

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
SKAGIT COUNTY AND CITY OF BURLINGTON
FOR FIBER OPTICS – FINAL FOOT**

THIS INTERLOCAL AGREEMENT is entered into this 13th day of August, 2020 between Skagit County, Washington (the “County”) and City of Burlington, a Washington Municipal Corporation (the “Recipient”) pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT, and in consideration of the mutual benefits do hereby agree as follows:

1. Purpose: The purpose of the contract is to distribute economic development funds pursuant to RCW 82.14.370.
2. Scope of Work: Recipient will use the funds distributed under this agreement pursuant to the intent and purpose of RCW 82.14.370. Further, Recipient is to use such funds for the Public Facility Project described in Recipient’s Economic Development Applications submitted to the County which are attached to this document as Exhibit “A”.
3. Payment: County will compensate Recipient a maximum of \$250,000, chargeable to GL expenditure code # 342 58502254109. Recipient shall submit an invoice describing the use of funds to be distributed by the County and the County upon receipt of appropriate documentation shall distribute a portion of the awarded funding as determined by the County Contract Representative described in Paragraph 6.1 of this Contract. However, such payments shall not occur more often than monthly, through the County voucher system. The County Contract Representative has the sole discretion of determining what appropriate documentation is required in order for Recipient to receive a distribution of funds under this Agreement.
4. Recipient agrees that in the event the county or other state or federal agency finds that the funds distributed pursuant to this agreement violate any state or federal laws including but not limited to the primary purpose for which funds pursuant to this agreement are being given, Recipient agrees to return the funds provided by County under this agreement to County including any penalties and interest, and agrees to hold County harmless and indemnify County for distributing such funds contrary to state or federal law. Further, in the event that funds provided to Recipient under this agreement are used for a purpose other than what was originally described in its application of funds, then Recipient agrees to return such funds to the County upon demand.
5. The parties agree that Recipient is an independent contractor and not an employee, or agent of Skagit County. Recipient hereby agrees not to make any representations to any third party or to allow such third party to remain under the misimpression that Recipient is an employee, independent contractor, or agent of Skagit County. All payments made hereunder and all services performed shall be made and performed pursuant to this Agreement. Recipient will defend, indemnify and hold harmless the County, its officers,

agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph. Further the Recipient represents that all employees and sub-contractors are covered under Industrial Insurance in compliance with R.C.W. Title 51.

6. Administration: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party in writing.

6.1 The County's representative shall be the Budget and Finance Director:
Trisha Logue
1800 Continental Place, Suite 100
Mount Vernon, WA 98273

6.2 Recipient's representative shall be the City Administrator:
Greg Young
833 S. Spruce Street
Burlington, WA 98233

All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

7. Defense & Indemnity Agreement: The Recipient agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Recipient, its subcontractors, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. Recipient insurance shall be primary. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of Recipient's insurance and shall not contribute to it.

8. This Agreement shall become effective upon execution of Resolution No. R20200120. Work on the project shall be substantially complete and contract shall expire July 13, 2022. For the purposes of this paragraph, the term “substantially complete” shall mean “when the contract work has progressed to the extent that the Recipient has full use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains to physically complete the total contract.” Upon termination of this Agreement, all property acquired by the Recipient shall remain the Recipient’s property, with no obligation to pay the County therefore.

9. The Recipient shall not assign any interest in this Contract and shall not transfer any interest in same without prior written County consent.

10. The Recipient will secure, at his own expense, all personnel required in performing said services under this Contract. Recipient shall be personally liable for applicable payroll, Labor and Industries premiums, and all taxes, and shall hold the County harmless from any claims related thereto.

11. Right to Review: This contract is subject to review by the State Auditor's office. The County or its designee shall have the right to review and monitor the financial components of this project. Such review may include, but is not limited to, on-site inspection by County agents or employees, and inspection of all records of other materials, which the County deems pertinent to the Agreement and its performance. Recipient shall preserve and maintain all financial records and records relating to this project under this Agreement for 3 years after contract termination, and shall make them available for such review, within Skagit County, State of Washington, upon request.

