

CONTRACT FACE SHEET

Snohomish County Information Technology Department
3000 Rockefeller Avenue, M/S 709
Everett, WA 98201

CONTRACT SPECIFICS

Contract Number: 22-96810-011 **Maximum Grant Contract Amount:** \$16,713,615.00
Maximum County CLFR Funds: \$125,100.00
Title of Project: Snohomish County and Ziplly – SR 530 Project
Federal Period of Performance Start Date: March 3, 2021 **End Date:** December 31, 2026
Contract Start Date: July 1, 2021
Contract End Date: June 30, 2025, contingent on State reappropriation; June 30, 2023 if funds are not reappropriated.

CONTRACTING ORGANIZATION

Agency Name: Ziplly Fiber Northwest, LLC **Address:** 135 Lake Street South, Suite 155
City, State, Zip: Kirkland, WA 98103 **Contact Person:** Jessica Epley
Telephone: (503) 431-0458 **Email Address:** jessica.epley@ziplly.com
IRS Tax No. / EIN: 91-0466810 **Unique Entity Identifier:** MDJYUHSH7PM8

FUNDING SPECIFICS: GRANT

Federal Awarding Agency: U.S. Department of the Treasury
ALN* No. & Title: 21.027 Coronavirus State and Local Fiscal Recovery Funds
Funding Specifics: American Rescue Plan Act of 2021, PL-117-2, sec. 9901
Federal Award ID No: SLFRP0002 **Federal Award Date:** May 18, 2021

*ALN is the Assistance Listing Number formerly known as CFDA number for federal funding.

FUNDING SPECIFICS: COUNTY CLFR FUNDS

Federal Awarding Agency: U.S. Department of the Treasury
ALN* No. & Title: 21.027 Coronavirus State and Local Fiscal Recovery Funds
Funding Specifics: American Rescue Plan Act of 2021, PL-117-2, sec. 9901
Federal Award ID No: SLFRP0002 **Federal Award Date:** May 18, 2021

SNOHOMISH COUNTY CONTACT INFORMATION

Contact Person: Viggo Forde, Director of Information Technology / CIO
Email: DIS.Admin@snoco.org **Phone:** (425) 388-3739

Additional terms of this Contract are set out in and governed by the following, which are incorporated herein by reference:

General Terms and Conditions, Attached as Exhibit A
Statement of Work, Attached as Exhibit B
WSBO IAG Handbook, attached as Schedule 1 to the Statement of Work
Contractor / Subcontractor Terms, attached as Exhibit C
Indefeasible Right to Use, IRU Agreement, attached as Exhibit D
Description of IRU Fibers, attached as Attachment 1 to the IRU Agreement
Maps and Anchor Institutions, attached as Attachment 2 to the IRU Agreement
County Endpoint Maps, attached as Attachment 3 to the IRU Agreement

Acceptable Use Policy, attached as Attachment 4 to the IRU Agreement
WSBO Grant Application, attached as Exhibit E
Certification of Payment of Prevailing Wages, attached as Exhibit F
WSBO Grant Award 22-96810-011, attached as Exhibit G

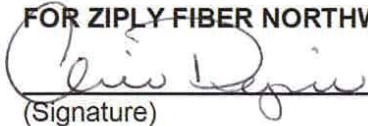
Form Attachments:

- Certification Regarding Lobbying, Form 1
- Certification Regarding Conflict of Interest, Form 2
- Civil Rights Assurances Certification, Form 3
- Request for Reimbursement-Actual Expenditures, Form 4
- Monthly Project Status Report, Form 5
- Audit Certification Form, Form 6
- Project Completion Report, Form 7

In the event of any inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order: (a) appropriate provisions of state and federal law, (b) General Terms and Conditions, (c) Contractor/Subcontractor Terms, (d) IRU Agreement, (e) other attachments incorporated by reference, and (f) other documents incorporated by reference.

THE CONTRACTING ORGANIZATION IDENTIFIED ABOVE (HEREINAFTER REFERRED TO AS ZIPLY), AND SNOHOMISH COUNTY (HEREINAFTER REFERRED TO AS COUNTY), HEREBY ACKNOWLEDGE AND AGREE TO THE TERMS OF THIS CONTRACT. SIGNATURES FOR BOTH PARTIES ARE REQUIRED BELOW. BY SIGNING, THE AGENCY IS CERTIFYING THAT IT IS NOT DEBARRED, SUSPENDED, OR OTHERWISE EXCLUDED FROM PARTICIPATING IN FEDERALLY FUNDED PROGRAMS.

FOR ZIPLY FIBER NORTHWEST, LLC:



(Signature)

10/27/2023

(Date)

Chief Operating Officer

(Title)

FOR SNOHOMISH COUNTY:

Ken Klein

(Signature) Ken Klein (Date)

Digitally signed by Ken Klein
Date: 2023.11.07 14:26:32 -08'00'

Executive Director

(Title)

COUNCIL USE ONLY	
Approved	<u>11/7/2023</u>
ECAF #	<u>2023-0825</u>
MOT/ORD	<u>Motion 23-490</u>

EXHIBIT A

GENERAL TERMS AND CONDITIONS

SNOHOMISH COUNTY AND ZIPLY – SR 530 PROJECT

I. INTRODUCTION

Snohomish County has received funds from the Washington State Department of Commerce (“Commerce”), Washington State Broadband Office – Infrastructure Acceleration Grant, America Rescue Plan Act, State and Local Fiscal Recovery Funds, CFDA number 21.027 to be utilized for Snohomish County and Ziplly – SR 530 Project (“WSBO Grant”). Funding for this WSBO Grant has been provided in the 2021-2023 biennial state Capital Budget, SSB 1080, pursuant to Federal grants to Washington State under the American Rescue Plan Act of 2021 (ARPA or “Act”), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 et seq.

As a condition of the award of the WSBO Grant, the County must include in its Contract with Ziplly, an Indefeasible Right of Use (“IRU”) for any ARPA-funded construction, acquisition, or rehabilitation. The IRU is set forth in Exhibit D of the Agreement. The County has appropriated funds from its portion of Coronavirus Local Fiscal Recovery Funds (“CLFR”) pursuant to the American Rescue Plan Act (ARPA), PL 117-2, section 9901, codified at 42 U.S.C. Section 802 et seq. to pay Ziplly the IRU fee set forth in Exhibit D.

The following Terms and Conditions apply to the WSBO Grant and County funding for the IRU fee.

II. TERMS AND CONDITIONS

- A. Ziplly agrees to comply with the requirements of 42 U.S. Code § 802 - Coronavirus State fiscal recovery fund, regulations adopted by Treasury pursuant to subsection (f) of that section, and guidance issued by Treasury regarding the foregoing. Ziplly also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Ziplly shall provide for and/or require such compliance by other parties in any agreements it enters into with other parties relating to this award.
- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
 1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall also apply to this award.

2. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
3. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
4. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
5. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
6. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
7. New Restrictions on Lobbying, 31 C.F.R. Part 21.
8. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
9. Generally applicable federal environmental laws and regulations.
10. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR § 200.216.

C. Financial Award

All funds shall be available only in strict accordance with the provisions of this Contract, and other applicable federal, State, and local laws, regulations, and policies governing the funds provided in this Contract.

D. Nondiscrimination

Ziply shall comply with the following statutes and regulations prohibiting discrimination:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the grounds of race, color, or national origin under program or activities receiving federal financial assistance.

By execution of this Contract, Ziply certifies:

Ziply shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's VI regulation, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Contract.

2. The Fair Housing Act, Title VII-IX of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, national origin, sex, familial status, or disability;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap under any program or activity receiving or benefitting from federal assistance;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis or age in programs or activities receiving federal financial assistance; and
5. The American with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities and services provided or made available by state and local governments or instrumentalities or agencies thereto.
6. During the performance of this Contract, Ziply shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of Ziply's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and Ziply may be declared ineligible for further contracts with the County. Ziply shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this Contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this Contract.

E. Public Records [See Section XI, D.]

F. Capacity

Ziply, by signing this Contract, acknowledges that it has the institutional, managerial, and financial capability to ensure proper planning, management, and provision of the services funded. If at any time, Ziply believes its capacity is compromised or Ziply needs technical assistance, it shall immediately notify the County. The County will make best efforts to provide timely technical assistance to Ziply to bring this Contract into compliance.

G. Disputes

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties may choose a mutually acceptable dispute resolution method.

H. Governing Law and Venue

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Snohomish County.

I. Independent Contractor

4. Ziply agrees that Ziply will perform the services under this Contract as an independent contractor and not as an agent, employee, or servant of the County. This Contract neither constitutes nor creates an employer-employee relationship. The parties agree that Ziply is not entitled to any benefits or rights enjoyed by employees of the County. Ziply specifically has the right to direct and control Ziply's own activities in providing the agreed services in accordance with the specifications set out in this Contract. The County shall only have the right to ensure performance. Nothing in this Contract shall be construed to render the parties partners or joint venturers.

5. Ziply shall furnish, employ and have exclusive control of all persons to be engaged in performing Ziply's obligations under this Contract (the "Ziply personnel"), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Ziply personnel shall for all purposes be solely the employees, contractors or agents of Ziply and shall not be deemed to be employees, contractors or agents of the County for any purposes whatsoever. With respect to Ziply personnel, Ziply shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Ziply personnel when required by law.

6. Because it is an independent contractor, Ziplly shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers' compensation). Ziplly agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.
7. Ziplly assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises or payments required by any city, county, federal or state legislation which are now or may during the term of this Contract be enacted as to all persons employed by Ziplly and as to all duties, activities and requirements by Ziplly in performance of the work under this Contract. Ziplly shall assume exclusive liability therefore and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

J. Severability.

Should any clause, phrase, sentence or paragraph of this Contract be declared invalid or void, the remaining provisions of this Contract shall remain in full force and effect.

K. Survival.

Those provisions of this Contract that by their sense and purpose should survive expiration or termination of this Contract shall so survive.

L. Subcontracting.

If Ziplly subcontracts any work, Ziplly shall cause provisions as listed in Contractor/Subcontractor Terms, Exhibit C to be inserted in all subcontracts relative to the work to bind subcontractors to the applicable terms of this Contract. Should any terms and conditions in other contract documents be applicable to the work of subcontractors, Ziplly shall ensure those provisions are also inserted into the subcontract documents. Such provisions include, but are not limited to terms substantially equivalent to:

- Exhibit A General Terms & Conditions
 - Section II subsections A, B.4, B.6, B.9, B.10, C, D, I, J, K, L
 - Section III subsections C, M, N
 - Section IV subsections A, B, C, D
 - Section V subsections A, B, C, D
 - Section VII
 - Section VIII
 - Section IX

Depending on the amount of a subcontract, the following provisions of this Exhibit A may also apply: Sections II.M and III.C.

M. Changes.

No changes or additions shall be made in this Contract except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Contract.

N. Conflicts between Attachments and Text.

Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Contract, the text or main body of this Contract shall prevail, unless expressly set forth otherwise in such exhibit or schedule.

O. No Third Party Beneficiaries.

The provisions of this Contract are for the exclusive benefit of the County and Ziplly. This Contract shall not be deemed to have conferred any rights, express or implied, upon any third parties.

P. Execution in Counterparts.

This Contract may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Contract.

III. FISCAL MANAGEMENT

Every subcontract entered into by Ziplly under this Contract shall be in writing and shall incorporate all of the applicable terms and conditions as detailed in Section II (L), with word changes where appropriate to properly identify the parties to the subcontract.

A. Reimbursement shall be made pursuant to Exhibit B, Section 4 and paid with WSBO Grant funds provided to the County by Commerce. In the event that WSBO Grant funds are insufficient to fund the Contract, the County shall immediately notify Ziplly and Ziplly shall not be required to perform any obligations under this Contract that will not be funded.

B. Accounting Standards

Ziplly agrees to comply with OMB Uniform Guidance and 2 CFR part 200, to the extent and for such time as compliance with the Guidance and 2 CFR part 200 is required by the WSBO Grant, and to adhere to the accounting principles and procedures required therein, to use adequate internal controls, and to maintain necessary source documentation for all costs incurred.

C. Audit

For every year that Ziplly expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, Ziplly shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, Ziplly shall:

1. Submit to the County and Commerce, the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to the County and Commerce, follow-up and developed corrective action plans for all audit findings.

For every year that Ziplly expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, Ziplly shall notify the County and Commerce they did not meet the single audit requirement.

Audit packages are due to the County no later than nine months after Ziplly's fiscal year close. Ziplly shall send all single audit documentation by email to auditreview@commerce.wa.gov and DIS.Admin@snoco.org

In the event that compliance with any of the audit requirements in 2 CFR Part 200 are no longer required by the WSBO Grant, this Section C shall no longer apply.

D. Accounting for Funds

In the event of an audit, Ziplly shall account for all funds provided under this Contract and demonstrate that the funds have only been used as provided in this Contract.

E. Repayment of Funds to County/Recoupment

Ziplly shall return funds disbursed to it by the County under this Contract for return by the County to the U.S. Department of the Treasury, upon the occurrence of any of the following events:

1. If Ziplly has any unspent funds on hand as of the earlier of the end date of this Contract or the termination of this Contract, Ziplly shall return all unspent funds to the County within ten (10) calendar days.
2. If overpayments are made; or
3. If an audit of the project by the U.S. Department of the Treasury, the State, or the County determines that the funds have been expended for purposes not permitted by the Section 602 or 603 of the Social Security Act, other

applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, the U.S. Department of the Treasury, the County, or this Contract.

To exercise recoupment or repayment, the County shall make a written demand upon Ziplly for repayment, Ziplly shall be obligated to repay to the County the funds demanded within sixty (60) calendar days of the demand. No exercise of the County of the right to demand repayment of funds by Ziplly shall foreclose the County from making an additional demand for repayment if a return of additional funds is required by the U.S. Department of the Treasury; the County's right to demand repayment from Ziplly may be exercised as often as necessary to recoup from Ziplly all funds required to be returned by the County to the U.S. Department of the Treasury.

Ziplly is solely responsible for seeking repayment from any subcontractor in conformance with its debt collection policy.

F. Debts Owed the Federal Government.

1. Any funds paid to Ziplly in excess of the amount to which Ziplly is finally determined to be authorized to retain under the terms of this Contract, that are determined by the Treasury Office of Inspector General to have been misused or that are determined by Treasury to be subject to a repayment obligation pursuant to section 602(e) or 603(e) of the Act and have not been repaid by Ziplly shall constitute a debt to the federal government and Ziplly shall pay the federal government the amount of debt. Ziplly shall not be required to pay the County for such excess unless payment of such debt is required to be made through the County. In the event of payment of debt to the County, the County shall promptly pay such amounts to the federal government and cooperate with Ziplly in the final documentation of the resolution.
2. Any debts determined to be owed the federal government must be paid promptly by Ziplly. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if Ziplly knowingly or improperly retains funds that are a debt as defined in paragraph 1 of this subsection, Treasury will take any actions available to it to collect such a debt.
3. Any debts determined to be owed to the County must be promptly paid by Ziplly. A debt is delinquent if it has not been paid by the date specified in County's initial written demand for payment, unless other satisfactory arrangements have been made or if Ziplly knowingly or improperly retains funds that are a debt. The County will take any actions available to it to collect such a debt.

4. Any debts determined to be owed to the State must be promptly paid by Ziplly. A debt is delinquent if it has not been paid by the date specified in State's initial written demand for payment, unless other satisfactory arrangements have been made or if Ziplly knowingly or improperly retains funds that are a debt. The State may take any actions available to it to collect such a debt.

Nothing in this section shall be deemed to be a waiver by Ziplly to dispute any determination of debts owed and any obligation to pay will be suspended until such dispute process is complete.

G. Cost Principles

To the extent and for such time as compliance with the OMB Uniform Guidance and 2 CFR part 200 is required to be applied by the WSBO Grant, Ziplly shall administer the project in conformance with OMB Uniform Guidance and 2 CFR part 200. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

H. No Advance Payment

No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the County.

I. Budget Revisions

Proposed changes to this Contract budget that increase or decrease the total Contract amount or change the Statement of Work shall necessitate a written amendment to this Contract.

