

**PORT OF BELLINGHAM AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY
FIBER OPTIC / BROADBAND INTERLOCAL AGREEMENT**

This **FIBER OPTIC / BROADBAND INTERLOCAL AGREEMENT** (hereafter the “**Agreement**”) is made and entered into this 14 day of July, 2021, by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY** (hereafter “the **PUD**”) and the **PORT OF BELLINGHAM** (hereafter “the **Port**”).

WHEREAS, there are areas of Whatcom County that are currently unserved and/ or underserved with broadband services meeting today’s residential, business, educational and other public service access needs; and

WHEREAS, RCW 53.08.370 grants authority to the Port to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate and maintain telecommunications facilities within or without the Port’s limits for its own use and/or for the provision of telecommunications services; and

WHEREAS, RCW 54.16.330 grants authority to the PUD to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate and maintain any telecommunications facilities within or without the PUD’ s limits for its own use and/or for the provision of telecommunications services, and

WHEREAS, the Port and the PUD have the authority granted by the State of Washington to provide last mile and retail telecommunication services to the end user, as granted by the passage of SB5383 and HB1336; and

WHEREAS, the PUD is prepared to begin developing broadband utility business models based on this authority, and

WHEREAS, having a public agency provide retail broadband services will help to ensure that public investments in fiber are extended to all Whatcom County residents;

WHEREAS, the parties will explore how to use their respective authority to maximize benefits to all of Whatcom County; and,

WHEREAS, the Port has developed a plan for constructing a publicly owned, open access dark fiber network throughout rural Whatcom County; and

WHEREAS, the PUD is in support of the Port’s efforts to plan, engineer, design, finance and construct the fiber network backbone throughout rural Whatcom County; and,

WHEREAS, the Port is seeking public partnership with the PUD to provide opportunities to support the financing, operation, maintenance, and management of the fiber network , and utilization of the fiber network to provide broadband services to the end user, or last mile and retail services; and

WHEREAS, the PUD is seeking a public partnership with the Port to develop, finance, operate, maintain, manage the fiber network and develop last mile/retail services to residents, businesses, schools, and public safety agencies; and

WHEREAS, the PUD, in support of this broadband system and services development, offers technical expertise, potential funding support, operation, maintenance and last mile/retail services; and

WHEREAS, the PUD owns and operates fiber infrastructure in Whatcom County for its own use in connecting its water and electric infrastructure, monitoring and managing said systems, and has expertise in maintaining fiber optic infrastructure; and

WHEREAS, on November, 2018, the Port and the PUD executed an Interlocal Agreement to engage in joint planning and a feasibility study for development of publicly owned, open access dark fiber network throughout rural Whatcom County; and

WHEREAS, the Port and the PUD are now seeking to expand their cooperative relationship by pursuing the following initial joint agency initiatives and potentially developing additional recommended initiatives (the "Joint Initiatives") to:

- a) Build on and support the existing work the Port has done in the development of a strategic countywide broadband infrastructure plan that includes analysis and strategies, allows for the efficient utilization and expansion of existing infrastructure and strategic planning for the future development of new publicly owned infrastructure in support of residential, educational, commercial, industrial, general economic development, and agricultural activities with a goal of providing accessible and affordable high speed broadband service access to residences, businesses, schools, libraries, and medical facilities throughout Whatcom County; and
- b) Pursue the development of a countywide, open access publicly owned dark fiber optic network and other infrastructure and broadband services throughout Whatcom County that will, in conjunction with private telecommunications providers, deliver reliable, accessible, affordable, high speed internet service to serve residential, business, public safety, governmental, healthcare, and educational needs in Whatcom County; and
- c) Jointly seek funding for rural publicly owned broadband fiber optic network and other infrastructure; and
- d) Develop operation, maintenance, and management plans of the rural publicly owned broadband fiber network; and

WHEREAS, the Port and the PUD believe that the establishment of a joint interagency steering committee to manage, oversee, develop recommendations, and direct actions related to the Joint Initiatives is an efficient utilization of public resources while maintaining appropriate financial and final strategic decision making and/or oversight by the agencies' respective Boards of Commissioners; and

WHEREAS, Chapter 39.34, Revised Code of Washington provides for cooperation between local governmental entities through contractual agreement.

