

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202207029

Originating Department:	Executive
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Non-Departmental/EDI Program (Pub Util Impr Fund)
Contract or Grant Administrator:	S. Mildner
Contractor's / Agency Name:	Port of Bellingham
<p>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, Whatcom County grant contract number(s): _____</p> <p>Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Contract _____ Cost Center: <u>332248</u></p> <p>Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <p><input type="checkbox"/> Professional services agreement for certified/licensed professional.</p> <p><input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</p> <p><input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.</p> <p><input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</p>	
<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>\$2,000,000</u></p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ _____</p>	<p>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:</p> <ol style="list-style-type: none"> 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.
<p>Summary of Scope: Interlocal Grant Agreement with the Port of Bellingham utilizing EDI Program funding (from the Public Utilities Improvement Fund) for use in the Port's Rural Broadband construction project, benefitting project phases for construction in two areas: North Lynden and North Ferndale.</p>	
Term of Contract:	Expiration Date: N/A

Contract Routing:	1. Prepared by: <u>S. Mildner</u>	Date: <u>7/26/22</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>7/28/22</u>
	3. AS Finance reviewed: <u>Bbennett</u>	Date: <u>7/29/22</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: <u>7/28/22</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

Economic Development Investment Program Interlocal Grant Agreement

I PARTIES

This Agreement is made by and between **Whatcom County** (hereinafter referred to as **the County**), and **the 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 all payments required under Section V, MUTUAL CONSIDERATION, Subsection B(ii), PAYOUT OF GRANT FUNDING, have been made or until terminated as provided for in Section VIII, TERMINATION.

III PURPOSE

The purpose of this Agreement is to provide additional funding support for the Rural Broadband Construction Project, to include 2 separate rural broadband projects (hereinafter referred to as **the Projects**) using certain County funds designated for such infrastructure development as further described in Attachment A. These funds will be used to complete the Projects as outlined in the Grant Payout Requirements 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 Port will construct the Projects. Under a separate agreement executed in 2019 (designated at Whatcom County Agreement #201908011) the Port was provided with initial grant funding for these Projects. The Port then submitted a second EDI Program application to the EDI Board requesting additional grant dollars for the Projects. Following the recommendation of the board and subsequent approval by the County Council, the Projects will be partially funded by an additional **\$2,000,000.00 grant from the Whatcom County Public Utilities Improvement Fund**, and the balance of the Projects will be funded by the State of Washington and the Port of Bellingham, as outlined in Attachment A. The Projects' improvements, when complete, will be owned and maintained by Port of Bellingham.

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 Projects 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 Port 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 Whatcom County Council reviewed the recommendation, and approved a grant to the Port from the Public Utilities Improvement Fund in the amount of \$2,000,000. The grant was approved on the condition that the Port secure additional funding and also provide details of how the "last mile" would be provided. These conditions have been fulfilled thereby allowing this Interlocal Agreement to be executed and the Projects to move forward.

H. The Public Utilities Improvement Fund balance is sufficient to make the requested grant to the Projects.

I. 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 Projects. The terms and conditions contained herein reflect the voluntary participation of the parties.

A. **PORT OF BELLINGHAM RESPONSIBILITIES:** The Port hereby agrees as follows:

(i) If after the award of the construction contract, the scope of the Projects or the Project budgets have changed, the Port shall provide the County the following updated documents: 1) a detailed description of the Projects; 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 Projects, if any of the aforementioned documents varies from those that are outlined in Attachment A.

(ii) The Port shall be responsible for all aspects of the design and construction of the Projects.

(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 Projects. The County shall have no responsibility for the Projects other than the funding set forth herein.

(iv) The Port shall provide the County with a final report showing the actual cost of the Projects and the actual sources and uses of funding for the Projects.

(v) The Port shall comply with all other reporting requirements as set forth by its other funding sources.

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 Two Million Dollars (\$2,000,000.00) for the Projects described herein. This grant shall be by County warrant drawn on the Public Utilities Improvement Fund and payable to the Port upon approval of this Agreement by the Whatcom County Council and the Port, and pursuant to the terms contained in (ii), Payout of Grant Funding, below.