12. Acknowledgement of Funding: All books, informational pamphlets, press releases, research reports, articles, requests for information, signs or other public notices developed for or referring to the activities or programs funded by this agreement shall include the statement, “This project received funding from Skagit County,” or similar language acknowledging Skagit County’s funding contribution. Further, Recipient shall notify the County (or Administrative Services) no later than two weeks before a dedication ceremony or public event for any activities or programs funded by this agreement. Recipient shall also make efforts to verbally acknowledge the County’s contributions to the Recipient at all dedication ceremonies or other public events relating to any programs or projects funded by this agreement.

13. Prevailing Wages: If Prevailing Wages are applicable to the work provided under the Agreement then Recipient shall submit a “Statement of Intent to Pay Prevailing Wages” prior to submitting first application for payment. Each statement of intent to pay prevailing wages must be approved by the Industrial Statistician of the Department of Labor and Industries before it is submitted to the County. Unless otherwise authorized by the Department of Labor and Industries, each voucher claim submitted by a Recipient for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the pre-

filed statement or statements of Intent to Pay Prevailing Wages on file with the public agency.

14. Nondiscrimination: During the performance of this contract, the Recipient shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

a. Nondiscrimination in Employment: The Recipient shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment selection for training, including apprenticeships and volunteers. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

15. Compliance with Applicable Law: The Recipient and all subcontractors of Recipient shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 C.F.R. Sec. 52.203-5); safety and health regulations. In the event of the Recipient's or a subcontractor's noncompliance or refusal to comply with any law or policy, the Department may rescind, cancel, or terminate the contract in whole or in part. The Recipient is responsible for any and all costs or liability arising from the Recipient's failure to so comply with applicable law.

16. Venue and Choice of Law: In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

17. No Separate Legal Entity: It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of the Agreement.

18. Termination of Contract for Cause

a. If, through any cause, the Recipient shall fail to fulfill in a timely and proper manner its obligations under this contract or if the Recipient shall violate any of its covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate this contract and withhold the remaining allocation if such default or violation is not corrected within thirty (30) days after submitting written notice to the Recipient describing such default or violation. Further, in the event Recipient fails to

expend funds under this contract in accordance with State or Federal laws and/or the provisions of the agreement, the County reserves to right to recapture funds expended to Recipient in an amount equal to the extent of the noncompliance.

b. The County may unilaterally terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this contract.

19. Termination for Public Convenience: The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the best interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Recipient shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County. If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

20. Nonassignability: Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Recipient.

21. Taxes: All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Recipient or its staff shall be the sole responsibility of the Recipient.

City of Burlington

Signature

(Date _____)

Print Name

Title

Mailing Address:

833 S. Spruce Street
Burlington, WA 98233

Telephone No. 360-755-0531

Fed. Tax ID # 91-6001232

Contractor Lic. #. _____

DATED this _____ day of _____, 2020.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Attest:

Lisa Janicki, Commissioner

Clerk of the Board

For contracts under \$5,000:
Authorization per Resolution R20030146

Recommended:

County Administrator

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director

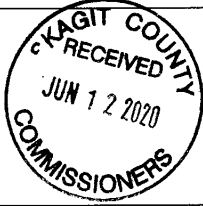
Exhibit A



Economic Development Public Facility Project Application

Board of County Commissioners · 1800 Continental Place · Mount Vernon WA 98273
voice 360-416-1300 · fax 360-336-9307 · www.skagitcounty.net

Part 1		Applicant Information	
Organization	City of Burlington	State	WA
Address	833 South Spruce Street	Zip	98233
Primary Contact	Greg Young - City Administrator	Phone	360-755-0058
E-mail Address	gregy@burlingtonwa.gov		



Part 2		Project Information	
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RCW 82.14.370 (3) defines "public facilities" as 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, commercial infrastructure, and port facilities in the state of Washington.