NOW, THEREFORE, it is agreed by and between the Port and the PUD as follows:

1. Purpose. The purpose of this Agreement is to establish procedures whereby the Parties can combine, share, and use their respective skills and assets, authority granted to the Parties by the State of Washington, thereby reducing the financial and administrative costs that may be otherwise borne by an entity and resulting in a countywide high speed system providing access to areas that are currently unserved or underserved to access high speed broadband. The cooperative efforts enabled by this Agreement are intended to reduce the cost of related services over what would otherwise be achieved if the Parties acted independently.

2. Joint PUD/Port Steering Committee and Decisions:

2.1 Committee Establishment and Purpose. A joint PUD and Port Rural Broadband Steering Committee is created for the purpose of facilitating and providing joint decision making on a publicly owned rural broadband fiber network. This Steering Committee shall be known as the "Joint PUD/Port Rural Broadband Steering Committee" or the "Broadband Steering Committee".

2.2. Steering Committee Meetings. The Steering Committee shall establish its own rules of conduct, meeting schedule, and process for setting a meeting agenda and decision making. The Steering Committee will meet on a bi-monthly basis unless deemed necessary to meet more frequently. The Steering Committee will make decisions as they pertain to joint tasks, projects, scope of works, funding, and policies, as it pertains to the broadband fiber network.

2.3 Steering Committee Composition/Members, Chairpersons, and staff support. The Steering Committee shall consist of one representative from each elected Board of Commissioners and one staff member from each district as selected by the respective Board of Commissioners. The initial Steering Committee Membership shall consist of the following members:

PUD: Commissioner Christine Grant, and General Manager Stephan Jilk or his staff designee.

Port: Commissioner Michael Shepard, and Executive Director Rob Fix, or his staff designee.

The Steering Committee will be alternately chaired/co-chaired by a Port Commissioner and/or PUD Commissioner for the term of one year, selected and determined by the Steering Committee as a whole. Support for facilitating the meeting and setting the agenda will be provided by the broadband project manager/Port staff.

2.4 Steering Committee Recommendations. The Steering Committee will make recommendations to the Port and PUD Commissioners as necessary on policy level decisions and on such matters as financial commitments, retaining consultants, and construction projects that require action by the individual agency. The Steering Committee does not have the authority to enter into binding contracts without the approval of their individual agencies.

3. General Scope of Services. During the term of this Agreement, the Parties may seek to obtain grant assistance, engineering, design and/or consulting services agreements, public works, or other services agreements between the Parties (“Work or Services”) as part of a Task Order (defined below).

3.1 Task Orders. As the need arises for both Parties to jointly request Work or Services, the scope of such services to be provided with specific tasks assigned will be delineated in a sequentially numbered task order to be in the form similar to that attached hereto as **Exhibit A**. Such Task Order(s) will identify the specific Work or Services, the staff from each agency assigned to the project, the estimates of the time, the agreed hourly rate, if any, and the estimated total cost to complete. Task Orders shall be approved by the Broadband Steering Committee .

3.2 Outside Contracting for Services. Neither Party shall contract with any third party to provide for joint services of the type described in Section 3 of this Agreement to be provided to both Parties without the written consent of the other Party first being obtained. This consent is to be provided by the Board of Commission of each party, unless that Board has delegated this authority to its Executive Director or General Manager, as applicable. In the event that the Parties hereto agree to contract with an outside party to provide any of the services herein, then the Parties hereto shall separately agree as to the purposes, objectives, and responsibilities of the contracting Party, which Party shall be responsible for contract preparation, award, and supervision. Any bidding required for the acquisition of any outside services shall comply with the bidding requirements applicable to both entities. These requirements shall be specific in a Task Order.

4. Compensation for Services. Unless otherwise agreed to by the Parties, services provided by staff of either Party pursuant to this Agreement shall be at the cost of the Party providing the services through a staff member of that Party.

5. Contact Persons. The following persons, referred to as Contact Person(s), are responsible for the administration of this Agreement for each Party and have the authority to execute Task Orders on behalf of their Party under this Agreement:

For the Port: Executive Director Rob Fix

For the PUD: General Manager Stephan Jilk

or such other persons as may be specified from time to time in writing by either Party.

6. Treatment of Assets and Property. No fixed assets or personal or real property are anticipated to be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement, except that the Strategic Plans, and all drafts, work product, data, information, analysis or similar produced in relation to the Strategic Plans shall be deemed the property of both Parties to this agreement even if stored and retained by the Port or the PUD.