J. Reduction in Funds

In the event state funds appropriated for the work contemplated under the Contract are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Period of Performance, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of Commerce, and shall meet and renegotiate the Contract accordingly. Obligations under this Contract shall be suspended until such negotiations are completed.

K. Contingency Funds [See Exhibit B, Section 6.]

L. Audit Exceptions or Disallowed Costs

Ziply is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

M. Duplicate Payment

Ziply certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

N. Federal and State Prevailing Wage Requirements

Use of federal, state, or local funds to reimburse costs associated with labor performed for any type of maintenance, repair, rehabilitation, construction, etc. is subject to State Prevailing Wage requirements per RCW Chapter 39.12.

O. Performance and Payment Bonds

Projects that include construction costs will require Performance and Payment Bonds from the prime Ziply. No reimbursement, final or otherwise, shall operate to release Ziply or Ziply's Sureties from any obligation under this contract or the Performance and Payment Bond.

IV. PROJECT REQUIREMENTS

A. Procurement

See Exhibit C, Section 3.

B. Political Activities

Political activity of Ziply employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for lobbying or for working for or against ballot measures or for or against the candidacy of any person for public office.

C. Public Information

Ziply agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by Ziply describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statement:

“This project was supported by a grant awarded by the US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US

Department of the Treasury. Grant funds are administered by the America Rescue Plan Act, State and Local Fiscal Recovery Funds, Washington State Department of Commerce.”

D. Publicity

Ziply agrees not to publish or use any advertising or publicity materials in which the state of Washington or Commerce’s name is mentioned, or language used from which the connection with the state of Washington’s or Commerce’s name may reasonably be inferred or implied, without the prior written consent of Commerce.

V. RECORDS

Ziply shall comply with the following:

- A. Ziply shall maintain records and financial documents sufficient to evidence compliance with Section 602(c) and 603(c) of the Social Security Act, Treasury’s implementing regulations, and guidance issued by Treasury regarding the foregoing as set forth in this Section V.
- B. The Treasury Office of the Inspector General and the Government Accountability Office, or their authorized representatives, and the County shall have the right of access to records (electronic and otherwise) of Ziply in order to conduct audits or other investigations.

C. Records to Be Maintained

Ziply shall maintain all records required by this Contract pertaining to the activities funded under this Contract and as further described in the Statement of Work, Exhibit B. Ziply shall furnish related records to the County or other authorized officials, as requested, in connection with the County’s monitoring responsibilities. Ziply shall maintain records including, but not limited to:

1. Records providing a full description of each activity undertaken;
2. Records used for data collection for reports as required;
3. Records of compliance with conflict of interest requirements;
4. Records of compliance with the nondiscrimination requirements;
5. Financial Records, including supporting documentation for all costs submitted via invoice;
6. Any other reporting obligations established by the U.S. Department of the Treasury as they relate to this award.

D. Records Maintenance

Ziply shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein,

including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

ZiPLY shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under this contract, shall be subject at all reasonable times to inspection, review or audit by Snohomish County, Commerce, personnel duly authorized by Commerce, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

VI. PERFORMANCE EVALUATION AND MONITORING

ZiPLY agrees to participate reasonably with the County in any monitoring (on-site and/or desk) or evaluation of the project conducted by the County to determine Contract compliance and to make available information in its possession relevant to such evaluation. Any such monitoring shall be done during business hours and with reasonable notice based upon the nature of the request.

The County will monitor the performance of ZiPLY against the goals and performance standards set forth in this Contract. Remedies for substandard performance that is not corrected to the County's satisfaction may include Contract suspension or termination following the procedures described in Section XIV of this Contract.

See Exhibit B, Section 3 for Reporting Requirements.

VII. AFTER-THE-CONTRACT/CLOSE-OUT REQUIREMENTS

ZiPLY's obligation to the County shall not end until all close-out requirements are completed. Notwithstanding the foregoing, the terms of this Contract shall remain in effect during any period that ZiPLY has control over American Rescue Plan Section 9901 Coronavirus State and Local Fiscal Recovery Funds dollars. The County will close-out the award when it determines that all applicable administrative actions and all required work has been completed.

VIII. FALSE STATEMENTS

ZiPLY understands that making false statements or claims with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from

participating in federal awards or contracts, and/or any other remedy available by law.

IX. DISCLAIMER

The United States has expressly disclaimed any and all responsibility or liability to the County or third persons for the actions of the County or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of the award of Federal funds to the County under section 602(c) or 603(c) of the Act, or any agreement or subcontract under such award.

The County expressly disclaims any and all responsibility or liability to Ziplly or third persons for the actions of Ziplly or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Contract or any other losses resulting in any way from the performance of this Contract, or any subcontract thereto, except as may be caused by the negligence or willful misconduct of the County.

This Contract does not in any way establish an agency relationship between or among the United States, the County, and Ziplly.

X. TIME OF THE ESSENCE

Time is of the essence in the performance of each party's obligations under this Contract. Each party will carry out its obligations under this Contract diligently and in good faith.

XI. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to Ziplly by Commerce that is designated as "confidential" by Commerce;
2. All material produced by Ziplly that is designated as "confidential" by Commerce; and
3. All personal information in the possession of Ziplly that may not be disclosed except as permitted under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- B. Ziplly and the County shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. Ziplly and the County shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the County or of Ziplly or as may be required by law. Ziplly and the County shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request of one party, the other party shall provide its policies and procedures on confidentiality. Commerce may require changes to such policies and procedures as they apply to this Contract whenever Commerce reasonably determines that changes are necessary to prevent unauthorized disclosures. Ziplly shall make the changes within the time period specified by Commerce. Upon request, Ziplly and the County shall immediately return to the other any Confidential Information that it reasonably determines has not been adequately protected by the other party against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. Each party shall notify the other party within five (5) working days of when it becomes aware of any unauthorized use or disclosure of any Confidential Information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.
- D. Public Records Act. This Contract and all public records associated with this Contract shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of Ziplly are needed for the County to respond to a request under the Act, as determined by the County, Ziplly agrees to make them promptly available to the County. If Ziplly considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, Ziplly shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by Ziplly and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify Ziplly (a) of the request and (b) of the date that such information will be released to the requester unless Ziplly obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If Ziplly fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of Ziplly to claim any exemption from disclosure under the Act. The County shall not be liable to Ziplly for releasing records not clearly identified by Ziplly as confidential or proprietary. The County shall not be liable to Ziplly for any records that the

County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

XII. PERFORMANCE STANDARDS, LICENSING AND REGISTRATION

- A. Ziplly shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards and any other standards or criteria established by the County to assure the quality of services necessary for the performance of this Contract.
- B. Ziplly shall maintain registration with the Washington State Office of the Secretary of State.

At its sole discretion, Washington State Department of Commerce may withhold five percent (5%) from each reimbursement request until acceptance by Washington State Department of Commerce of the final report or completion of the project. Should such reserved moneys be withheld, the County shall not be obligated to reimburse more than the amount received from the Washington State Department of Commerce for each reimbursement request.

- C. Ziplly agrees to pay all taxes including sales tax, and assessments due the State of Washington, or any subdivision thereof, and to furnish the County a certificate from the Department of Revenue of the State of Washington that all taxes, increases and penalties due from Ziplly and all taxes due and to become due with respect to such contract have been paid in full.
- D. Ziplly shall secure all municipal, county or state permits or licenses necessary or incident to the actual performance of the work under this Contract, and shall, during its progress, comply with all laws, ordinances, and governmental regulations pertaining to carrying out the work.

XIII. PERFORMANCE AND BREACH

- A. Ziplly agrees to perform the work in this Contract and further agrees to carry on such work regularly and uninterruptedly thereafter with such force as to secure its completion in accordance with Exhibit B.
- B. It is understood that the whole of the project is to be done at Ziplly's risk, and Ziplly is familiar with the conditions of excavation, back fill, materials, climatic conditions, and other contingencies likely to affect the work, and that Ziplly assumes the responsibility and risk of all loss or damage to materials or work that may arise from any cause whatsoever prior to completion.
- C. This Contract shall not be assignable by the County. Ziplly may assign this Contract (a) with prior consent of the County or (b) without prior consent of the County in connection with a transaction in which Ziplly, either directly or through operation of law, assigns all or substantially all of its assets to a third party.

Zipty shall be fully responsible for all contractual obligations, financial or otherwise, for their contractors, and liable for all acts and omissions of their subcontractor(s).

- D. Zipty warrants that workmanship under the Contract shall be conducted according to professional standards in the industry and that materials used shall, when used as intended and without modification, will perform according to their specifications, and the payment of all undisputed obligations incurred until the work is “finally accepted” and for one year thereafter and until the construction provisions of this Contract are fulfilled.
- E. Neither the final certificate of Payment nor any provision of this Contract nor partial or entire use of the installation provided for in this Contract by the County 1) shall constitute an acceptance of the work not done in accordance with this Contract or 2) release Zipty of liability with respect to any warranty or responsibilities for faulty material or workmanship. Zipty shall be under the duty to remedy any defects in the work to the extent caused by Zipty or Zipty’s contractors and pay for any damage to other work resulting there from to the extent caused by Zipty or Zipty’s contractors which shall appear within a period of one year from final acceptance of the work. The County will give notice of observed defects as herein specified with reasonable promptness after discovery thereof.

XIV. TERMINATION OR SUSPENSION OF ANY CONTRACT

A. Termination for Convenience:

- i. The County may terminate this Contract, in whole or in part, upon one hundred twenty (120) calendar days’ advance written notice to Zipty.
- ii. In the event of termination under this clause, the County shall be liable only for payment in accordance with the terms of this Contract for services rendered or expenses incurred prior to the effective date of termination or expenses incurred as a result of the early termination (such as demobilization costs and early termination fee liability). The County may pay an amount mutually agreed by the parties for partially completed work and services not otherwise reimbursable if County determines in its sole discretion that the work products are useful to, or usable by, the County.

B. Suspension or Termination for Lack of Funding:

- i. The County may suspend or terminate this Contract, in whole or in part, upon thirty (30) calendar days’ written notice in the event expected or actual funding from a state, federal, or other source is withdrawn, reduced, or limited in any way prior to Contract expiration. The suspension or termination shall be effective on the date specified in the written notice.
- ii. In the event of suspension under this clause, the County shall provide Zipty written notice stating when services may be resumed. The County

shall pay only for services rendered or for expenses incurred prior to the effective date of suspension or which occur as a result of the suspension (such as demobilization costs and early termination fee liabilities). The County shall only pay for services and expenses in this subsection to the extent of funds provided by Commerce under the WSBO Grant for this purpose. .

- iii. In the event of termination under this clause, the County shall pay only for for services rendered or for expenses incurred prior to the effective date of termination or which occur as a result of the termination (such as demobilization costs and early termination fee liabilities). The County shall only pay for services and expenses in this subsection to the extent of funds provided by Commerce under the WSBO Grant for this purpose. The County may pay an amount mutually agreed by the parties for partially completed work and services not otherwise reimbursable if County determines in its sole discretion that the work products are useful to, or usable by, the County.

C. Suspension or Termination for Lack of Performance:

- i. In the event the County determines Ziplly has failed to meet or maintain any requirement for contracting with the County, to comply with the terms or conditions of this Contract in a timely manner, or has otherwise breached any provision or condition of this Contract(a "Breach"), the County may suspend or terminate this Contract upon sixty (60) days prior written notice.
- ii. Before the County may terminate this Contract for lack of performance, the County shall provide Ziplly with written notice of Breach. Ziplly shall respond with a corrective action plan within thirty (30) days. Ziplly's corrective action plan . shall include the steps being taken to correct the specified Breach and shall specify the proposed completion date for curing the Breach. The County reserves the right to reject any part ofthe corrective action plan and specify the required date for curing the Breach. If Ziplly does not correct the Breach by the required date for curing the Breach, the County may suspend or terminate this Contract, unless such failure is caused by reasons outside of Ziplly's reasonable control.
- iii. The rights and remedies of the County provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

D. Suspension or Termination for Fraud, Abuse, Violation of Law:

The County reserves the right to suspend or terminate all or part of this Contract, to withhold further payments, require repayment of any WSBO Grant funds, public funds, or to prohibit Ziplly from incurring additional obligations of funds, if the County has reason to believe that fraud, abuse, or violation of law has occurred on the part of Ziplly in the performance of any Contract.

E. Suspension or Termination Procedures:

- i. Suspension or Termination by County. Upon the effective date of the notice of suspension or termination of this Contract, unless otherwise directed by the County in writing, Zply shall:
 - a. Stop work under this Contract on the date, and to the extent, specified in the notice;
 - b. Place no further orders or subcontracts for materials, services, or facilities under that portion of this Contract that has been suspended or terminated;
 - c. Complete performance of that part of this Contract, if any, which has not been suspended or terminated;
 - d. Take such action as may be necessary for the protection and preservation of the property related to this Contract which is in the possession of Zply and in which the County has or may acquire an interest; and
- ii. Remedies

The County shall be entitled to all remedies available at law, in equity, or under this Contract.

XV. NOTICES

All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties stated on the Contract Face Sheet.

XVI. EMERGENCY RESPONSE REQUIREMENTS

Within three months of the execution of this Contract, Zply shall prepare and make available to the County upon request, the necessary plans, procedures and protocols to:

- A. Respond to and recover from a natural disaster or major disruption to Zply operations such as a work stoppage.
- B. Continue operations during a prolonged event such as a pandemic. If Zply does not have any such plan as of the start of this Contract, Zply may request (i) an extension of the time needed to create a plan, and (ii) for assistance from the County in preparing such a plan. At a minimum, any plans, procedures, or protocols described in this section must include how the Provider plans to continue to provide the services described in or funded by this Contract.

XVII. AFTER THE CONTRACT REQUIREMENTS

The close-out or termination of this Contract does not affect:

- a. The County's right to disallow costs and recover funds on the basis of a later audit or other review;
- b. Records retention as required;
- c. Audit requirements;
- d. Insurance requirements;
- e. Use of property requirements;
- f. Deed of trust/IRU requirements;
- g. Hold harmless;
- h. Indemnification requirements;
- i. Venue stipulation;
- j. Non-assignability of claims;
- k. Rights in data;
- l. Non-assignability of obligations.

XVIII. FORCE MAJEURE

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, pandemics, accidents, shutdowns for purpose of emergency repairs, government mandates, industrial, civil or public disturbances, or other events outside of the reasonable control of a party, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, such obligation or condition shall be suspended for the time and to the extent commercially practicable to restore normal operations.

XIX. RESPONSIBILITIES DURING FEDERAL INTEREST PERIOD

Title to Project Property (real property or equipment acquired or improved under this Contract) vests in Ziplly subject to the condition that during the

Federal Interest Period (through December 31, 2034), Ziplly and any successors or transferees:

- 1) Must use the Project Property for the authorized purposes of this Project in the same manner as they use comparable real property and equipment within its network in the ordinary course of its business, subject to the rights to disposition provided below;
- 2) Must continue to provide internet service to the service areas and at the standard initially agreed upon by the County and Ziplly;
- 3) Must participate in federal programs that provide low-income consumers with subsidies on broadband internet access services;
- 4) Must comply with the requirements of 2 CFR 200.310 (Insurance), which may be satisfied with adequate self-insurance;
- 5) Must comply with the use and management requirements for equipment in section 2 CFR 200.313(c)(4) and 2 CFR 200.313(d), which may be satisfied by applying Ziplly's commercial practices for meeting such requirements in the normal course of business (e.g. commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable federal interest;
- 6) Must maintain records of real property that include an indication of the applicable federal interest;
- 7) May dispose of the Project Property in the ordinary course of business when no longer needed to operate the network, such as in order to upgrade equipment and improve facilities, provided that at least the same level of service provided by the network is maintained and there is no material interruption to service and that such upgraded property is subject to the same requirements as other Project Property;
- 8) May otherwise sell or transfer Project Property only after provision of notice to Treasury that identifies the successor or transferee and after securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Property Interest; and
- 9) Must notify the County and Department of Treasury upon the filing of a petition under the Bankruptcy Code, whether voluntary or involuntary, with respect to Ziplly or its affiliates.