Project Name	Burlington Fiber "Final Foot" Project	Location	City of Burlington
Project Type	Construction	Start Date	Upon Grant Award

Description The fiber industry refers to the eventual connection to the end user as the "final mile", "final leg", or "final connection". Our application uses the term "final foot" because for many Burlington customers, the distance from our fiber backbone and their front door is literally measured in feet or yards. This application strives to eliminate the final hurdle between our fiber system and our potential customers. As the Commissioners know, Burlington has, with financial assistance from Skagit County, deployed a fiber backbone in the City. While this economic development project has resulted in over 30 businesses connecting to the fiber system, it has become apparent that the cost of the final foot can be a no, no-go decision for many businesses. The cost of the final fiber run into the business varies depending on the route (overhead, boring underground, etc.) - ranging from less than a thousand dollars to over five thousand (our costliest connection totaled nearly \$8,000). While this may not seem to be an excessive sum, many businesses are running on very tight margins, especially in this post-COVID world. It has been said that the best economic development proposals are those that directly facilitate the creation and retention of jobs. In the fiber world, having fiber nearby is of no use - you only get the real economic benefit when the fiber is brought into the building and the business owners are able to use the technology. This Project will do just that. Burlington is proposing to connect 100 new businesses to our fiber system within the next 24 months. With the cost of the Final Foot varying between locations, the City is proposing to use up to \$5,000 of County Economic Development Grant monies for each site, with the City picking up any costs greater than this amount.

Use of funds Describe the specifics of what funds will be spent on (e.g., labor, equipment, material, etc.):
Economic development funds will be used to run fiber from the street into the business. These improvements may be done with either city forces or outside contractors, depending on the number of connections requested and the specific business needs. Over the years, Burlington has invested in trenching equipment and has the necessary equipment and personnel to complete most installations. There is an old axiom in economic development that seven out of ten of the new jobs you will see in your community in the future will be created by businesses who are already in your city - they have invested in your community and know it is a good place for commerce. This project will have the two-fold return of both retaining jobs and facilitating those business leaders who want to continue to invest in Burlington and Skagit County by adding to their workforce. Especially today, the availability of high speed fiber and the technological benefits it brings, allows companies to keep existing employees and grow their businesses.

Part 5 Value Proposition

Business Is this project supportive of a specific business? If so, how many? Please provide names of businesses if known.

The City has repeatedly heard that a cost of \$1,000 to well over \$5,000 for the upfront fiber run into their business is cost prohibitive. The most expensive underground fiber connections have cost approximately \$7,500 each. It is the initial installation cost and not the monthly fees that dissuade businesses from converting to high speed fiber. As noted previously, Burlington has over 30 businesses connected to our system and (again due to the high cost of the Final Foot) we have a list of 20 specific business that have reached out to the city for fiber and would connect if not for the upfront boring costs. If this grant application is successful, we will move immediately to connect these customers and aggressively market our new Final Foot Connection Service.

Jobs Describe, in specific detail, how this project will create jobs and/or allow for the retention of current jobs.

In today's highly competitive business environment, high speed fiber is fast becoming a business necessity. With this said, it is of little use when it is not brought into the business in a cost effective manner. This is what differentiates Burlington's application from both ours in the past and from other applicants - we are not proposing to bring fiber near businesses, we are proposing bringing fiber into the business and available for immediate use and benefit. In this way, jobs will be directly and immediately retained and this will set the stage for job creation into the future. This will make it easy for business owners to reap a return for the monies they have already invested and it will ensure that they continue to invest in our community for many years to come.

Job Detail Provide information on the following: (a) the average wage, including benefits, and the number of new jobs/FTEs; and (b) the average wage, including benefits, as the result of the project. Please be specific as possible. *Generic information may not be scored. Do not include any construction-related jobs.*

	Jobs/FTEs Retained	Jobs/FTEs Created 1-3 Years	Jobs/FTEs Created 4 Years
Number of Jobs/FTEs	500	300	500
Average Wage/FTE	\$40,000	\$12,000,000	\$20,000,000

Infrastructure How will this project improve local infrastructure capacity? How much additional capacity will be provided for future development? Please be specific in your answer.

