestrian access to Lynden schools including Fisher Elementary School, Lynden Middle School, and the Lynden Christian School complex which includes all grade levels. This trail section provides a connection from the west to City Park and the “Million Smiles” play area, the City Pool/Recreation Center, and the Bender Fields Recreation Area further to the east. The entire Kaemingk trail system began in 1994 and gives residents and visitors to Lynden an exceptional outdoor recreational activity that links to a wide variety of other City points of interest.

This photo-realistic rendering shows the proposed Kaemingk Trail Extension, including the pedestrian bridge over Fishtrap Creek.