Pursuant to 2 CFR 200.316, and in recognition that these broadband programs are being executed for the benefit of the public being served by the broadband infrastructure, for the duration of the Federal Interest Period (through

December 31, 2034), Ziplly shall hold Project Property in trust for the beneficiaries of the broadband infrastructure project.

For new encumbrances where Ziplly uses the Project Property as collateral, Ziplly shall provide Treasury a shared first lien in the Project Property such that, if the Project Property were foreclosed upon and liquidated, Treasury would receive the portion of the fair market value of the property that is equal to Department of Treasury's percentage contribution to the project costs. If Ziplly encumbers the Project, Ziplly shall use the Department of Treasury's forms to create Department of Treasury's shared first lien position.

Ziplly shall comply with 2 CFR 200.312 to the extent any federally-owned real property or equipment is used by Ziplly.

Ziplly acknowledges and agrees that the County's remedies at law for a breach or threatened breach of this Section XIX would be inadequate and that the County would suffer irreparable damages as a result of such breach or threatened breach. In recognition of this fact, Ziplly agrees that, in the event of such a breach or threatened breach, in addition to any remedies at law, the County, without posting any bond, shall be entitled to obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, or any other equitable remedy that may be available.

XX. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 1) **Only Actual Damages.** Notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other party or any third party for any special, incidental, indirect, punitive or consequential costs, liabilities or damages, whether foreseeable or not, arising out of, or in connection with, such party's performance of its obligations under this Agreement.
- 2) **Casualty Loss.** The parties hereto agree that neither party, their respective managers, members, officers, commissioners, employees insurance carriers and casualty policies shall be responsible to the other party for any property loss or damage done to the other party's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be each party's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the other party, third party, or act of nature. In this regard, each party hereby releases and discharges the other party and their respective managers, members, officers, commissioners, and employees from any claims for loss or damage to property.

- 3) **Indemnification.** To the fullest extent permitted by law, Ziplly shall indemnify, defend, and hold harmless County, its officers, officials, employees and agents, the state of Washington, Washington State Department of Commerce, agencies of the State and all officials, agents and employees of the State, for, from and against all claims for damage to tangible property or injuries or death arising out of, or resulting from, the performance of this Agreement. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

Ziplly's obligation to indemnify, defend, and hold harmless includes any claim by Ziplly's agents, employees, representatives, or any subcontractor or its employees.

Ziplly expressly agrees to indemnify, defend, and hold harmless County and the State for any claim arising out of or incident to Ziplly's or any subcontractor's performance or failure to perform under this Agreement. Ziplly's obligation to indemnify, defend, and hold harmless County and the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of County or State or their agents, agencies, employees and officials.

- 4) **Limited Waiver of Immunity Under Washington State Industrial Insurance Act, Title 51 RCW and other Similar Industrial Insurance Schemes:** For purposes of the foregoing indemnification provision, and only to the extent of claims against each other under such indemnification provision, each party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, the United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto. Ziplly shall similarly require that each subcontractor it retains in connection with the project comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subcontractor.

- 5) **Infringement Indemnity.**

a) Ziplly shall, at its own expense, (i) defend County in any claim or legal action in the United States, alleging that the use of any

product or service (“Product”) provided by Ziplly to County under this Agreement, directly or indirectly infringes (including contributory infringement), misappropriates, or violates any patent, trademark, trade secret right, copyright, or other intellectual property or proprietary rights of any nature in any jurisdiction of the world, of any third party (“Infringement Claim”); and (ii) pay any settlement reached or final award, including reasonable attorney’s fees, for infringement, excluding any damages or awards arising out of or based on the amount of use that County makes of the Product or the revenue County receives from using the Product. As a condition of such defense or payment, County is required to (i) give Ziplly control of the defense and/or settlement of the Infringement Claim and (ii) cooperate fully with Ziplly in such defense or settlement. County may, at its own expense, participate fully in the defense of any such Infringement Claim.

(b) In the event Ziplly becomes aware of a potential Infringement Claim, Ziplly shall use its reasonable best efforts to avoid an interruption of County service and may (or in the case of an award of an injunction, shall) at its sole option and expense: (i) procure for County the right to continue using the alleged infringing Product(s); (ii) replace or modify the alleged infringing Product(s) with an equivalent product(s) so that County’s use is non-infringing; or (iii) if the remedies under the foregoing clauses (i) and (ii) are not commercially feasible, require County to return the affected portion of the Product(s) and refund to County for the depreciated value (as carried on the County’s books) of such Product(s).

(c) Ziplly has no obligation or liability in respect to any Infringement Claim for the value of the use of a non-Ziplly product, service, data, business process, or other intellectual property rights, including County products, services, data and business processes and/or in the event that the affected Product: (i) is manufactured, designed or supplied by Ziplly in accordance with any design or special instruction furnished by County (ii) is used by County in a manner or for a purpose not contemplated by this Agreement or Ziplly’s Product documentation; (iii) is used or located by County in a country other than the United States; (iv) is used by County in combination with other products or applications not provided by Ziplly under this Agreement excepting any such combination of the Products that is set out in Ziplly’s specifications set forth in the Product documentation as it may be updated from time to time including any software developed by County through the permitted use of Products; or (v) is modified by County without authorization from Ziplly. If County continues use of the affected Product notwithstanding Ziplly’s request to replace, modify or return the Product, Ziplly shall not be liable for such use. County shall pay

Ziply any settlement reached or final award for any and all claims against Ziply for infringement based upon any of the foregoing.

(d) THE PROVISIONS OF THIS SECTION XX.5 CONSTITUTE THE EXCLUSIVE RECOURSE OF COUNTY AND THE ENTIRE OBLIGATION AND LIABILITY OF ZIPLY WITH RESPECT TO ANY CLAIM FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

XXI. INSURANCE

- 1) Ziply shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect County and the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of Ziply or Subcontractor, or agents of either, while performing under the terms of this contract.

The deductible and/or self-insured retention of the policies shall not limit or apply to the Ziply's liability to the County and shall be the sole responsibility of the Contractor. All policies shall be primary to any other valid and collectable insurance. Ziply shall instruct the insurers to give County ten (10) calendar days advance notice of any insurance cancellation or non-renewal. Ziply's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by County.

Ziply is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Additional Insureds. Except for Professional Liability or Errors and Omissions Insurance and Worker's Compensation, the insurance shall name Snohomish County and the state of Washington, their agents, officers, officials and employees as additional insureds under the insurance policy.

Evidence of Insurance. Ziply shall submit to County before contract execution and within fifteen (15) calendar days of a written request

by County, evidence of insurance which outline the coverage and limits defined in this insurance section. Ziplly shall provide copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered (including additional insured endorsement), the amounts, the period of coverage, and that County will be provided thirty (30) days advance written notice of cancellation.

During the term of the Agreement, Ziplly shall submit renewal evidence of insurance not less than thirty (30) calendar days prior to expiration of each policy required under this section, or as soon thereafter as possible.

Minimum Limits. Ziplly shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$5,000,000 per occurrence, \$6,000,000 aggregate.

Automobile Liability. Provide Automobile liability insurance. The minimum limit is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Ziplly shall maintain Professional Liability or Errors and Omissions Insurance. The Ziplly shall maintain minimum limits of no less than \$5,000,000 per occurrence to cover all activities by Ziplly and licensed staff employed or under contract to Ziplly. County and the state of Washington, their agents, officers, and employees need *not* be named as additional insureds under this policy.

- 2) **Workers' Compensation insurance for Washington State as required by Title 51 RCW.** County maintains a fully funded self-insurance program as defined in Snohomish County Code 2.90 for the protection and handling of the County's liabilities, including injuries to persons and damage to property, automobile liability, professional liability, and workers compensation. The self-funded program will respond if an incident occurs involving negligence of the County's employees acting in the scope of their employment. Ziplly

acknowledges, agrees and understands that the County is self-funded for all its liability exposures.

County agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Agreement. County agrees to provide at least 30 calendar days prior written notice of any material change in its self-funded program and, if requested, will provide a letter of self-insurance as adequate proof of coverage. Ziplly further acknowledges, agrees and understands that the County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore, the County does not have the ability to add any party as an additional insured.

EXHIBIT B

STATEMENT OF WORK

Snohomish County and Ziplly - SR 530 Project

The County and Ziplly Fiber NW, LLC (“Ziplly”), (each a “Party” and together the “Parties”) understand and agree that all work will be pursuant to the provisions, terms and conditions of this SOW, the Contract, and in accordance with the specifications set forth herein.

1. Project Overview:

Ziplly shall implement the Snohomish County and Ziplly - SR 530 Project (the “Project”) in accordance with the WSBO Grant Application (Exhibit E), which, after completion, will replace an existing low-capacity copper network with fiber optics capable of delivering a minimum of symmetrical 1/1 Gigabit per second to each premise at or below 80 milliseconds total round-trip latency. The Project will provide service to approximately 4,510 specific locations and Community Anchor Institutions. Up to twelve strands of dark fiber in network funded by the WSBO Grant and additional strands in areas adjacent to the project funded by the County CLFR grant, as defined in Section 4.4, will be provided by Ziplly to the County for Government use as covered in the Indefeasible Right of Use Agreement (“IRU”), (Exhibit D).

2. Background:

The portion of State Route 530 connecting the City of Arlington and the Town of Darrington (“SR530 Corridor” or “SR530”) is an essential regional corridor providing access to timber, outdoor recreation, and community festivals. As small business and other business activities continue to expand into this area, the development of a robust broadband network is essential. The increased broadband speeds as provided with this project will allow additional opportunities for regional commerce/growth by enhancing small business opportunities, promoting online education, and creating remote work options to communities that have historically suffered from being underserved and unserved.

3. Work:

3.1. Scope of Work

To design and construct a Gigabit Passive Optical Network (GPON) Fiber to the Premise (“FTTP”) network to unserved locations in Snohomish County along the SR530 Corridor in and along existing right of way. Currently, Ziplly's service in the FTTP area in Snohomish County primarily consists of copper-based voice service and limited copper-based digital subscriber line (“DSL”) broadband service. To best serve the locations within this project area, both central office and network access infrastructure upgrades will be required. The network upgrade will be designed to support gigabit speeds over a Gigabit Passive Optical Network (“GPON”) network architecture. Optical line terminal and various core upgrades will be required to support the additional capacity requirements. From the central offices out, construction (aerial placement, trenching, or directional bore) will be utilized to place both feeder fiber to area fiber distribution hubs housing splitters and distribution fiber from there to locally placed fiber multi-service terminals where drop fiber is terminated to customers.

The last mile will consist of single mode fiber terminated on fiber terminals within drop distance of a customer address. The network drop and customer network interface will be placed to a customer's property at the time of construction, provided the property owner orders service from Ziplly prior to completion of construction of the network. Ziplly may charge customers for service drops that do not meet the criteria set forth above. Notwithstanding the foregoing, Ziplly may charge wholesale customers for service drops under Ziplly's Wholesale Internet Service Provider Program as more fully described in the IRU Agreement between the parties. Ziplly must ensure that the Project meets all applicable Local, State, and/or Federal standards.

3.2. Project Location

The Project will construct an FTTP network across Snohomish County from the City of Arlington to the Town of Darrington along the State route 530 Corridor. From Arlington, the network will connect Trafton, Cicero, Oso, Rowan, Hazel, Whitehorse, and Darrington, as shown in Exhibit E and Attachment 1, 2 and 3 of the IRU. The Project will enable fiber connectivity to approximately 4,510 premises.

3.3. Ziplly Responsibilities

Ziplly shall be responsible for all necessary permitting, project management, and oversight of the construction of the Project. Ziplly shall design, construct, and deploy the Project as proposed in the WSBO Grant Application. Ziplly shall establish and maintain a system of accounting and internal controls that complies with the Generally Accepted Accounting Principles issued by the Financial Accounting Standards Board (FASB), the Governmental Accounting Standards Board (GASB), or both as is applicable to Ziplly's form of doing business.

Ziplly shall maintain any equipment where Contract funds are used to pay for all, or part of the equipment purchase costs as may be required under 2 CFR § 200.313, if required by the federal government for this grant program. Ziplly shall be responsible for all proper care and maintenance of the equipment, including securing and insuring such equipment.

Ziplly shall ensure compliance with all WSBO Grant requirements, as specified in this Contract, during construction of the project and for the duration of the term of the IRU. These requirements will include and not be limited to:

- Submission of financial and project status reports
- Compliance with state Prevailing Wages, Chapter 39.12 RCW, as applicable to the Project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040
- Compliance with open access terms as defined in the WSBO Contract
- Compliance with all procurement requirements in the WSBO IAG Handbook, attached as Schedule 1 to this Statement of Work, specifically Sections 1.6, 3.1, 3.3, 5, 6 and 7

Ziplly shall be responsible for completing all Project activities which include and are not limited to:

- **Engineering:** Including detailed design engineering, permitting and rights of way restoration, creation of construction documents
- **Procurement:** Identification, ordering, receiving, and inventory of all necessary materials and equipment.

- **Construction:** Advertisement of bids for OSP contractor, contractor selection, construction management, advertisement of bids for drops contractor selection.
- **Customer connection/completion:** Installation of network equipment in customer homes. Network connections and provision of internet service.

ZiPLY shall market the services provided in connection with its network funded under this Agreement. On a quarterly basis for one year after the completion of the Project, ZiPLY shall provide a report to the County describing its efforts and providing samples of materials used in these efforts.

During construction, ZiPLY will work with the County to develop press releases and ZiPLY shall provide information in the affected neighborhoods about the project. The ZiPLY local sales team will canvas the service area in outreach efforts to encourage customers to order service prior to completion of the construction of the network. ZiPLY is expecting initial take rates of 25% during construction and long term up to 60% of eligible premises in the project area.

ZiPLY shall comply with the marketing requirements set forth in the Affordable Connectivity Program (ACP) under 47 CFR §54.1804 and, for the first year after completion of the Project, shall provide quarterly reports on the marketing efforts related to ACP

3.3.1. Reporting

ZiPLY shall submit to the County such reports as the County requests pursuant to the requirements of federal, state, and local law, regulations, and guidance as applicable. The County reserves the option to modify reporting criteria in the future. At a minimum, ZiPLY shall submit, no later than the 20th of the month following each reporting period, in a format prescribed by the County, the following reports:

Report Title	Description
Monthly Project Status Report, Form 5	Describe progress made during the period on the Project, approximate percentage of Project completion, and any anticipated changes to the scheduled completion date.
Request for Reimbursement-Actual Expenditures, Form 4	Completed form and invoices, purchase orders, timesheets, labor cost report (without overhead cost) or other documentation supporting expenses incurred for each completed section.
Quarterly Progress Report	Detailed report of previous quarter's work including; geospatial location of the Project work, number of households, businesses, Anchor Institutions connected (broken out by those on Tribal lands and those not on Tribal lands), miles of fiber, cost per mile, cost per passing, and service drop outreach efforts.
Employer Information Report EEO-1	On or before September 30 of each year, a contractor subject to Title VII of the Civil Rights Act of 1964, as amended, that has 100 or more employees, must file an "Employer Information Report EEO-1" with the EEOC or its delegate. Instructions on how to file are on the EEOC website: www.EEOC.gov . ZiPLY shall submit each EEO-1 to the County and retain a copy of the most recent report filed.

Project Completion Report, Form 7	Report is to be completed upon completion of operations listing total funds expended, number of passings by connection speed pre- and post-project, and digital photographs to support completed project.
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3.4. County Responsibilities

The County shall reimburse Ziplly for satisfactory completion of the services and requirements as specified in Contract and its attached Exhibit(s).

The County shall be responsible for providing a project manager and a financial point of contact during the contracting and construction of the Project. The County shall monitor Ziplly's compliance with all WSBO Grant requirements, as specified by WSBO, during construction of the project and for the duration of the term of the IRU. Ziplly shall cooperate with the County in its role to ensure compliance with all standards and applicable law and shall provide all lawfully required records/documents necessary to ensure compliance. These requirements will include and not be limited to:

- Auditing and review of records and documents with respect to all matters covered by Contract and IRU
- Performance Monitoring, including monitoring visits to assess the compliance with Contract requirements, quality, and practices
- Submission of financial and project status reports to Commerce
- Monitor Ziplly's compliance with state Prevailing Wages, Chapter 39.12 RCW, as applicable to the Project funded by this Contract

3.5. Deliverables

Ziplly shall replace an existing low-capacity copper network with fiber optics capable of delivering a minimum of symmetrical 1/1 Gigabit per second to each premise at or below 80 milliseconds total round-trip latency. The network will be designed to support gigabit speeds over a GPON network architecture. Ziplly shall deploy a single 100G circuit on the multiprotocol label switching network into the local areas deploying a ring configuration.