7. Term of Agreement. This Agreement shall be effective on the date of such recording ("Effective Date") and shall terminate on December 31, 2024.

8. Termination. The Port or the PUD may withdraw from this Agreement by providing thirty (30) days written notice to the other Party. However, any Party withdrawing shall remain responsible for its prorated share of any payments due for any contracts executed prior to the receipt of the Notice of Termination.

9. Assignment. This Agreement shall not be assigned by either Party to any third Party without the prior written consent of the other Party, which consent may be withheld for any reason or no reason.

10. Release and Indemnify. To the extent permitted by law, each Party agrees to release, defend, indemnify, and hold harmless the other Party, its officers, agents, employees, and representatives (Port/PUD) from all claims, actions, suits, losses, harm, liabilities, damages, costs, and expenses, including but not limited to, reasonable attorneys' fees arising out of the negligent acts or omissions arising in connection with performance of this Agreement. Where negligence by both Parties is concurrent and contributes to a claim, the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude either Party from pursuing any remedy against a third Party.

11. Public Records Act. All records received by the Port or the PUD pursuant to this Agreement shall be a public record and therefore subject to the Public Records Act.

12. Miscellaneous Provisions.

a. Notices. Any notice, request, authorization, direction, or other communication as required under this Agreement shall be given in writing and shall be delivered in person or by first class United States mail, properly addressed and stamped with the required postage, to the intended recipient as follows:

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

Public Utility District No. 1 of Whatcom County
1705 Trigg Road / Post Office Box 2308
Ferndale, WA 98248
Attention: Stephan Jilk, General Manager

Either Party may change its address specified above by giving the other Party notice of such change in accordance with this Section. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provided in this Section or personally delivered to the other Party.

b. Governmental Authority. This Agreement is subject to the rules, regulations, orders, and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, and/or the Parties, or either of them.

c. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liabilities of either Party. Furthermore, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

d. Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

e. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. This Agreement supersedes all prior and contemporaneous agreements and understandings between the Parties with respect to such subject matter. This Agreement may be amended only by a subsequent writing signed by both Parties and expressly stating the intention to amend this Agreement.

f. No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any rights or interest on anyone other than the Parties, their respective successors, assigns, and legal representatives.

g. Amendment. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

h. Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement, and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

i. Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

j. Applicable Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington, except to the extent such laws may be pre-empted by the laws of the United States of America.

k. Venue. The venue of any litigation arising out of this Agreement shall be in Whatcom County, State of Washington, or such other place as both Parties may agree to in writing.

l. Interpretation and Fair Construction of Contract. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and shall not be construed either for or against either Party as the drafter.

m. Recordation. Upon execution of this Agreement, this Agreement shall record this Agreement with the office of its County Auditor pursuant to the requirements of RCW 39.34; PROVIDED, that any delay in effecting compliance with this Section shall not affect the stated term, expiration or renewal dates hereof.

IN WITNESS WHEREOF, the Port and the PUD have executed this Agreement as of the day and year according to the signatures below.

EXECUTED THIS 14th day of JULY, 2021.

PORT OF BELLINGHAM:



Rob Fix
Executive Director

**PUBLIC UTILITY DISTRICT NO. 1
OF WHATCOM COUNTY:**



Stephan Jilk
General Manager

(SAMPLE FORM- MODIFY TO FIT CIRCUMSTANCE)

EXHIBIT A

TASK ORDER NO. _____

A. Scope of Services or Work (e.g., Public Works reimbursement (refer to bid); joint staff effort (attach detailed project scope), one party effort with reimbursement from other party (attach detailed project scope with cost allocation below)

B. Entity to perform and/or supervise work or services (3rd party, Port, PUD, or combination)

C. Cost Allocation between Port and PUD (if any)

D. Specific Tasks to Port and/or PUD staff, assigned staff, estimated hours (if any), hourly compensation (if any), total not to exceed cost (if any)

The following is a list of tasks (not inclusive) anticipated to be undertaken as part of the scope of services to be provided under this Task Order No. _____.

E. Task Order Cost Estimate

F. Approval to Proceed (signed by both Parties following approval by each Commission)

EXECUTED THIS _____ day of _____, 2021.

PORT OF BELLINGHAM:

**PUBLIC UTILITY DISTRICT NO. 1
OF WHATCOM COUNTY:**

Rob Fix
Executive Director

Stephan Jilk
General Manager