Infill is the smartest return on infrastructure cost. With Burlington's density of commercial and manufacturing businesses, getting fiber into these businesses will enable the other aspects of infrastructure (water, sewer, storm, roads, electricity, etc.) to be maximized at minimum cost. The scale and scope of Burlington's fiber infrastructure also ensures that capacity will be available in the future for the eventual complete build-out of the city and the delivery of high speed fiber to all businesses that desire this tool. Burlington has completed the buildout of the fiber backbone in the City, now we need to maximize this prior investment through this targeted economic development proposal.

Part 6 Project Timeline

Timeline Provide a timeline for the project. Please include specific deadlines for segments or phases of the project, including total project begin date and completion date.

We will begin immediately - as noted previously, there are over 20 businesses that have asked to be connected to fiber, if not for the high upfront Final Foot costs. Our immediate action plan is to reengage with these businesses and move to connect them all within 6 months of grant award. With our goal being 100 new fiber customers, we will also embark on a focused marketing push highlighting the ability to get fiber connections immediately and at no upfront cost to the business. Marketing will use our business license database to send direct mailers to potential customers and we will partner with ISP providers to identify those specific business that would benefit from a high speed fiber connection.

Phasing If this is a phased project, for which phase are you applying for funding?

In many ways this is the final phase of our years long fiber project. As is known to the other governmental fiber providers, stringing fiber from pole to pole in short runs or countywide is only the first part of solving the fiber availability puzzle. With the help of Skagit County, Burlington has successfully installed our backbone - now the short money is needed for the long run return on investment. Also, in many ways, we may be a useful test case for Skagitnet to follow - they too will need to turn their attention eventually to the Final Foot once their backbone is put in place. Our experience using these economic development funds may provide valuable information to be used throughout our county.

Completion By what date will the project (or this phase) be complete? Funds will lapse and may not be spent after this date.

We have established a goal fo 100 new fiber connections within the next 24 months.

Efforts So Far Summarize efforts taken to date regarding the project. What planning has taken place? Have engineering reports and feasibility studies been prepared? If so, describe them.

The City of Burlington has a proven history of providing cost-effective fiber to businesses. Not only have we run fiber to almost every portion of the City, we have direct experience in completing the final installations. The number of businesses who have expressed interest in obtaining fiber within the City demonstrates that there is a ready market for our services - if we can mitigate for the relative high cost of the Final Foot.

Part 7 Action Plan

What quantifiable measures are you going to track to measure the success of the project?

As noted, we intend to reach out to the 20 business who have expressed interest in fiber if not for the high cost of running the fiber into their building. Our 24 month goal is to connect 100 new fiber customers to the system. As is the case for many business services, the success of our program will be shared throughout the business community thus spreading the word and futher growing our fiber system in the coming months.

Part 8 Miscellaneous

Include information related to the project, if any, that would assist the Economic Development Advisory Committee and the Board of County Commissioners in evaluating the funding request, such as emergency declarations, bird-in-hand industry, volunteer efforts, links to other priority projects, etc.

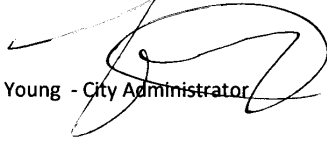
In many ways, we have 20 bird-in-hand businesses waiting to connect to our system - they have already come to the decision that high speed fiber will allow them to grow their business. This combined with our planned outreach activities will enable the City to broaden our fiber reach within Burlington. The award of these economic development monies will be the best investment the County can make at this time - it will immediately and directly bear fruit. The bigger money has been spent - now is the time for the final push to enjoy the return on investment that the County and Burlington has jointly strived to achieve.

Part 9

Applicant Certification

The applicant here certifies and affirms (1) that it does not now, nor will it during the performance of any contract arising from this application, unlawfully discriminate against any employee, applicant for employment, client, customer, or other person who might benefit from said contract, by reason of age, race, color, ethnicity, sex, religion, creed, place of birth, or degree of handicap; (2) that it will abide by all relevant local, state and federal laws and regulations; and (3) that it has read and understood the provisions and restrictions in each part above and will comply with all provisions thereof.

Signature



Date

6/12/2020

Printed Name Greg Young - City Administrator

Title