Ziplly shall ensure each addressable location will have fiber passing in the public right of way accessible through a customer drop with customer service drops that may be installed as set forth in Section 3.1 of this Exhibit B.

Approximated deliverables:

Number of last mile passings: 4510

Number of middle miles, if any included in this project: 0

156 Pole - Fiber Optic Miles

135 Trench - Fiber Optic Miles

25 Pushed(blow)/pulled - Fiber Optic Miles

317 TOTAL MILES

The available speed tiers for business, residential and Community Anchor Institutions shall be on transparent terms and offered at fair market price, competitive to services offered in other areas of Snohomish County.

Zipty shall ensure all Community Anchor Institutions as listed in Attachment 2 of the IRU are connected.

3.6. Timeline

Changes to the timeline will require County approval. Changes to the timeline must be requested by Zipty in accordance with Exhibit A, section XV, Notices and approved in writing by the County. Changes to the timeline may necessitate a written amendment to the Contract.

Construction of the Project must be completed and costs submitted no later than June 30, 2025, or later if funds the Washington State legislature reappropriates funding.

Tasks	Start (Month/Year)	Estimated Completion
Right of Way/Easements		
Preliminary Engineering		October 2021
Initial Permits - Applied for	April 2022	April 2023
Initial Permits - Issued	June 2022	June 2023
Initial Bid Document - Design Engineering	January 2022	May 2023
Initial Construction Contract Award	June 2022	June 2023
Estimated Construction Start	June 2023	
Estimated Construction Complete		June 2025
End User Service Delivery Date		June 2025

4. Invoicing and Payment Procedures:

4.1. Eligible Expenditure Period

The County shall pay for eligible and authorized costs supported by adequate documentation, as determined by the County, for the Work specified in this Contract. As set forth in Treasury’s implementing regulations, Zipty may use funds awarded to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on June 30, 2025. Pursuant to Federal rules, a cost shall be considered to have been incurred if Zipty has incurred an obligation with respect to such cost by December 31, 2024. The not to exceed amount of federal funds for this period is \$16,713,615.00.

4.2. Invoicing

The County shall reimburse Zipty for completion of the services and requirements as specified in Contract and its attached Exhibit(s), specifically as set forth in this Statement of Work and the IRU, Exhibit D. In particular, the services to be provided are divided into sections and subsections (“Sections” or “Segments”). To request County reimbursement, Zipty shall submit properly executed invoices to the County upon completion of a Section. Each invoice shall include a fully completed Request for

Reimbursement – Actual Expenditures, Form 4, all outstanding project progress reports for that section, prevailing wage documentation, itemization of the dates on which services were provided, including the number of hours and a brief description of the work performed on each such date. Each invoice shall also include an itemization of any reimbursable expenses incurred by Ziplly or IRU Fee payable to Ziplly associated with the Section covered by the invoice, together with supporting documentation substantiating such expenses. The County shall endeavor to reimburse Ziplly for properly executed invoices within thirty (30) calendar days of receipt of all necessary documentation, subject to receipt of funds by County from the State.

4.3. Withheld funds

In accordance with the WSBO Grant, there may be reserved moneys reimbursable to Ziplly during progress of this project, at a sum not to exceed 5%; said withheld percentage may be held by WSBO, and, as a result, the County, until the project is completed, all submittal and contractual requirements are satisfied, and internet service has begun in accordance with agreed upon Contract scope of work. In any event, funds released by WSBO to the County shall be remitted to Ziplly within 30 days of receipt by the County.

4.4. Estimate of Section expenses

The fixed cost for each Section is set forth in the table below:

Endpoint A to Endpoint B	Grant Eligible	Ziplly Fiber Match	Grant	Ineligible (County CLFR Funds)	Notes
Arlington Phase 1A – Arlington Heights Road to Trafton	\$2,009,531	\$1,004,765	\$1,004,766	\$0	SR530/Arlington Heights Road - access to fiber for IRU fibers available for IRU use, 3.4 mile build along SR530. New hub with distribution at Jim Creek Road/SR530. Fibers available in new distribution for IRU out Jim Creek Road to Wallitner Road.
Arlington Phase 1B – Trafton to Ramstad Road	\$2,622,811	\$1,311,405	\$1,311,405	\$0	SR530/Jim Creek Road to SR530/Ramstad Rd, 6.1 mile build along SR530. SR530/Hills Road to Grant Creek Road/148th (end location of the existing fiber is roughly 48.280159, -122.028928) using existing 24 fiber (1.4 miles) no IRU available. IRU available in distribution beyond.
Arlington Phase 1C – Jim Creek Road	\$1,707,053	\$853,527	\$853,527	\$0	Using existing fiber along Jim Creek Road, from the intersection of Jim Creek Road/SR530 (5.9 miles). See Phase 1A for fiber to Wallitner Road. No IRU fibers.

Darrington Phase 1D – Darrington to Whitehorse	\$1,354,219	\$677,110	\$677,110	\$4,000	Darrington along SR530 to White Horse Road (5.0 mile build along SR530) - access to fiber for IRU
Darrington Phase 1E – Whitehorse to Swede Heaven	\$743,972	\$371,986	\$371,986	\$0	Using existing fiber along Swede Haven Road from SR530 to 371st (2.3 miles). No IRU Fibers.
Darrington Phase 2A – Areas Surrounding the City Core	\$1,658,523	\$1,243,892	\$414,631	\$46,800	Using existing fiber from Darrington east along SR530 to Giles Road (1.6 miles) no fiber available for IRU. New Build - Giles Road along SR530 to Snohomish County line (2.4 miles) fibers available for IRU. Using existing fiber from Darrington east along Sauk Prairie Road to 324th St NE (4.9 miles) no fiber available for IRU.
Arlington Phase 2B – Arlington to Bryant, Kackman Road	\$6,429,746	\$2,468,260	\$3,961,486	\$0	SR9 just north of Schloman Road (adjacent to RR ROW) access to fiber for IRU. New Build fibers available for IRU use, 2.7 miles along SR9 to Bryant. Additional New Build along 252nd/Kackman Road for 2.8 miles and one mile of new fiber placed south along 35th from Kackman Road.
Arlington Phase 2C – Grandview Road	\$2,349,696	\$0	\$2,349,696	\$0	New Build intersection of SR9/Grandview Road out Grandview Road to intersection of Grandview Road/99th Ave NE (4.5 miles). Using existing fiber from Grandview Road/99th to Grandview Trail/115th Ave NE (1.4 miles) no IRU fiber available.
Arlington Phase 2D – Stanwood/Bryant Road	\$1,139,286	\$0	\$1,139,286	\$0	New Build intersection of SR9/Stanwood-Bryant Rd along Stanwood-Bryant Rd to just past the intersection with 268th St NE (3.2 miles) fibers available for IRU. Using existing fiber along 268th from Stanwood-Bryant Rd to 15th Ave NE/272nd St NE (0.7 miles) no IRU fiber available.
Arlington Phase 2E – Settlement Road	\$1,926,988	\$721,082	\$1,205,906	\$0	Using existing fiber from SR9/Stanwood-Bryant Rd north along SR9 to 44th/Settlement Road (2.2 miles) no fiber available for IRU. New Build north along SR9 to Nakashima Barn entrance road (2.1 miles) fibers available for IRU. New

					Build north along 44th/Settlement Road to 324th NE (1.8 miles) fibers available for IRU.
Arlington Phase 3A – Ramstad Road to Oso ESA	\$1,139,263	\$0	\$1,139,263	\$0	New build from Ramstad Road along SR530 to Oso Loop Road then following Oso Loop Road to the Oso ESA (3.0 miles) fibers available for IRU. Oso ESA is located at 24124 OSO LOOP RD, Arlington, WA.
Arlington Phase 3B – Oso ESA to Oso Slide	\$1,192,757	\$357,827	\$834,930	\$60,000	New build from Oso ESA (24124 OSO LOOP RD, Arlington, WA) northeast along Oso Loop Road to SR530 then east along SR530 to the west end of the Oso Slide (roughly 28020 State Route 530 NE, Arlington, WA) 2.6 miles fibers available for IRU. Use existing fiber through Oso slide area (roughly 28020 State Route 530 NE, Arlington, WA to 30516 State Rte 530 NE, Arlington, WA) 1.6 miles no fibers available for IRU.
Arlington Phase 3C – Oso East ESA	\$574,060	\$0	\$574,060	\$0	New build from east end of Oso Slide area (roughly 30516 State Rte 530 NE, Arlington, WA) along SR530 to Boulder Creek Road (1.6 miles) fibers available for IRU. No build across Boulder River to Darrington Exchange (Darrington Phase 3D – White Horse to French Creek fiber stops at Boulder Creek Dr) 0.3 miles no fibers available for IRU.
Darrington Phase 3D – White Horse to French Creek	\$875,563	\$0	\$875,563	\$0	New build from Swede Haven Road (White Horse) west along SR530 to Boulder Creek Drive (3.4 miles) fibers available for IRU. No build across Boulder River into the Arlington Exchange (Arlington Phase 3C – Oso East ESA fiber stops at Boulder Creek Rd) 0.3 miles no fibers available for IRU.
Arlington CO to Arlington City Hall	\$0	\$0	\$0	\$14,300	238 N Olympic Ave, Arlington Outside Grant Area/Scope
Arlington CO to Cascade District Court	\$0	\$0	\$0	\$0	415 E Burke Ave, Arlington

TOTAL	\$25,723,469	\$9,009,854	\$16,713,615	\$125,100	
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4.5. Payment to Subcontractor(s)

Zipty agrees to pay each Subcontractor under Contract undisputed amounts and for satisfactory performance of its Subcontract within 45 days of the receipt of each payment Zipty receives with respect to the amounts owed from the County.

4.6. Unspent Funds

If Zipty has retained any funds that have not been expended as of the termination of this Contract, Zipty shall return all such unspent funds to the County within ten (10) calendar days.

5. Budget

Type of Funding	Source Description	Amount
Grant	WSBO Grant	\$ 16,713,615
Local Match	Zipty local match	\$ 9,009,854
County Endpoints	IRU Fee (County Funds)	\$ 125,100
Total Project Funding		\$ 25,848,569

Zipty, by its signature, certifies that project funding from sources other than those provided by Contract and identified above has been reviewed and approved by the Zipty's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Contract, as of the date and year written below. Zipty shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project and shall make such records available for the County's review upon reasonable request.

6. Cost Overrun Procedures and Budget Amendment Requests

Proposed changes to Contract budget that increase or decrease the total Contract amount or change the Statement of Work shall necessitate a written amendment to Contract. Contingency funds may be awarded by the Washington State Broadband Office on a case-by-case basis. If Zipty determines that additional funds are necessary to complete the project, Zipty shall provide a written explanation of what the funds are for, and documentation in support of the request, including the associated costs, to the County for consideration.

Changes to the budget must be requested by Zipty in accordance with Exhibit A, section XV, Notices and approved in writing by the County. Budget change requests that require approval from Commerce will not be approved by the County prior to obtaining written approval from Commerce. Zipty bears all risk of construction costs, including cost overruns. Other than funding

for the IRU Fee, under no circumstances shall the County be responsible for payments of amounts in excess of the total WSBO Grant funds received by County from the State.

EXHIBIT C

CONTRACTOR / SUBCONTRACTOR TERMS

SNOHOMISH COUNTY AND ZIPLY – SR 530 PROJECT

Due to Washington State Department of Commerce - Broadband Office ("WSBO Grant") assistance on this project, Subrecipient and all of Subrecipient's contractors and subcontractors performing work on the Snohomish County and Ziplly SR 530 Project (the "Project") are subject to WSBO Grant provisions provided in this document, to the extent the provisions are required by the WSBO Grant.

Required Forms:

- Certification Regarding Lobbying, Form 1
- Conflict of Interest Form 2

Submit completed forms to Snohomish County WSBO Project Manager

1. Debarment and Suspension.

A. Ziplly certifies that to the best of its knowledge and belief that they:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- ii. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
- iv. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where Ziplly is unable to certify to any of the statements in this Contract, Ziplly shall attach an explanation to this Contract.

C. Ziplly agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by County and Commerce.

D. Ziplly further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier

Covered Transaction,” as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier subcontractor certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier subcontractor is unable to certify to any of the statements in this Grant, such subcontractor shall attach an explanation to this Grant.

The terms: covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, currently available online at eCFR: 22 CFR Part 513 Subpart A – General

2. Conflicts.

Ziply’s employees, subcontractors and board or committee members shall not use, or give the appearance of using, their positions for the personal gain of themselves or those with whom they have family, business or other ties. Ziply’s employees, subcontractors, and board or committee members shall not have or acquire any interest, direct or indirect, that would conflict with the performance of services under this Contract. Ziply shall not employ or subcontract with persons who have conflicts of interest, nor appoint them as members of its governing board or advisory committee(s). Ziply’s personnel and governing board or advisory committee policies of this Contract shall include written standard of conduct governing conflict of interest and kickbacks. Ziply shall disclose to the County any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. 200.112.

The County may, by written notice to Ziply, suspend or terminate this Contract in whole or in part if it is found that any of the following laws or their successors, have been violated in obtaining this Contract or in securing favorable treatment with respect to the awarding, amending, or the making of determinations with respect to this Contract or any subcontracts entered into by Ziply: 2 C.F.R. 200.318, Ethics in Public Service Act (chapter 42.23 RCW and 42.52 RCW), and Ethics Code (chapter 2.50 SCC).

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Ziply and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program administering the WSBO Grant, including but not limited to formulating or drafting the legislation, participating in WSBO Grant procurement planning and execution, awarding WSBO Grants, and monitoring WSBO Grants, during the 24-month period preceding the start date of this Contract. Identify the individual by name, contractor previously or currently employed by, job title or position held, and separation date. If it is determined by Commerce or the County that a conflict of interest exists, Ziply may be disqualified from further consideration for the award of a contract.

In the event this Contract is terminated as provided in Exhibit A, County shall be entitled to pursue the same remedies against Ziply. The rights and remedies of the County provided for in this clause shall not be exclusive and are in addition to any other rights and remedies

provided by law. The existence of facts upon which the County makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

- 3. Procurement Standards for Federally Funded Programs.** All recipients of funds under this Contract, including all Contractors and Subrecipients and subcontractors of any tier, must follow the procurement standards in 2 CFR §§ 200.318 through 200.327, including ensuring that the methods used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320 until such time as the federal government may no longer require compliance with these standards as a condition of the grant program.

ZiPLY's procurement system shall include but not necessarily be limited to, the following:

- A. General procurement standards 2 CFR § 200.318. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
 - B. Competition 2 CFR § 200.319. Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
 - C. Methods of procurement to be followed 2 CFR § 200.320.
 - D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms 2 CFR § 200.321.
 - E. Domestic preferences for procurements 2 CFR § 200.322.
- 4. Treatment of Assets.** Title to all property furnished by Commerce or County shall remain in Commerce or County, respectively. Title to all property furnished by the County, for the cost of which ZiPLY is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in County upon delivery of such property by ZiPLY. Property, real property or facilities owned by ZiPLY that are acquired, constructed, or otherwise improved by ZiPLY using state funds under this agreement, shall be held or used by the County, in accordance with the terms of Exhibit D, IRU for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- A. Any property of County furnished to ZiPLY shall, unless otherwise provided herein or approved by County, be used only for the performance of this Contract.
 - B. ZiPLY shall be responsible for any loss or damage to property of County that results from the negligence of ZiPLY or which results from the failure on the part of ZiPLY to maintain and administer that property in accordance with sound management practices.
 - C. If any County property is lost, destroyed or damaged, ZiPLY shall immediately notify County and shall take all reasonable steps to protect the property from further damage.
 - D. ZiPLY shall surrender to County all property of County prior to settlement upon completion, termination or cancellation of this Contract.

