

Whatcom County
Contract No.
202106036

Economic Development Investment Program Interlocal Loan & Grant Agreement

I PARTIES

This Agreement is made by and between **Whatcom County** (hereinafter referred to as **the County**), and the 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 West Front Street Arterial Improvement 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 C).

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** will construct the Project. The Project will be partially funded by a **\$1,333,333 loan from the Whatcom County Public Utilities Improvement Fund, a \$666,667 grant from the Whatcom County Public Utilities Improvement Fund**, and the balance of the Project will be funded by the City and other sources as outlined in Attachment C. The Project improvements, when complete, will be owned and maintained by the City.
- 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 City 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 City's 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 \$1,333,333 and a grant in the amount of \$666,667, for a total of \$2,000,000. A copy of the EDI application for this project is attached by reference to this Agreement.

H. The Whatcom County Council reviewed the recommendation and approved a loan to the City from the Public Utilities Improvement Fund in the amount of \$1,333,333, and a grant to the City from the Public Utilities Improvement Fund in the amount of \$666,667.

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 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 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's application for EDI funding.

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

(iii) The City 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 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 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 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* One Million Three Hundred Thirty-three Thousand Three Hundred and Thirty-three dollars and Zero Cents (\$1,333,333) for the Project described herein (the "Loan"). This Loan shall be by County warrant drawn on the Public Utilities Improvement Fund and payable to the City, available upon written request after approval and execution of this agreement by the Whatcom County Council and the City, and pursuant to the terms contained in (iii) Payout of Loan and Grant Funding.

(ii) COUNTY GRANT—The County shall issue a *grant* to the The City for up to Six Hundred Sixty-Six Thousand Six Hundred Sixty-seven Dollars and Zero Cents (\$666,667) for the Project described herein. This grant shall be by County warrant drawn on the Public Utilities Improvement Fund and payable to the City upon approval of this agreement by the Whatcom County Council and the City, and pursuant to the terms contained in (iii), Payout of Loan and Grant Funding, below.

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

(iv) 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 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 shall repay the Loan as follows:

(i) The term of the Loan shall be **twenty (20)** years, commencing from the date that the County disburses the Loan proceeds to the City. 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 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. In the event that the City fails timely to make a Loan payment hereunder, the County shall notify the City of the failure and the City shall have fourteen (14) days to cure its failure. At the option of the County, such an event of default and the City'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 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 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 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 desire to retire this debt early, either in whole or in part.

VI RECORDS, REPORTS AND AUDITS

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

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

VIII TERMINATION

If the City 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 fails to comply with the terms and conditions of this Agreement, the County will give notice to the City in writing of its failure to comply. The City 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 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. the event of default by the City and a failure by the City 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 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 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 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, its agents, employees, or subcontractors pursuant to this Agreement.

XII ASSIGNABILITY

The City 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 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.

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.

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 THE CITY: Steve Banham, Public Works Director
City of Lynden
300 4th Street
Lynden, WA 98284

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

EXECUTED, this _____ day of _____, 2021, for the **CITY OF LYNDEN:**

Scott Korthuis, Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this _____ day of _____, 2021, 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 _____, 2021, for **WHATCOM COUNTY:**

Approved: Accepted for Whatcom County:

Satpal Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 2021, 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:

Chief Civil Deputy Prosecutor Date

Attachment A						
WHATCOM COUNTY						
EDI Loan City of Lynden						
West Front Street						
		Principal			\$1,333,333	
		Interest Rate			1.00%	
		Term (20 years)			20	
#	Year	Beginning	Payment	Interest	Principal	Ending
1	2022	\$1,333,333	(\$73,887)	13,333	(\$60,554)	\$1,272,779
2	2023	\$1,272,779	(\$73,887)	12,728	(\$61,159)	\$1,211,620
3	2024	\$1,211,620	(\$73,887)	12,116	(\$61,771)	\$1,149,849
4	2025	\$1,149,849	(\$73,887)	11,498	(\$62,389)	\$1,087,460
5	2026	\$1,087,460	(\$73,887)	10,875	(\$63,012)	\$1,024,448
6	2027	\$1,024,448	(\$73,887)	10,244	(\$63,643)	\$960,805
7	2028	\$960,805	(\$73,887)	9,608	(\$64,279)	\$896,526
8	2029	\$896,526	(\$73,887)	8,965	(\$64,922)	\$831,603
9	2030	\$831,603	(\$73,887)	8,316	(\$65,571)	\$766,032
10	2031	\$766,032	(\$73,887)	7,660	(\$66,227)	\$699,805
11	2032	\$699,805	(\$73,887)	6,998	(\$66,889)	\$632,916
12	2033	\$632,916	(\$73,887)	6,329	(\$67,558)	\$565,358
13	2034	\$565,358	(\$73,887)	5,654	(\$68,233)	\$497,125
14	2035	\$497,125	(\$73,887)	4,971	(\$68,916)	\$428,209
15	2036	\$428,209	(\$73,887)	4,282	(\$69,605)	\$358,604
16	2037	\$358,604	(\$73,887)	3,586	(\$70,301)	\$288,303
17	2038	\$288,303	(\$73,887)	2,883	(\$71,004)	\$217,299
18	2039	\$217,299	(\$73,887)	2,173	(\$71,714)	\$145,585
19	2040	\$145,585	(\$73,887)	1,456	(\$72,431)	\$73,154
20	2041	\$73,154	(\$73,886)	732	(\$73,154)	\$0

Attachment B

The City of Lynden – West Front Street Arterial Improvement Project
 Loan and Grant Draw Down Requirements

The \$666,667 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 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.

The \$1,333,333.00 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 Steve Banham, Public Works Director 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 (\$1,333,333.00), 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.