

Whatcom County Contract No. 202209010

**Economic Development Investment Program
Interlocal Grant Agreement
Port of Bellingham – BST Terminal Power/Telecom**

I PARTIES

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

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 in Section V MUTUAL CONSIDERATION A (iv) is received or until the contract is terminated as provided for in Section VIII, TERMINATION.

III PURPOSE

The purpose of this Agreement is to provide funding support for the BST Terminal Power/Telecom 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 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 **Port** will construct the Project. The Project will be partially funded by a **\$1,125,000 grant from the Whatcom County Public Utilities Improvement Fund**, and the balance of the Project will be funded by the Port, as outlined in Exhibit B, Budget. The Project improvements, when complete, will be owned and maintained by the **Port**.
- 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 \$1,125,000. 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 grant to the **Port** from the Public Utilities Improvement Fund in the amount of \$1,125,000.

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. **Port RESPONSIBILITIES:** The **Port** 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 **Port** 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 **Port**'s application for EDI funding.
- (ii) The **Port** shall be responsible for all aspects of the design and construction of the project.
 - (iii) The **Port** 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 **Port** 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 **Port** 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 **Port** for up to One Million One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$1,125,000) 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 **Port** 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 **Port** 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 **Port** in the undertaking of a project of this nature. All **Port** records pertaining to this Agreement and the Project work shall be retained by the **Port** 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 **Port** 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 **Port** 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 **Port**. This agreement does not create, either implicitly or explicitly, any right, duty or obligation that is not expressly provided for herein.

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

VIII TERMINATION

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

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

XII ASSIGNABILITY

The **Port** 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 **Port** 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 **Port**.

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 **Port**.

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

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 **Port** 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 **Port** 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.

Exhibit A

Port – Bellingham Shipping Terminal (BST) Clean Power/Telecom Grant Draw Down Requirements

The **\$1,125,000** grant funding will be disbursed as follows:

Port of Bellingham– Bellingham Shipping Terminal Clean Power/Telecom Project Grant Draw Down Requirements

The overhead and power telecommunication infrastructure at the Bellingham Shipping Terminal is aged and incompatible with the needs of current users and prospective customers. This project will remove and underground overhead power lines, upgrade power service, eliminate a safety hazard and allow large equipment to fully utilize the limited footprint of BST. The new infrastructure will increase the power available to Berth 1 and the two warehouses, expand power service to the area adjacent to the BST and extend new fiber (high-speed internet) for Shipping Terminal customers. Given the low power currently available along the Shipping Terminal pier, vessels must rely on diesel generators. This project will give shipping customers the ability to connect to clean electric power which will significantly reduce greenhouse gas emissions and improve air quality for maritime workers and community members. Project scope will include:

- Upgrade power supply to Warehouse #1 & Berth #1 (1200 amp)
- Upgrade power service to Log Pond to 1200 amp
- Extend conduit to front of Warehouse #2 for future expansion
- Bury overhead power lines on the east side from ABCD Lockers to Warehouse #1 and Berth #1.
- Add tele-comm utilities to Warehouse #2 from 625 Cornwall fiber connection + fire alarm monitoring Including adding Port network fiber to Warehouse #2.
- Extend overhead power on the Log Pond site to run behind ABCD lockers to entrance of Log Pond site. (located east of ABCD Lockers)
- Demo brick bldg. once all power has been diverted to the interior of Warehouse #1
- Utility Duct Bank to Berth 3

Project Timeline: The project will begin September 2022 and completion is anticipated December 31, 2023.

The **Port** 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 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**

The **\$1,125,000** grant funding will be disbursed as follows:


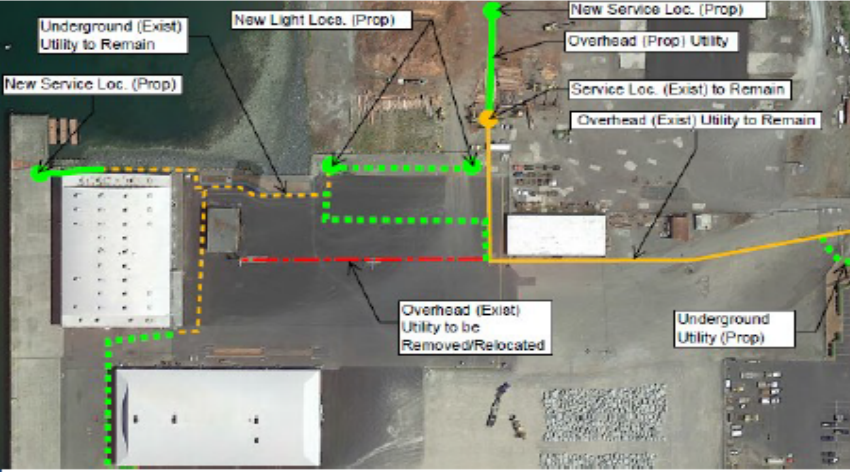
The **Port** will send invoices for project expenses to Whatcom County Executive's Office, 311 Grand Avenue, Suite 108, Bellingham, WA 98225. Invoices will include copies of receipts. Funds will be made available by warrant within 30 days following receipt of invoice and are for reimbursement of project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

BUDGET

Funding Source	Amount	
Port	\$ 2,250,000	
Whatcom County EDI Fund (Grant only)	\$ 1,125,000	
TOTAL	\$ 3,375,000	
Project Budget		
Design and Permitting (Port)	\$ 180,000	
Construction (Port)	\$ 2,070,000	
Upgrade power to Warehouse #1, Log Pond, and Berth #1.		
Bury overhead power lines, install conduit, add tele-comm and fire monitoring utilities		
Demo brick building		
Construction (Wh. Co. EDI fund grant only)	\$ 1,125,000	
Upgrade power to Warehouse #1, Log Pond, and Berth #1.		
Bury overhead power lines, install conduit, add tele-comm and fire monitoring utilities.		
TOTAL	\$3,375,000	

ATTACHMENT "A"

Port of Bellingham– Bellingham Shipping Terminal Clean Power/Telecom

<h2 style="margin: 0;"><u>Bellingham Shipping Terminal Clean Power</u></h2> <p style="margin: 0;">Funding Request: \$1,125,000</p>	 PORT OF BELLINGHAM <i>Washington State</i>
<p>Request: The Port of Bellingham requests \$1,125,000 to modernize power and telecommunication utilities at the Bellingham Shipping Terminal (BST), which are aged and incompatible with the needs of current marine trades business opportunities. These improvements are a key phase of work to modernize the BST in an effort to spur economic development in a facility that benefits all of Whatcom County. The total project budget is currently estimated at \$3 million with significant design and permitting completed in 2019.</p>	
<p>Issue: The current overhead power and telecommunication infrastructure is aged and outmoded, which limits potential business opportunities at the Shipping Terminal. Given the low power available along the pier, vessels at the BST must rely on diesel generators. This project will significantly reduce greenhouse gas emissions from ships at berth, improving air quality for maritime workers and community members. Shore power is increasingly requested by potential Port customers as it allows vessels to turn off diesel engines while at the dock, reducing air pollution and greenhouse gas emissions which contribute to climate change. Additionally, this project allows the removal and undergrounding of overhead power lines allowing large equipment to fully utilize the limited footprint of the Bellingham Shipping Terminal. The overhead utilities are a potential obstacle and safety hazard for managing large cargo. The Port has completed prior capital projects that have installed portions of the planned new, upgraded underground utility infrastructure and this next phase of work was planned to implement the upgraded power and fiber extension. However, following the uncertainty of the COVID-19 pandemic, this project was deferred in 2020 and is currently unfunded.</p>	
<p>Solution: This project will complete the work to extend fiber (high-speed internet) access to BST and will increase power available to Berth 1, the two warehouses, and extend power service to the area adjacent to the BST, which will support operations. Some of the base infrastructure (e.g., vaults) for this next phase of work were procured in 2019/2020 and permits were secured to complete the work prior to the pandemic. This work will remove portions of the overhead utilities and will allow vessels to connect to clean shore power, minimizing or eliminating the need for vessels to run generators.</p>	
<ul style="list-style-type: none"> - BST is critical infrastructure to Whatcom County's economic and disaster resiliency planning. - BST was recently identified in the Whatcom County CEDS 2021-2025 by stakeholders in the public, private, and nonprofit sectors, as one of the biggest opportunities for Whatcom County's future economy. - Improvements to BST provides new business and diversifies the Port's revenue base, increasing resiliency of the Port, an important economic development actor 	 <p style="text-align: center;">Schematic of Improvements</p>