All reference to Ziplly under this clause shall also include Ziplly's employees, agents or subcontractors.

- 5. Prevailing Wage Law.** Ziplly certifies that all employees, contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. Ziplly shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW and shall make such records available for County's and Commerce's review upon request.
- 6. Work Hours and Safety Standards.** The Grant Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Grant Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 7. Historical or Cultural Resources, Human Remains.** Certain capital construction projects may be subject to the requirements of Washington State Executive Order 21-02 "Archaeological and Cultural Resources". Ziplly will cooperate with County as may be required, to fulfill the requirements of EO-21-02. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, Ziplly or Ziplly's subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, Ziplly shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.
- 8. Code Requirements.** All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.
- 9. Pay Equity.** Ziplly agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

 - A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

- B. Zply may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
- (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide region
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by County, if the County determines that Zply is not in compliance with this provision.

10. Registration with Department of Revenue. If required by law, Zply shall complete registration with the Washington State Department of Revenue.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Zply shall comply with 2 C.F.R. 200.216 and shall require compliance with 2 C.F.R. 200.216 in any subcontract.

12. System Award Management Exclusions. Zply must terminate or void in whole or part any subcontract with a person or entity listed in the System Award Management Exclusions (SAM) as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015.

13. Indemnification. Zply shall include the following language verbatim in every subcontract for services which relate to the subject matter of this Contract:

Subcontractor shall protect, defend, indemnify, and hold harmless Snohomish County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that Snohomish County is a third-party beneficiary to its Contract with Zply and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph.

EXHIBIT D

IRU AGREEMENT

BY AND BETWEEN

**ZIPLY FIBER NORTHWEST, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

AND

SNOHOMISH COUNTY, WASHINGTON

DATE: November 7, 2023

IRU AGREEMENT

THIS IRU AGREEMENT (this “Agreement”) is made and entered into as of November 7, 2023 (the “Effective Date”) between Ziplly Fiber Northwest, LLC, a Delaware limited liability company (“Ziplly”), and Snohomish County, a municipal corporation (“County”). County and Ziplly are sometimes individually referred to herein as a “Party” or collectively as the “Parties”

RECITALS

A. Ziplly will build, own, operate and maintain a fiber optic communications system in the area within the territorial jurisdiction of County (“Ziplly Network”).

B. As a condition of the award of the WSBO Grant, the County must include in its Contract with Ziplly, and Ziplly must provide, an indefeasible right of use for any WSBO Grant-funded construction, acquisition, or rehabilitation. This indefeasible right of use concerns up to twelve (12) strands within certain portions of the Ziplly Network.

C. In addition to the indefeasible right of use required as a condition of WSBO Grant-funded construction, acquisition, or rehabilitation, the County desires to purchase an indefeasible right of use of additional strands of fiber.

Accordingly, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1. **GRANT OF INDEFEASIBLE RIGHT TO USE**

1.1 **Grant of IRU.** Ziplly hereby sells, conveys, transfers, assigns, delivers, and grants to County, and County hereby accepts and acquires from Ziplly, a fully paid, exclusive and indefeasible right to use (the “IRU”) up to twelve (12) fiber strands within the Ziplly Network, as more particularly described in Attachment 1, Description of IRU Fibers (the “IRU Fibers”), which may be divided into segments (“Segments”) with end points (“End Points”) to be further defined by the parties, along with the right to access the IRU Fibers at the End Points of each Segment, and at other agreed locations as defined in Attachment 1, 2 and 3. The routes described in Attachments 1, 2 and 3 may be amended from time to time by Ziplly provided that routes for the IRU Fibers will be co-extensive to similar routes used by Ziplly on the Ziplly Network. For avoidance of doubt, the IRU Fibers will not include any portion of the Ziplly Network that could be considered a service drop from Ziplly’s distribution network to a premise or other location, except for the County’s premises at the End Points described in Attachment 1 and Attachment 3. The grant of the IRU to these certain fiber strands is made in connection with the Broadband

Project Agreement (the “Zipty Grant Agreement”) between the parties of even date with this Agreement .

1.2 **Exclusive IRU and Nonexclusive Associated Property.** The IRU is granted on the terms and subject to the covenants and conditions set forth in this Agreement and shall become effective on the Acceptance Date, as defined in article 4.2. The IRU shall be exclusive as to the IRU Fibers. The IRU does not include the right of County to own, control, maintain, modify or revise the Zipty Network, or the right of physical access to, the right to encumber in any manner, or other use of the Zipty Network except as expressly set forth in this Agreement.

1.3 **Effect of IRU.** To the fullest extent permitted by law, the Parties intend that the IRU shall grant, transfer and convey to County all beneficial right, title and interest in the IRU Fibers and that County shall have exclusive possession, use and control over and shall be for all purposes the equitable owner of the IRU Fibers during the IRU Term (defined in Section 5.1); provided, however, the IRU does not convey legal title or legal ownership of the IRU Fibers. For the sake of clarity, the IRU is intended by the Parties to be a beneficial property interest (as distinguished from a mere contractual interest). For the further sake of clarity, this Agreement is not intended by the Parties to be a revocable license, a lease or executory contract, but rather to effect the sale and purchase of the IRU by Zipty to County for the IRU Term.

1.4 **Limitations.** The IRU shall not include: (i) the right to own, control, maintain, modify, relocate or repair the cable in which the IRU Fibers are located, any Zipty equipment, or any other portion of Zipty’s Network; (ii) the right to physically access the cables or any other portion of Zipty’s Network or facilities except as set forth in Article 6 (Network Access) below; (iii) the right to encumber the cables or any other portion of Zipty’s Network or facilities in any manner; or (iv) the right to use the cables or any other portion of Zipty’s Network except as expressly set forth herein. County expressly acknowledges and agrees that County shall receive no rights to use any of Zipty’s equipment in connection with the IRU. Zipty is not supplying nor is Zipty obligated to supply to County any optronics or electronics or optical or electrical equipment or other facilities, all of which are solely the responsibility of County, nor is Zipty responsible for performing any work in connection with the IRU Fibers other than as specified in this Agreement. Zipty shall keep the cables, the IRU Fibers, Zipty’s equipment and all other portions of Zipty’s Network and facilities, free from any liens, rights or claims of any third party attributable to County. Notwithstanding the foregoing, County may access the Segments of the IRU Fibers at their respective End Points as more fully set forth Article 6 below.

1.5 **Network Configuration.** Zipty shall have full and complete control and responsibility for determining the Zipty Network and service configurations or designs, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the Zipty Network, provided that such control and responsibility shall not adversely affect the use by County of the IRU Fibers.

ARTICLE 2.
CONSIDERATION FOR ADDITIONAL IRU FIBERS

2.1 **IRU Fee for Additional Strands of Fiber.** For and in consideration of additional strands of fiber not contemplated by the Ziplly Grant Agreement, of which this IRU is a part of, County agrees to pay to Ziplly, one hundred twenty-five thousand one-hundred dollars (\$125,100.00) (the “IRU Fee”). The portion of the total IRU Fee for each area covered by each of the Segments as listed in Exhibit B shall be due and payable after the Acceptance Date for that Segment and within sixty (60) days of County’s receipt of Ziplly’s invoice for the portion of the IRU Fee.

2.2 **Grantor’s Election Not to Construct.** In the event that unanticipated conditions would cause construction of a portion of the network funded exclusively by the County IRU Fee assigned in Attachment 1 to be unfeasible for the fee amount, Ziplly may elect not to complete construction for that portion. In such a case, Ziplly shall notify County as provided herein and upon written agreement by County, County shall not be obligated to pay for that portion of the IRU Fee. In no event does this section 2.2 extend to portions of the network funded in whole or in part by WSBO Grant Funds.

2.3 **Invoices Late Charges and Fees.** Ziplly shall invoice County for all amounts due as referred to in Attachment 1, “Description of IRU Fibers”. All uncontested invoices shall be due and payable within sixty (60) days of receipt by County. Within sixty (60) days, County shall pay all uncontested portions of the invoice and provide a written, detailed explanation of any contested portion. The parties will promptly discuss and reasonably resolve any contested issues. Ziplly reserves the right to apply a late charge equal to one percent (1.0%) per month (or the maximum legal rate, if less) on any unpaid uncontested balance after 60 days. County shall reimburse Ziplly for all reasonable fees Ziplly incurs collecting any past due uncontested charges from County including, but not limited to, reasonable attorneys’ fees and collection fees.

ARTICLE 3. **WHOLESALE ISP PROGRAM**

During the IRU Term, Ziplly shall establish and maintain a Wholesale Internet Service Provider Program (the “Program”). Under the Program, third party Internet service providers (“ISPs”) may purchase Internet access and transport services from Ziplly in order to serve ISP end user customers using the Ziplly Network. Ziplly will establish reasonable pricing and other terms and conditions of the Program and may amend such terms and conditions from time to time. Any use of the Ziplly Network will be subject to such pricing, terms and conditions, together with any other policies of Ziplly, such as Ziplly’s Acceptable Use Policy, and any applicable tariffs or other laws or regulations. The Program will cover the use of the Ziplly Network within the area described in Attachment 1, 2, and 3. Nothing in this Agreement or the Program will (a) require Ziplly to expand, modify or alter the Ziplly Network in any way, (b) require Ziplly to install any service drops to serve any customer of an ISP, (c) require Ziplly to permit an ISP or any other third party to install any service drop or other network extension from the Ziplly Network, (d) require Ziplly to provide collocation to any ISP or any other third party within Ziplly facilities, or (e) require Ziplly to provide any equipment or other hardware to an ISP or any other third party, all unless otherwise agreed between Ziplly and an ISP or other third party on reasonable commercial terms. The Program shall

provide service that is designed to be capable to reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds, or such faster download and upload speeds as are then required by the Washington State Broadband Office as measured at the premises of the end user. Nothing in this Agreement shall restrict or prohibit Zippy from charging ISPs for collocation services or for service drops to end users' premises.

In addition to the Program, Zippy represents that it currently participates in the Federal Communications Commission's Affordable Connectivity Program ("ACP") and currently intends to participate in the ACP through the current term of the program. If Zippy does not participate in the ACP, Zippy will provide access to its end user subscribers to a broad-based affordability program to low-income consumers in the Zippy Network area covered by this IRU Agreement that provides benefits to low-income households commensurate with those provided under the ACP, and which shall meet affordability (and speed requirements) as are then required by the Washington State Broadband Office for low-income programs through the IRU Term.

In the event that Zippy amends the Program during the Term, Zippy shall ensure that service is available to ISPs on a reasonable and non-discriminatory basis for similarly situated ISPs.

ARTICLE 4.
ACCEPTANCE AND TESTING OF COUNTY CONNECTIVITY

4.1 **Completed Zippy System Testing.** Upon completion of each phase, Zippy shall perform an Optical Time Domain Reflectometer (OTDR) test or similar industry standard evaluation of the IRU Fibers to verify that the IRU Fibers may operate with a no greater than the loss budget designated by Zippy which shall be similar to industry standards for similar projects. Zippy will provide the results of these tests to County for verification. When Zippy has determined that the IRU Fibers have been installed and are operating appropriately in a phase, Zippy shall promptly notify County that the IRU Fibers in that phase are available.

4.2 **Notice of Completion to County.** When Zippy gives written notice (including by email) to County that the IRU Fibers are available in a Segment, County shall be provided ten (10) business days to verify the IRU Fibers are acceptable; however, County shall not be required to conduct such verification. On or before the expiration of the ten businessday period, County will provide notice that it accepts the County Connectivity or reject it by specifying in writing the defect or failure in the County Connectivity that is the basis for such rejection. If County fails to notify Zippy of its acceptance or rejection of the County Connectivity within ten (10) days following County's receipt of notice of availability, County shall be deemed to have accepted the IRU Fibers. The date of such notice of acceptance or deemed acceptance of the IRU Fibers shall be the "Acceptance Date". In the event of any good faith rejection by County, Zippy shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure. The foregoing notwithstanding, if County uses IRU Fibers to carry traffic prior to acceptance by County, such use shall constitute acceptance of the IRU Fibers, and the date of such use shall be the "Acceptance Date".

ARTICLE 5.
TERM AND ABANDONMENT BY COUNTY

5.1 **Term of IRU and Termination of Agreement.** The IRU granted pursuant to this Agreement shall begin on the Effective Date and shall extend until the date that is twenty-five (25) years after the date final payment is made under the Ziplly Grant Agreement or final payment of the IRU Fee, whichever is later by County (the “IRU Term”). Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration, including but not limited to expenses incurred or commitments made by Ziplly prior to the expiration in connection with performance under this Agreement, and shall not affect the IRU granted to the County pursuant to this Agreement with respect to IRU Fibers completed prior to termination for the duration of the IRU Term, which shall survive for the duration of the IRU Term. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration.

5.2 **Removal of County’s Property Upon Termination of IRU.** Upon 1) the expiration of the Term, 2) termination, or 3) abandonment of this Agreement by the County, the IRU shall immediately terminate and all rights of County to use the IRU Fibers shall cease, and Ziplly shall owe County no further duties or consideration. County shall, within forty-five (45) days of expiration, termination of the Agreement, or abandonment of this Agreement by the County, remove all of County’s electronics, equipment, and other County property from the Ziplly Network at County’s sole cost and under Ziplly’s supervision. If County fails to so remove County property, Ziplly may remove the property and store it and shall invoice County for such removal and storage at rates to be determined by Ziplly. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration. In good faith, Ziplly will negotiate with the County for extension of the IRU Term at least one (1) year prior to the expiration provided that the County provides prior written notice to Ziplly of its intent to negotiate.

5.3 **Abandonment by County.** If at any time County determines that it does not want to retain the IRU Fibers, or any portion of them, in compliance with the terms and conditions of the WSBO Grant, County shall have the right to abandon the IRU Fibers, or such portion(s) of them, by written notice to Ziplly. In the case of abandonment, the IRU shall be automatically modified to delete that portion of the IRU Fibers.

5.4 **Abandonment by Ziplly.** If at any time during the term of this Agreement, Ziplly determines that it does not wish to provide service to customers over its fiber strands included in the cables in which the IRU Fibers are placed (“Project Fibers”), Ziplly shall provide notice to County of its intent to abandon the Project Fibers. Within ninety (90) days of such notice, County may notify Ziplly that it wishes to take ownership of the Project Fibers. Upon such notice, the parties will proceed to transfer such ownership to County without further payment. Such transfer shall be on “AS IS” and “WHERE IS” basis, without any warranty by Ziplly, and Ziplly shall be released of all liability with respect to the Project Fibers, the transfer of the Project Fibers and this Agreement.

ARTICLE 6.
NETWORK ACCESS

6.1 **Access.** Ziply shall provide County with access to the IRU Fibers at the Ziply Fiber Central Office(s) and at agreed hub locations identified in Attachment 1 in order for County to connect the County system to the IRU Fibers. These connections are hereinafter collectively referred to as the “Connecting Points”. This Agreement specifically excludes access to any Ziply fiber facilities existing on or before January 13, 2022, unless they are identified on Attachment 1. The identification of fiber facilities on Attachment 1 are an approximation and are subject to amendment once final engineering is complete. Subject to any Underlying Rights, Ziply shall provide County with reasonable access to Connecting Points (a) during regular business hours or (b) in order to address an emergency, at all times on a 24 hour/ 7 days per week basis. County acknowledges that escorted access may be required at any Connecting Point. If escorted access is required, County shall notify Ziply of a need for access reasonably in advance of such access. Ziply shall provide such escorted access at no cost to County. It is the responsibility of County to obtain all governmental and other approvals and consents necessary to access and/or interconnect the IRU Fibers with County’s system at a Connecting Point. Nothing in this Agreement shall require Ziply to provide any collocation services within Ziply facilities to County unless required to access and utilize IRU Fibers at End Points, subject to space and power availability and the execution by Grantee of a collocation agreement describing the terms and conditions of such collocation services at no cost to the Grantee. Any such collocation services not related to IRU Fiber access and utilization at End Points may be separately agreed to by the Parties, including any pricing and other terms and conditions.