(ii) PAYOUT OF GRANT FUNDING—The County shall pay out the grant funding to the Port up to a maximum of Two Million Dollars and Zero Cents (\$2,000,000.00) of the total costs of the Projects. This amount shall be paid in accordance with Attachment A, attached hereto. Disbursements of grant funding shall be made contingent upon and subject to the continued commitment of the other funding sources for the Projects.

(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 these Projects. 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 Projects of this nature. All Port records pertaining to this Agreement and the Projects' 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 Projects' 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 reasonably 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 suing for 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 Projects 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 grant transaction. There are no other oral or written agreements between the Port and County as to the 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. The substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs in any such suit.

XIX RECORDING

Upon execution of this agreement by the parties hereto, the County shall cause it to be recorded with the Whatcom County Auditor, or otherwise published pursuant to the requirement contained within RCW 39.34.040.

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

EXECUTED, this _____ day of _____, 2022, for the **PORT OF BELLINGHAM:**

Rob Fix, Executive Director

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this _____ day of _____, 2022, before me personally appeared **ROB FIX**, to me known to be the **Executive Director** of the Port of Bellingham 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:

 7/29/22

Civil Deputy Prosecutor Date

ATTACHMENT A

The Whatcom County Rural Broadband Project is led by the Port of Bellingham. It is a multi/phase and multi/year project that builds open access dark fiber infrastructure throughout Whatcom County. The goal is to build broadband infrastructure in areas where gaps exist due to it not being built by the private sectors. The Whatcom County Broadband Project will bridge the digital divide providing access to those who are unserved and underserved in our community. WCBP is fiscally responsible with public funding, collaborates with our partners and supports our local businesses to develop an economy for new and existing businesses.

Other state and federal funding programs are in the rule making process and are expected to be released later this summer. These funding sources require a match of at least 25%-50%, the EDI funding is an important source of funding to leverage these potential grants.

The Broadband project is included in the Whatcom County CEDS project list in order to qualify for both federal and local funding sources. One of the Regional Economic Partnership goals is the enhancement of critical infrastructure that promotes economic developments throughout Whatcom County including communication infrastructure and the deployment of broadband that will increase access for the unserved and the underserved.

This project supports the growth of multiple jurisdictions, industries, and workforce throughout the county. The Rural Broadband project will provide an essential utility necessary for the recruitment of new industries, expansion of existing businesses, and the overall resiliency of our economy.

The Port will request reimbursement for two separate rural broadband projects. The EDI Funding will be the first funding used.

Project 1: The Port of Bellingham will build an open access fiber network located north of the City of Lynden as identified in Attachment B. This project will construct approximately 47 miles of mid-mile fiber and fiber to the premise and business (FTTP/FTTB). This project will build fiber to other premise/business (FTTP/FTTB). The Port of Bellingham will partner with local ISP provider to build the extension of the fiber network.

Project 2: The Port of Bellingham will be building an open access fiber network located east of Lake Terrell and north west of the city of Ferndale as identified in Attachment B. This project will construct approximately 35 miles of mid-mile fiber and fiber to the premise and business (FTTP/FTTB). The Port of Bellingham will partner with a local ISP provider to build the extension of the fiber network. The County EDI funding will pay for design, permitting and construction of the project.

County funds may be used for design, permitting, splicing, and construction of the fiber network for both projects that will be retained and owned by the Port.