6.2 **Splicing and Other Work.** Unless otherwise agreed in writing, Ziply shall be responsible for, shall undertake, and shall control in its sole discretion, all necessary splicing on or to fiber optic facilities, including IRU Fibers. County may request (which request Ziply shall not unreasonably deny), access to IRU Fibers at additional access/splice points, provided that such access/splice points are: i) technically feasible in Ziply’s reasonable opinion, ii) County agrees to pay a reasonable splice fee at the time, iii) all work shall be performed by Ziply or a contractor operating under its direction, and iv) the agreements governing Ziply’s use and occupancy of the right of way at the access/splice points permit such activity. Normal requests for splicing shall be submitted at least thirty (30) days prior to the requested splicing date. Ziply shall obtain any and all permits necessary for such splicing. County agrees that it will not perform any splicing or interfere in any manner with the Ziply fibers at any time for any reason.

ARTICLE 7.
PERMITS; UNDERLYING RIGHTS

7.1 **Underlying Rights.** Ziply agrees and warrants that they have obtained all required rights of way and related or similar rights for construction and operation of the Ziply Network (the “Underlying Rights”). Ziply will use its commercially reasonable best efforts to maintain the Underlying Rights for the Term of this Agreement. The IRU is subject to the terms of the

Underlying Rights, and subject to the terms under which the right of way is owned or held by the Ziplly of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The IRU granted hereunder is further subject and subordinate to the prior right of the Ziplly of the Underlying Rights to use the right of way for other business activities, including energy or railroad operations, telecommunications use, pipeline operations or any other purposes. The rights granted herein are expressly made subject to each and every limitation, restriction or reservation affecting the Underlying Rights. Nothing herein shall be construed as to be a representation, warranty or covenant of Ziplly's right, title or interest with respect to the right of way or the Underlying Rights, provided that Ziplly represents that it has no actual knowledge that any grantor has asserted to Ziplly any right, limitation, restriction or reservation that would materially interfere or could reasonably be expected to interfere with the IRU granted to the County during the IRU Term.

7.2 Relocation. If, after the Effective Date, Ziplly is required (i) by any governmental authority under the power of eminent domain or otherwise, (ii) by Ziplly or provider of any Underlying Rights, (iii) by any other person having the authority to so require (each a "Relocating Authority"), or (iv) by the occurrence of any Force Majeure Event as set forth in Section 15, to relocate the Ziplly Network or any portion thereof, Ziplly shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. If and to the extent that a relocation is not the result of a failure by County to observe and perform its obligations under this Agreement, the costs of relocations of the Ziplly System are the responsibility of Ziplly. County shall reimburse Ziplly for Ziplly's Costs (including but not limited to testing and including amounts paid to a Relocating Authority to avoid relocation) if the relocation is entirely caused by a failure by County to observe and perform its obligations under this Agreement.

7.3 County Resolution of Underlying Rights. Notwithstanding anything herein to the contrary, in the event Ziplly is unable to resolve any issue with respect to the continuation of the Underlying Rights in a manner reasonably acceptable to County, County may, with Ziplly's advance written approval, which approval shall not unreasonably be withheld, delayed or conditioned (e.g., if not allowed under any grantor third party agreement), attempt to resolve the issue directly with the grantor of such underlying rights. In such case County agrees to use reasonable efforts to work with any other affected third parties also utilizing the Ziplly Network in compliance with the Underlying Rights.

ARTICLE 8. **USE OF ZIPLY SYSTEM**

8.1 County Compliance with All Applicable Laws and Regulations. County will use the IRU Fibers in compliance with and subject to all applicable government codes, ordinances, laws, rules and regulations as they now exist or are hereinafter amended.

8.2 **Use Limitations.** County may use the IRU Fibers for internal use or for benefit of governmental or quasi-governmental public services only. County may not sell or use the IRU Fibers for any commercial purpose and may not permit third parties to use the IRU Fibers for any commercial purpose, including but not limited to any wholesale or retail offer or sale of telecommunications services. All use of Ziplly Network will be subject to Ziplly's Acceptable Use Policy as may be amended by Ziplly from time to time. The current version of the Acceptable Use Policy (as of November 2, 2022) is attached to this IRU as Attachment 4.

8.3 **Notice of Impending Damage.** County and Ziplly shall promptly notify each other of any known matters pertaining to, or the occurrence (or impending occurrence) of, any event which would be reasonably likely to give rise to any damage or impending damage to or loss of the Ziplly Network that are known to such Party.

8.4 **No Interference with Ziplly Network.** County shall not use its systems in a way that interferes in any way with or adversely affects the use of the Ziplly Network by Ziplly or any other person, and Ziplly shall not use its systems in a way that interferes in any way with or adversely affects the County's rights under the IRU during the IRU term.

8.5 **Further Cooperation.** County and Ziplly each agree to cooperate with the other in complying with any requirements applicable to their respective rights and obligations hereunder.

ARTICLE 9. **MAINTENANCE**

For the IRU Term, Ziplly shall use commercially reasonable efforts to maintain the Ziplly Network, including the IRU Fibers, in accordance with the maintenance requirements and procedures that Ziplly uses in maintaining the Ziplly Network.

ARTICLE 10. **LIMITATION OF LIABILITY AND INDEMNIFICATION**

10.1 **Only Actual Damages.** Notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other party or any third party for any special, incidental, indirect, punitive or consequential costs, liabilities or damages, whether foreseeable or not, arising out of, or in connection with, such party's performance of its obligations under this Agreement.

10.2 **Casualty Loss.** The parties hereto agree that neither party, their respective managers, members, officers, commissioners, employees insurance carriers and casualty policies shall be responsible to the other party for any property loss or damage done to the other party's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be each party's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the other party, third party, or act of nature. In this regard, each party

hereby releases and discharges the other party and their respective managers, members, officers, commissioners, and employees from any claims for loss or damage to property.

10.3 Indemnification. To the fullest extent permitted by law, Ziply shall indemnify, defend, and hold harmless County, its officers, officials, employees and agents, the state of Washington, Washington State Department of Commerce, agencies of the State and all officials, agents and employees of the State, for, from and against all claims for damage to tangible property or injuries or death arising out of, or resulting from, the performance of this Agreement. “Claim” as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney’s fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

Ziply’s obligation to indemnify, defend, and hold harmless includes any claim by Ziply’s agents, employees, representatives, or any subcontractor or its employees.

Ziply expressly agrees to indemnify, defend, and hold harmless County and the State for any claim arising out of or incident to Ziply’s or any subcontractor’s performance or failure to perform under this Agreement. Ziply’s obligation to indemnify, defend, and hold harmless County and the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of County or State or their agents, agencies, employees and officials.

10.4. Limited Waiver of Immunity Under Washington State Industrial Insurance Act, Title 51 RCW and other Similar Industrial Insurance Schemes: For purposes of the foregoing indemnification provision, and only to the extent of claims against each other under such indemnification provision, each party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, the United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers’ compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers’ compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto. Ziply shall similarly require that each subcontractor it retains in connection with the project comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subcontractor.

10.5 Infringement Indemnity.

a) Ziply shall, at its own expense, (i) defend County in any claim or legal action in the United States, alleging that the use of any product or service (“Product”) provided by Ziply to County under this Agreement, directly or indirectly infringes (including contributory infringement), misappropriates, or violates any patent, trademark, trade secret right, copyright, or other intellectual property or proprietary rights of any nature in any jurisdiction of the world, of any third party (“Infringement Claim”); and (ii) pay any settlement reached or final award, including reasonable attorney’s fees, for

infringement, excluding any damages or awards arising out of or based on the amount of use that County makes of the Product or the revenue County receives from using the Product. As a condition of such defense or payment, County is required to (i) give Ziplly control of the defense and/or settlement of the Infringement Claim and (ii) cooperate fully with Ziplly in such defense or settlement. County may, at its own expense, participate fully in the defense of any such Infringement Claim.

(b) In the event Ziplly becomes aware of a potential Infringement Claim, Ziplly shall use its reasonable best efforts to avoid an interruption of County service and may (or in the case of an award of an injunction, shall) at its sole option and expense: (i) procure for County the right to continue using the alleged infringing Product(s); (ii) replace or modify the alleged infringing Product(s) with an equivalent product(s) so that County's use is non-infringing; or (iii) if the remedies under the foregoing clauses (i) and (ii) are not commercially feasible, require County to return the affected portion of the Product(s) and refund to County for the depreciated value (as carried on the County's books) of such Product(s).

(c) Ziplly has no obligation or liability in respect to any Infringement Claim for the value of the use of a non-Ziplly product, service, data, business process, or other intellectual property rights, including County products, services, data and business processes and/or in the event that the affected Product: (i) is manufactured, designed or supplied by Ziplly in accordance with any design or special instruction furnished by County (ii) is used by County in a manner or for a purpose not contemplated by this Agreement or Ziplly's Product documentation; (iii) is used or located by County in a country other than the United States; (iv) is used by County in combination with other products or applications not provided by Ziplly under this Agreement excepting any such combination of the Products that is set out in Ziplly's specifications set forth in the Product documentation as it may be updated from time to time including any software developed by County through the permitted use of Products; or (v) is modified by County without authorization from Ziplly. If County continues use of the affected Product notwithstanding Ziplly's request to replace, modify or return the Product, Ziplly shall not be liable for such use. County shall pay Ziplly any settlement reached or final award for any and all claims against Ziplly for infringement based upon any of the foregoing.

(d) THE PROVISIONS OF THIS SECTION 10.5 CONSTITUTE THE EXCLUSIVE RECOURSE OF COUNTY AND THE ENTIRE OBLIGATION AND LIABILITY OF ZIPLY WITH RESPECT TO ANY CLAIM FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 11. INSURANCE

11.1 **Insurance.** Ziplly shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect County and the State should there be any claims, suits,

actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of Ziplly or Subcontractor, or agents of either, while performing under the terms of this contract.

The deductible and/or self-insured retention of the policies shall not limit or apply to the Ziplly's liability to the County and shall be the sole responsibility of the Contractor. All policies shall be primary to any other valid and collectable insurance. Ziplly shall instruct the insurers to give County ten (10) calendar days advance notice of any insurance cancellation or non-renewal. Ziplly's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by County.

Ziplly is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Additional Insureds. Except for Professional Liability or Errors and Omissions Insurance and Worker's Compensation, the insurance shall name Snohomish County and the state of Washington, their agents, officers, officials and employees as additional insureds under the insurance policy.

Evidence of Insurance. Ziplly shall submit to County before contract execution and within fifteen (15) calendar days of a written request by County, evidence of insurance which outline the coverage and limits defined in this insurance section. Ziplly shall provide copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered (including additional insured endorsement), the amounts, the period of coverage, and that County will be provided thirty (30) days advance written notice of cancellation.

During the term of the Agreement, Ziplly shall submit renewal evidence of insurance not less than thirty (30) calendar days prior to expiration of each policy required under this section, or as soon thereafter as possible.

Minimum Limits. Ziplly shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$5,000,000 per occurrence, \$6,000,000 aggregate.

Automobile Liability. Provide Automobile liability insurance. The minimum limit is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Ziplly shall maintain Professional Liability or Errors and Omissions Insurance. The Ziplly shall maintain minimum limits of no less than \$5,000,000 per occurrence to cover all activities by Ziplly and licensed staff employed or under contract to Ziplly. County and the state of Washington, their agents, officers, and employees need *not* be named as additional insureds under this policy.

11.2 Workers' Compensation insurance for Washington State as required by Title 51 RCW.

County maintains a fully funded self-insurance program as defined in Snohomish County Code 2.90 for the protection and handling of the County's liabilities, including injuries to persons and damage to property, automobile liability, professional liability, and workers compensation. The self-funded program will respond if an incident occurs involving negligence of the County's employees acting in the scope of their employment. Ziplly acknowledges, agrees and understands that the County is self-funded for all its liability exposures.

County agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Agreement. County agrees to provide at least 30 calendar days prior written notice of any material change in its self-funded program and, if requested, will provide a letter of self-insurance as adequate proof of coverage. Ziplly further acknowledges, agrees and understands that the County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore, the County does not have the ability to add any party as an additional insured.

ARTICLE 12.
GOVERNMENTAL IMPOSITIONS OCCASSIONED BY THIS AGREEMENT

12.1 Impositions Defined. "Impositions" means all taxes, fees, levies, duties, charges or withholdings of any nature (other than franchise, license and permit fees), together with any penalties, fines or interest thereon, arising out of the transactions contemplated by this Agreement that are imposed upon the Ziplly Network by any federal, state or local government or other public taxing authority as a result of this Agreement or any right granted hereunder.

12.2 [Intentionally Deleted.]

12.3 County's Responsibility. Except for taxes based on Ziplly's net income, County shall be responsible for and shall pay all Impositions (a) imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to County with respect to the IRU Fibers; or (b) which have been separately assessed, allocated to, or imposed on the IRU Fibers.

(a) To the extent such Impositions are not separately assessed, allocated to or imposed on the IRU Fibers, Ziplly will pay all such Impositions and provide notice of a reasonable allocation to County and the basis of that allocation. County shall promptly reimburse Ziplly for County's reasonable share of all such Impositions.

(b) "County's share" shall mean County's pro rata share of such Impositions based on the basis of the Imposition, including but not limited to total receipts, income, or fiber mile, which shall be allocated relative to the number of IRU Fibers in the affected portion of the Ziplly Network compared with the total amount of fibers in the affected portion of the Ziplly Network during the relevant tax period.

12.4 **Impositions Reporting.** Ziplly and County agree to cooperate fully in the preparation of any returns or reports relating to the Impositions.

ARTICLE 13.
NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, by a reputable overnight courier, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to Ziplly at:
Ziplly Fiber Northwest, LLC
ATTN: Legal Dept.
135 Lake Street South, Suite 155
Kirkland, WA 98103
Email: legal@ziplly.com

All notices and other communications shall be given to County at:

Snohomish County
ATTN: IT Director
3000 Rockefeller Ave, M/S 709
Everett, WA 98201
Email: DIS.Admin@snoco.org

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

ARTICLE 14.
DEFAULT

14.1 **Default Defined.** A default shall be deemed to have occurred under this Agreement if, in the case of a material breach of this Agreement, a Party fails to cure such material breach within thirty (30) days after notice specifying such breach, provided that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

14.2 **No Early Termination of IRU for Default.** Notwithstanding anything to the contrary in this Agreement, once County has paid the IRU Fee to Zply, prior to the expiration of the Term of this Agreement, Zply may not terminate County's rights in the IRU Fibers for the duration of the IRU Term for any reason except by order of a court of law. Notwithstanding the foregoing, Zply may suspend the right to use IRU Fibers to the extent necessary to stop any breach of Article 8 until such time as the breach has been cured.

14.3 **County's Cure of Service Default.** Notwithstanding any other provision of this Agreement, in the event, regardless of reason or Zply's good faith attempts, Zply does not or is unable to perform the services described in this Agreement, or does not or is unable perform services in compliance with the standards and specifications set forth in this Agreement, County may (but is not obligated), upon written notice to Zply reasonable under the circumstances but without authorization from Zply, perform such services or work and/or take such action that it deems necessary without subjecting itself to any liability to Zply. In such instances, County may request Zply to pay County an amount equal to the actual costs of services performed by County less County's proportionate share (based on fiber count). If County requests payment, Zply will remit payment to County within thirty (30) days from the date of County's invoice.

14.4 **Injunctive Relief.** The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder and/or injunctive relief, this being in addition to any other right or legal remedy available to such Party.

ARTICLE 15.
REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

Each Party represents and warrants that:

(a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement.

(b) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and

(c) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ITS SYSTEM, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 16.
FORCE MAJEURE

Neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; wind; pandemic; flood; fiber or cable cut not resulting from the responsible Party's failure; or other material failures which cannot be remedied as provided in section 1.4 and then only during such periods as may be required to reasonably repair the fiber or cable cut, or other material failures shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure; failure of third party power or system failures, lack of or delay in transportation not resulting from the responsible Party's failure; government codes, ordinances, laws, rules, regulations or restrictions (collectively, "Regulations"); war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of Zply to obtain access to the Zply Network not resulting from the Zply's failure; or any other cause beyond the reasonable control of such Party.

ARTICLE 17.
ASSIGNMENT AND COUNTY FIBER TRANSFERS

17.1 **No Assignment.** Except as specifically provided herein, neither Party may assign any rights or duties under this Agreement or this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably delayed, conditioned or withheld.

17.2 **Assignment to Affiliate or Successor of Ziplly.** The foregoing notwithstanding, Ziplly may, without the prior consent of, but upon 90 days' notice to the other Party, assign this Agreement to (a) an affiliate of Ziplly, (b) the parent of the Ziplly, (c) any company into which the Ziplly may be merged or consolidated, or (d) any company that acquires substantially all of the assets or stock of Ziplly; provided the assignee shall be subject to all the provisions of this Agreement. An "affiliate" of Ziplly shall mean any company or entity which, directly or indirectly, controls or is controlled by or is under common control with Ziplly, or a successor company to Ziplly by merger, consolidation, or non-bankruptcy reorganization. For purpose of the definition of "affiliate," the word "control" (including "controlled by" and "under common control with") means, with respect to any corporation, partnership, or association, possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a particular corporation, partnership or association, whether through the ownership of voting securities or by contract or otherwise.

17.3 **Assignment for Collateral.** Each Party (referred to in this Article 17.3. as the "Assigning Party") shall also have the right, without the other Party's consent, to assign or otherwise transfer this Agreement as collateral to any institutional lender to the Assigning Party (or institutional lender to any permitted transferee or assignee of the Assigning Party); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, the other Party to this Agreement agrees to accept performance of this Agreement by the assignee so long as the assignee is subject to the provisions of this Agreement. Any lien rights claimed by County under this Agreement shall be and are hereby specifically subordinated to the security interests of the lender(s) of Ziplly and its affiliates.

17.4 **Other IRUs.** Nothing contained in this Article shall be deemed or construed to prohibit Ziplly from selling, transferring, leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements with other persons respecting any facilities constituting a part of the Ziplly Network. Nothing contained in this Article shall be deemed or construed to prohibit County from leasing, licensing, subleasing, granting indefeasible rights of use or entering into similar agreements or arrangements with other persons respecting other fibers.

ARTICLE 18.
GENERAL

18.1 **Binding Effect.** This Agreement and each of the parties' respective rights and obligations under this Agreement, shall be binding on and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

18.2 **Waiver.** The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

18.3 **Governing Law.** This Agreement and all disputes or claims arising therefrom shall be governed by and construed in accordance with laws of the State of Washington without reference to its choice of laws principles.

18.4 **Rules of Construction.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

(a) Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

(b) Except as set forth to the contrary herein, any right or remedy of County or Zply shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

(c) Nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.

(d) This Agreement has been fully negotiated between and jointly drafted by the Parties.

(e) All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement, the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party's performance.

18.5 **No Personal Liability.** Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall

seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Article and shall be entitled to enforce the obligations of this Article.

18.6 Relationship of the Parties. The relationship between County and Ziply shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. County and Ziply, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

18.7 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18.8 Survival. All obligations of in this Agreement shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination date shall survive the termination date of this Agreement.

18.9 Time. It is mutually agreed and understood that time is of the essence of this Agreement.

18.10 Attorney Fees. Unless expressly permitted under another provision of the WSBO Grant, in the event of litigation or other action brought to enforce WSBO Grant, Ziply Grant Agreement or IRU terms, each party agrees to bear its own attorney's fees and costs.

18.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

Signature page follows

In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have executed this Agreement as of the Effective Date.

ZIPLY:

ZIPLY FIBER NORTHWEST, LLC

By: Chris Denzin

Name: Chris Denzin

Title: Chief Operating Officer

Date: 10/27/2023

COUNTY:

SNOHOMISH COUNTY, WASHINGTON

By: **Ken Klein**  Digitally signed by Ken Klein
Date: 2023.11.07 14:26:07 -08'00'

Name: Ken Klein
Executive Director

Title: _____

Date: _____

ATTACHMENT 1

DESCRIPTION OF IRU FIBERS

Each defined section will have up to twelve (12) fibers assigned to the IRU and as generally depicted in the maps in Attachment 2 and specifically detailed in the Ziplly Grant Agreement Exhibit B (Statement of Work), Section 4.4 and the tables below. IRU Fibers will be in cables that run from access point to access point in the areas defined in the maps. The table below identifies known segments and end points, and final listing of end points will be defined during the final Engineering process for acceptance by the County. Access procedures will be defined and communicated to the County during the final design process and shall include the Community Anchor Institutions (CAIs) listed in Attachment 2 and County facilities.

Description of IRU Fibers:

Segment	IRU Fiber Count	IRU Fee
Arlington CO to Darrington CO (Includes Segments 1A, 1B, 1C, 3A, 3B, 3C)	12 Fibers	\$60,000 Oso Firestation endpoint
Darrington CO to SR530 County line (Includes segments of Darrington Phase 2A:D1-101 to D1-106)	4-6 Fibers	\$50,800 Darr Ranger Station and White Horse Park endpoints
Arlington Phase 2B (Kackman Road)	12 Fibers	
Arlington Phase 2C (Grandview Road)	2 Fibers	
Arlington Phase 2D (Stanwood/Bryant Road)	2 Fibers	
Arlington Phase 2E (Settlement Road)	2 Fibers	
Darrington Phase 1D, 1E	0 Fibers	
Arlington City Hall, not in build	12 Fibers	\$14,300

Description of Access/Connecting Points at Individual Endpoints:

The Individual endpoints requested by the County are identified on maps in Attachment 3, "Snohomish County Endpoints", with additional fee, fiber count and construction details contained in the table below.

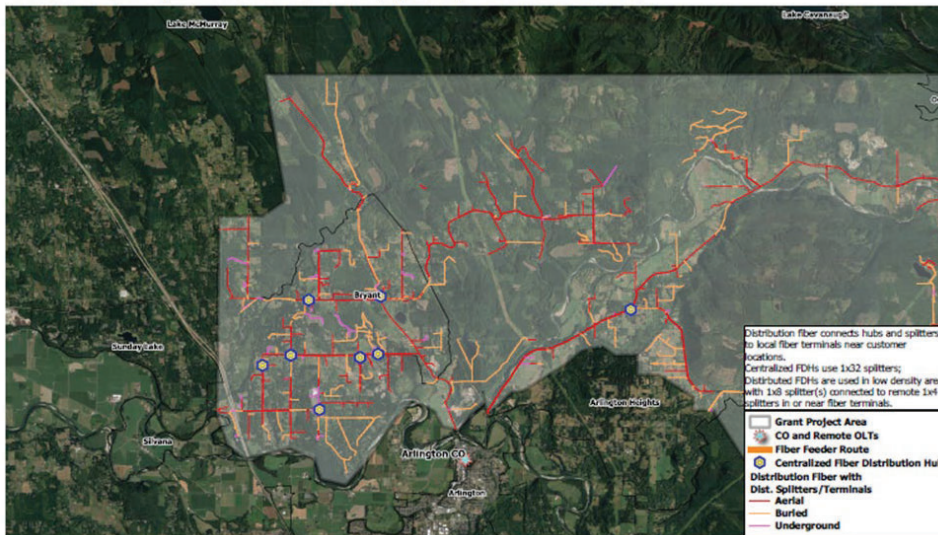
Endpoint Location	County Access Point	Comments	IRU Fee	Notes
Arlington CO #0	Arlington Central Office	All SR530 Fibers - First Stop Cascade District Court	\$ -	2500" to Courthouse
Cascade District Court, Site #1	NEMA box attached to exterior wall of Cascade district court.	County Provided NEMA box on Exterior Wall. Fiber continue Darrington via SR530	\$ -	
Public Works, Site #2	(Qty 2 fibers) Fibers 5,6 Access Pedestal off HW530	Fibers to enter from Arlington and exit to Darrington via patch panel	\$ -	
Taffon Trailhead Park, Site #3	(Qty 2 Fibers) 5,6 Access Point - County Building at park	Fibers to enter from Arlington and exit to Darrington via patch panel	\$ -	
Oso Fire, Site #4	(Qty 2 Fibers) Fiber 7, 8 Oso Firestation access	Fiber to enter from Arlington and exit to Darrington via patch panel	\$ 60,000.00	Oso slide and Hazen had to change build plan to accommodate ~5,000ft
Darrington Blue Grass Music Park, Site #5	(Qty 1 Fiber) Fiber 8 Pedestal Access	Fiber to enter from Arlington and exit to Darrington via pedestal	\$ -	
Darrington Fire, Site #7	All Fibers: Darrington Fire Station/ Darrington Police Station (shared facility)	Terminated in County provided LIU. Fiber to enter from Arlington and exit to Darrington CO	\$ -	On path to Darrington. Expected as a known termination point
Darrington CO #00	All Fibers Central Office Access	Terminate Fibers 1-6 in CO. Patch fibers 7 and 8 to Darrington Ranger Station and fibers 9-12 north on SR530 to County line		2400' CO to Fire #7 (Supports patch through to North route)
Darrington Ranger Station #8	2 Fibers Ranger Station	Fibers 7 and 8 Connected through Darrington CO	\$ 46,800.00	3600ft in area not part of build
Northern 530 County Line #9	4 Fibers - Pedestal @ County line SR530)	Fibers 9 through 12 connected through Darrington CO with splice/connection at White Horse community park.	\$ 4,000.00	Would need a HH as well as adding a splice. Need Eng review, est \$4,000 depending on the circuit migration impacts
Arlington Phase 2				
Arlington CO #0	Fiber - 12 Strands	Kackman Road Fiber	\$ -	
Fire District 18 Station 90 #10	(Qty 1 Fiber) Fire Station 90	Terminate Fiber #1 in Fire station 90	\$ -	
Angel of the Winds Casino #11	(Qty 1 Fiber) - Angel of Winds Casino	Terminate fiber #2 in Angel of Winds Casino	\$ -	This is a current Ziplly customer. Can likely accommodate 2 strands
HW9 and Stanwood Bryant Road, Site #12	(Qty 2 Fiber) Pedestal	Terminate fiber #3 and 4 on pedestal patch panel	\$ -	
Fiber patch panel HW9, Site #13	(Qty 2 Fiber) Pedestal	Terminate fiber #3 and 4 on pedestal patch panel	\$ -	Terminate fiber at endpoint 12 and 13 with a gap between endpoints
Fiber patch panel Nakashima Heritage Barn Parks Department, Site #14	(Qty 2 Fiber) Pedestal	Terminate fiber #3 and 4 on pedestal patch panel	\$ -	Dependent on site 13 but this portion will be built on grant
Fiber patch panel Grandview Rd & 99th Ave NE, Site #15	(Qty 1 Fiber) Pedestal	Terminate fiber #5 on pedestal patch panel	\$ -	
Fiber patch panel Grandview Trail & 115th Ave NE, Site #16	(Qty 1 Fiber) Pedestal	Terminate fiber #5 on pedestal patch panel	\$ -	Terminate fiber at endpoint 15 and 16 with a gap between endpoints
North County Fire Station 92, Site #17	(Qty 1 Fiber) Pedestal	Terminate fiber #5 on pedestal patch panel	\$ -	See note from site 16
City of Arlington, Site #18	(Qty 2 Fiber) Arlington Police Department	Terminate fiber 6 and 7 on patch panel	\$ 14,300.00	1100' of fiber not in build plan
		Total IRU Fee	\$ 125,100.00	

ATTACHMENT 2 MAPS AND ANCHOR INSTITUTIONS

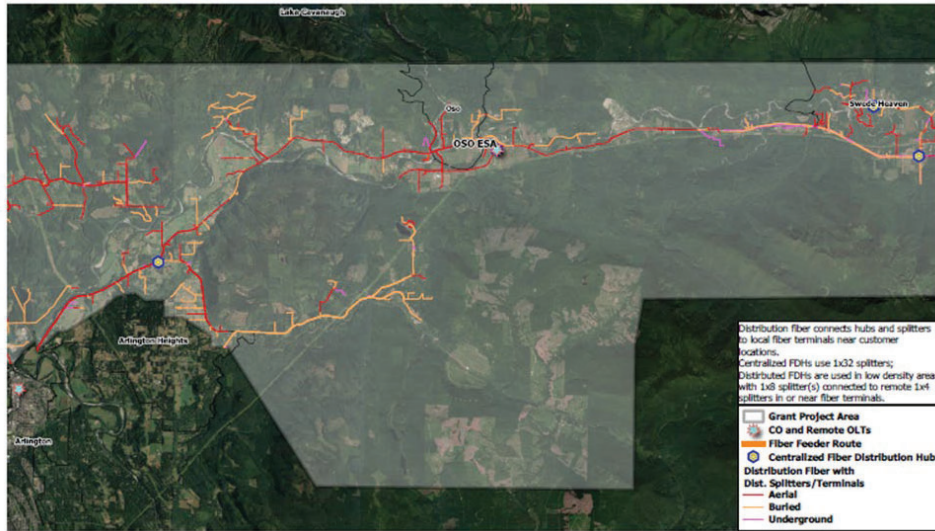
Snohomish County Central Office and Remote OLTs, New Fiber Feeder Routes, and Fiber Distribution Hubs



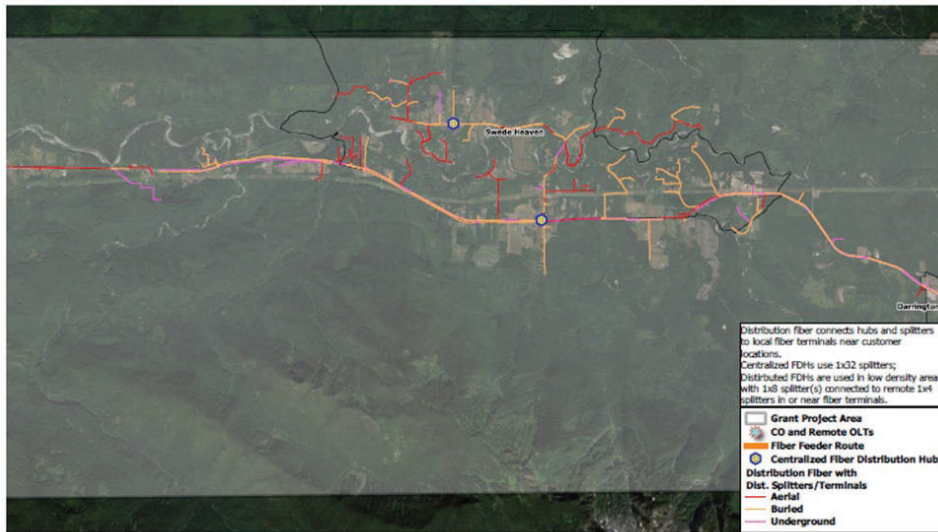
Snohomish County Fiber Distribution Hubs/Splitters, and Fiber Distribution



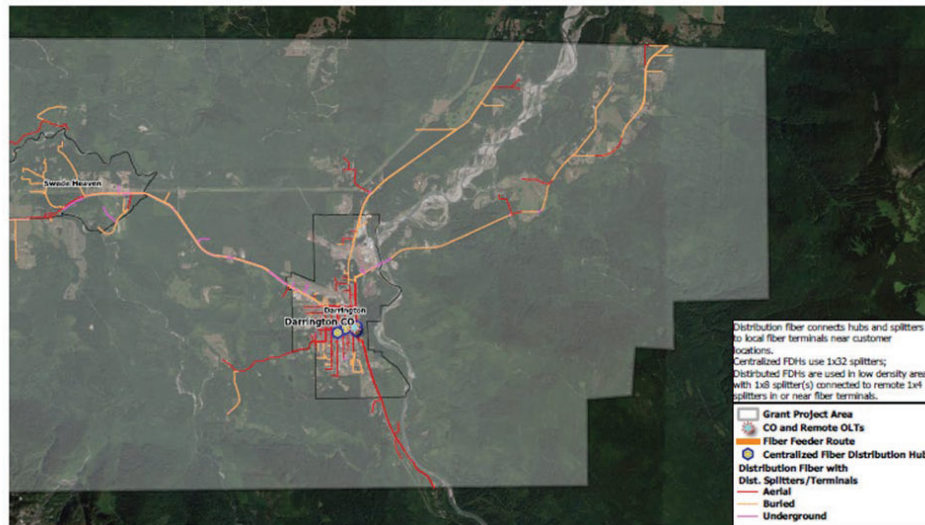
Snohomish County Fiber Distribution Hubs/Splitters, and Fiber Distribution