Attachment B

Port of Bellingham – Rural Broadband Construction Project Grant Payout Requirements

The Port will send invoices for project expenses to the Whatcom County Executive’s office, 311 Grand Avenue, Suite 108, Bellingham, WA 98225. Invoices will include copies of receipts and such invoices will be for expenses not paid by other funding sources for this project. A copy of the Indefeasible Right of Use (IRU) Agreement between the Port and the service provider will be submitted prior to the submittal of the first invoice. Funds will be made available by warrant within 30 days following receipt of invoice and are for reimbursement of project expenses only. (Note: the Port’s invoice request for grant funds should reference the Whatcom County assigned interlocal agreement number)

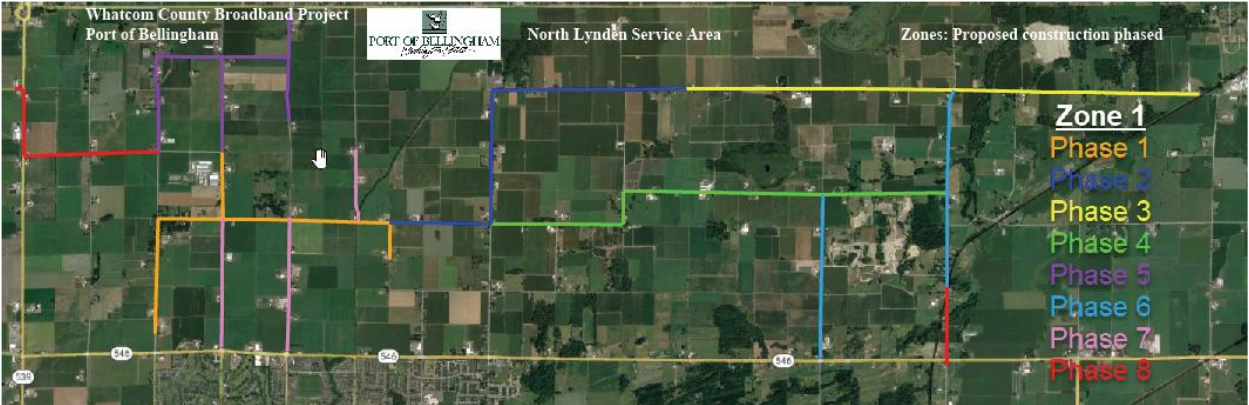
	North Lynden Project No. 1	
Funding Source	Amount	Secured
EDI	\$1 million	Yes
Community Economic Revitalization Board	\$2million	Yes
Total	\$3 million	

	Budget	
Network Design and Permitting	\$550,000	
Network Design and Permitting Contingency 25%	\$137,000	
Total Design and Permitting		\$687,500
Environmental permits	\$42,265	\$42,265
Construction, splicing, and materials	\$1,816,188	
Construction Contingency %25	\$424,047	
Total Construction		\$2,270,235.00
Total project budget		\$3,000,000.00

Scope: Funding will be used to design, permit and construct a 47-mile fiber, which includes phases 1 through 8, to the premise (FTTP) broadband network located north of the City of Lynden and will be known as the North Lynden Project. The EDI funding will be used for public infrastructure costs associated with the planning, permitting and construction of the project. This scope will include utilizing third party services to design, permit and construct the network, utility pole measurements for fiber optic cable placement, the purchase of materials necessary

to construct the fiber network and labor costs to construct, splice or test the network. EDI Funds will not be used for (FTTP).

Project No. 1



	North Ferndale Project No. 2	
Funding Source	Amount	Secured
EDI	\$1 million	Yes
Washington State Broadband office	\$4 million	Yes
Total Funding	\$5 million	
	North Ferndale Budget	
Network Design and Permitting	\$795,000	
Network Design and Permitting Contingency 25%	\$198,750	
Total Design and Permitting		\$993,750
Environmental Permits		
Construction, Splicing and Materials	\$3,217,000	
Construction, Splicing and Materials Contingency 25%	\$789,250	
Total Construction		\$4,006,250
Total project budget		\$5,000,000

Scope: Funding will be used to design, permit and construct a 47-mile fiber to the premise (FTTP) broadband network located north of the City of Lynden and will be known as the North Lynden Project. The EDI funding will be used for public infrastructure costs associated with the planning, permitting and construction of the project. This scope will include utilizing third party services to design, permit and construct the network, utility pole measurements for fiber optic cable placement, the purchase of materials necessary to construct the fiber network and labor costs to construct, splice or test the network. EDI Funds will not be used for (FTTP).