Snohomish County Fiber Distribution Hubs/Splitters, and Fiber Distribution



Snohomish County Fiber Distribution Hubs/Splitters, and Fiber Distribution



List of Community Anchor Institutions (CAIs):

- [Arlington City Hall - 238 N Olympic Ave, Arlington, WA 98223](#)
- [Arlington Library – 135 N Washington Ave, Arlington WA 98223](#)
- [Arlington School District – 315 N French Ave, Arlington, WA 98223](#)
- [Cascade District Court - 415 E Burke Ave, Arlington, Wa 9822](#)
- [Darrington Clinic EMS Heliport - 1190 Main St, Darrington, WA 98241](#)
- [Darrington Elementary School 1075 Fir St, Darrington, WA 98241](#)
- [Darrington Fire District 24 and Snohomish County Sheriff - 1115 Seeman St, Darrington, WA 98241](#)
- [Darrington High School 1085 Fir St, Darrington, WA 98241](#)
- [Darrington Library and Darrington Town Hall - 1005 Cascade St, Darrington, WA 98241](#)
- [Darrington Ranger Station - 1405 Emens Ave N, Darrington, WA 98241](#)
- [Darrington School District 1065 Fir Street Darrington, WA 98241](#)
- [North County Regional Fire Station - #92 29219 Heimer Road Arlington, WA 98223](#)
- [Oso Fire Department - 21824 WA-530, Arlington, WA 98223](#)
- [Skagit Regional Health 1190 Darrington St, Darrington, WA 98241](#)
- [Snohomish County Fire District 18 Station #90 - 3002 252nd St NE, Arlington, WA 98223](#)
- [Snohomish County Fire District 18 Station 91 26828 State Route 9 Northeast Arlington, WA 98223](#)
- [Snohomish County Fire District 21 – 12131 228th St NE, Arlington, WA 98223](#)
- [Snohomish County Fire District 24 Station 38 30020 Swede Heaven Road Arlington, WA 98223](#)
- [Stillaguamish Tribal Law enforcement 22714 Sixth Avenue NE Arlington, WA 98223](#)

Attachment 3

COUNTY ENDPOINT MAPS

ATTACHMENT 4

ACCEPTABLE USE POLICY (11.2.2022 version)

ZiPLY™ Fiber's Internet Service Acceptable Use Policy-Commercial

ZiPLY™ Fiber's Internet Service Acceptable Use Policy

Hi. It is ZiPLY Fiber's intent to provide our customers with the best Internet service possible. In order to accomplish this task, we have designed our network for optimal performance based on our customers using the service in a predictable way. We have adopted this Acceptable Use Policy ("Policy") which outlines what we consider to be acceptable use of our Internet services (the "Service"), as well as permissible and prohibited conduct for using the Service to access the Internet.

Questions regarding this policy and complaints of violations of it by our customers and users can be directed to: care@ziPLYfiber.com or 888-488-0051.

1. Customer Responsibility: It is the responsibility of all of our Service customers and all others who have access to our network ("customer," "you," or "your"), to comply with this Policy. Failure to comply with this Policy could result in the suspension or termination of your Service. If you do not agree to comply with this Policy, you must immediately stop use of the service and notify us so that we can close your account. We reserve the right to immediately terminate the Service and any applicable subscriber agreements or service orders if you engage in any of the prohibited activities listed in this Policy or if you use equipment or Service in a way which is contrary to any of our policies or any of our suppliers' policies.

2. Prohibited Uses and Activities: Prohibited uses include, but are not limited to, using the Service or any associated equipment to:

(i) undertake or accomplish any unlawful purpose. This includes, but is not limited to, posting, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening, defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law, order or regulation;

(ii) post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be objectionable, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate, regardless of whether this material or its dissemination is unlawful;

(iii) access any other person's computer or computer system, software, or data without such person's knowledge and consent; breach or circumvent, or attempt to breach or circumvent, the security system of any host, network, server, or user account. This includes, but is not limited to,

accessing data not intended for you, logging into or making use of a network, server or account you are not expressly authorized to access, or probing the security of other hosts, networks, or accounts; use or distribute tools designed or used for compromising security, such as password guessing programs, decoders, password gatherers, analyzers, cracking tools, packet sniffers, port scanning, network probing, encryption circumvention devices, or Trojan Horse programs; provided, that any port scanning, network probing or other similar network or security tools are permitted when used by you for purposes of securing or optimizing your own network, or if explicitly authorized by the destination host network;

(iv) upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way, information, software or other material obtained through the Service or otherwise that is protected by copyright or other proprietary right, without obtaining permission of the owner;

(v) copy, distribute, or sublicense any software provided by us or any third-party in connection with the Service, except that you may make one copy of each such software program for back-up purposes only;

(vi) restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Service, including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of network traffic that impede the ability of other authorized users of the Service to use the Service;

(vii) restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any host, server, backbone network, node or service, or otherwise cause a performance degradation to any of our or our suppliers' facilities used to deliver the Service;

(viii) for our residential customers, resell the Service or otherwise make available to anyone outside of your residence the ability to use the Service (e.g., wi-fi, or other methods of networking), in whole or in part, directly or indirectly, or on a bundled or unbundled basis. For our residential customers, the Service is for personal and non-commercial use only and residential customers agree not to use the Service for operation as an Internet service provider or for any business enterprise or purpose, or as an end-point on a local area network or wide area network outside of our network;

(ix) for residential subscribers, connect multiple computers to set up a local area network that in any manner would result in a violation of the terms of this Policy or an applicable Service plan;

(x) transmit unsolicited bulk or commercial messages or "spam." This includes, but is not limited to, unsolicited advertising, promotional materials or other solicitation material, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, and petitions for signatures;

(xi) send numerous copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files to a recipient that disrupts or clogs Ziplly Fibers network;

- (xii) distribute programs that remove locks or time-outs built into software (cracks); for our residential customers, run programs, equipment, computers or servers from your residence that provide network content or any other services to anyone outside of your residence, such as public e-mail, web hosting, file sharing, gaming server, and proxy services and servers;
- (xiii) initiate, perpetuate, or in any way participate in any pyramid or other illegal soliciting scheme;
- (xiv) participate in the collection of e-mail addresses, screen names, or other identifiers of others (without their prior consent), a practice sometimes known as spidering or harvesting, or participate in the use of software (including "spyware") designed to facilitate this activity;
- (xv) collect responses from unsolicited messages;
- (xvi) impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity;
- (xvii) service, alter, modify, or tamper with the Zply Equipment or Service or permit any other person to do the same who is not authorized by us;
- (xviii) connect any Zply Equipment to any computer outside of your premises;
- (xix) collect, or attempt to collect, personal information about third parties without their consent;
- (xx) interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to "crash" a host; and/or
- (xxi) violate the rules, regulations, or policies applicable to any network, server, computer database, or Web site that you access.

3. Security: As a Service customer, it is your responsibility to secure your computer and network equipment so that it is not subject to external threats such as viruses, spam, and other methods of intrusion. In all cases, you are solely responsible for the security of any device you choose to connect to the Service, including any data stored or shared on that device. You are responsible for any misuse of the Service, even if the misuse was committed without your authorization. Therefore, you must take steps to ensure that others do not use your computer or network to gain unauthorized access to the Service or to use the Service in an unauthorized manner.

4. Inappropriate Content and Transmissions: We reserve the right (but assume no obligation), to refuse to transmit or post and to remove or block any data, information or materials, in whole or in part, that we, in our sole discretion, deem to be offensive, indecent, or otherwise inappropriate, and regardless of whether this material or its dissemination is unlawful. Neither we nor any of our affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, file transfers, web searches, e-mail sent or received, visits or postings to social media sites, instant message transmissions, etc.) made using the Service. However, we and our affiliates, suppliers, and agents have the right to monitor these transmissions and postings from time to time for violations of this Policy and to disclose, block,

or remove them in accordance with this Policy and any other applicable subscriber agreements or service orders.

5. Online Communication: Forging, altering, or removing electronic mail headers is prohibited. You may not reference Zply Fiber or the Zply Fiber network in the header or by listing an IP address that belongs to us or our network in any unsolicited communication even if that communication is not sent through the Service. In the event that we believe in its sole discretion that any subscriber name, account name, or e-mail address (collectively, an "identifier") using the Service may or is being used for, any misleading, fraudulent, or other improper or illegal purpose, we (i) reserve the right to block access to and prevent the use of any such identifier, and (ii) may at any time require any customer to change his or her identifier. In addition, we may at any time reserve any identifiers on the Service for our own purposes.

6. Network, Bandwidth, Data Storage and Other Limitations: You must comply with all current, applicable bandwidth, data storage, and other limitations on the Service established by us and our suppliers. In addition, unless otherwise provided by your subscriber agreement or service order, you may only access and use the Service with a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not access or use the Service with a static IP address or using any protocol other than DHCP unless you are subject to a Service plan or Service order that expressly permits otherwise. You must ensure that your activity does not improperly restrict, inhibit, or degrade any other user's use of the Service, nor represent (in our sole judgment) an unusually large burden on our network. In addition, you must ensure that your activities do not improperly restrict, inhibit, disrupt, degrade or impede our ability to deliver the Service and monitor the Service, our network backbone, network nodes, and/or other network services.

7. Copyright Infringement: We are committed to complying with U.S. copyright and related laws, and require all customers and users of the Service to comply with these laws. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Service (or any part of the Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is our policy in accordance with the DMCA and other applicable laws to reserve the right to terminate the Service provided to any customer or user who is either found to infringe third party copyright or other intellectual property rights, including repeat infringers, or who we believe in its sole discretion is infringing these rights. We may terminate the Service of any such customer or user at any time with or without notice. Copyright owners may report alleged infringements of their works that are committed using the Service by sending our authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon our receipt of a satisfactory notice of claimed infringement for these works, we will take appropriate action. If the affected customer or user believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to us. Upon our receipt of a counter notification that satisfies the requirements of DMCA, we will provide a copy of the

counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that we will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

Copyright owners may send us a notification of claimed infringement to report alleged infringements of their works to:

Northwest Fiber, LLC dba Ziply Fiber
135 Lake Street S Suite 155
Kirkland, WA 98033
Attn: Legal Department

DMCANotice@nwfbr.com

Copyright owners may use any form of notification of claimed infringement form that satisfies the requirements of Section 512(c)(3) of the U.S. Copyright Act. Under the DMCA anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to us, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material.

If a notification of claimed infringement has been filed against you, you can file a counter notification with our designated agent using the contact information shown above. All counter notifications must satisfy the requirements of Section 512(g)(3) of the U.S. Copyright Act.

For more information about the DMCA, visit copyright.gov.

8. Violation of Acceptable Use Policy: We do not routinely monitor the activity of Service accounts for violation of this Policy. However, in our efforts to promote good citizenship within the Internet community, we will respond appropriately if we become aware of inappropriate use of our Service. Although we have no obligation to monitor use of the Service and/or the network, we and our suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content from time to time to operate the Service; to identify violations of this Policy; and/or to protect our network, the Service and our customers and users.

We prefer to advise customers of inappropriate behavior and any necessary corrective action. However, if the Service is used in a way that we or our suppliers, in our sole discretion, believe violate this Policy, we or our suppliers may take any responsive actions they deem appropriate. These actions may include, but are not limited to, temporary or permanent removal of content, cancellation of online posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service. Neither we nor our affiliates, suppliers, or agents will have any liability for any these responsive actions. These actions are not our exclusive remedies and we may take any other legal or technical action we deem appropriate. We reserve the right to investigate suspected violations of this Policy, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material transmitted over our servers, routers and network. During an investigation, we may suspend the account or accounts involved and/or remove or block material that potentially violates this Policy. You expressly authorize us and our suppliers to cooperate with (i) law enforcement

authorities in the investigation of suspected legal violations, and (ii) system administrators at other Internet service providers or other network or computing facilities in order to enforce this Policy. This cooperation may include our providing available personally identifiable information about you to law enforcement or system administrators, including, but not limited to, subscriber name, IP address, information regarding your use of the Service and other account information. Upon termination of your account, we are authorized to delete any files, programs, data and e-mail messages associated with your account.

Any failure to enforce this Policy, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this Policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

You agree to indemnify, defend and hold harmless us and our affiliates, suppliers, and agents against all claims and expenses (including reasonable attorneys' fees) resulting from you engaging in any of the prohibited activities listed in this Policy or resulting from your violation of this Policy or of any other posted policy related to use of the Service. Your indemnification obligations will survive any termination of your Zply Fiber Service.

With respect to County end users only, the previous paragraph shall be replaced with:

To the extent allowed for a governmental entity, the County shall have an acceptable use policy that is substantially similar to this Acceptable Use Policy and apply it to all of its end users of the Zply Network. The County shall publish its policy to its end users and enforce it according to its terms.

EXHIBIT E
WSBO GRANT APPLICATION

Powered by ZoomGrants™

Washington State Dept. of Commerce
Washington State Broadband Office
WSBO Infrastructure Acceleration Grants
Deadline: 11/30/2021Snohomish County
Snohomish County and Ziplly Fiber NW, LLC - SR 530 ProjectJump to: [Pre-Application](#) [Application Questions](#) [Budget](#) [Tables](#) [Documents](#)**USD\$ 18,461,464.00** Requested

Submitted: 11/30/2021 5:44:29 PM (Pacific)

Project ContactBrook Chesterfield
Brook.Chesterfield@snoco.org
Tel: 4252619849**Additional Contacts**

Randy.Blair@co.snohomish.wa.us,jessica.epley@ziply.com

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Everett, WA 98201
United States
Telephone 4252619849
Fax
Web**County Executive**Dave Somers
dave.somers@co.snohomish.wa.us**Pre-Application** [top](#)**1. Entity Type:***If a partnership, is there at least one public partner? Please attach an operating agreement in the document tab.*

- Local Government (including but not limited to Ports and Public Utility Districts)
- Federally Recognized Tribe
- Nonprofit Organization
- Nonprofit Cooperative Organization
- Multiparty Entity (must include at least one public entity)
- Other:

2. Is any part of the project area located on federally recognized Tribal Lands?*If yes, attach a letter of support from the affected Tribe(s) in the documents tab*

- Yes
- No

3. Does the Applicant have the 10% matching cash funds secured?

- Yes
- No, explain:

4. Is there a Broadband Action Team (BAT) in the project area?*If yes, please attach a letter of support in the documents tab.*

- Yes
- No

5. Project Description:*Please provide a detailed description of the project. Attach a shape file of the boundary map with identifiable location details in the document tab.*

This project would be implemented by Ziplly Fiber NW, LLC. The proposed project area consists of the State Route 530 corridor from the City of Arlington to the Town of Darrington, covering approximately 5,598 specific locations that would have access to reliable internet access after completion.

Currently, Ziplly Fiber's service in the proposed FTTP area in Snohomish County primarily consists of copper based voice service and

limited copper based digital subscriber line (DSL) broadband service. The distribution network is principally constructed of fiber. To best serve the proposed locations within this project area, both Central Office and network access infrastructure upgrades will be required. The network upgrade will be assigned to support gigabit speeds over a Gigabit Passive Optical Network (GPON) network architecture. The primary service delivery method will be Gigabit Passive Optical Network (GPON) which is the most common approach today for fiber to the home delivery. Supporting infrastructure in the Central Office is known as the Optical Line Terminal (OLT) providing the GPON ports and the Fiber Distribution Panels (FDPs) terminating feeder fiber to the Outside Plant. The OLT connects to a local Data Switch/Router for Transport back to Core Routers and then to Peering Point connections to the public internet. Middle mile and Core networks utilize redundancy and diversity.

The OLT and various core upgrades will be required to support the additional capacity requirements. The last-mile will consist of single-mode fiber terminated on fiber terminals within drop distance of a customer address. The network drop and customer network interface will be placed to a customer's property based on a service request. From the Central Office out, the best method of construction (aerial placement, trenching, or directional/micro trenching bore) will be utilized to place both feeder fiber to area Fiber Distribution Hubs (FDHs) housing splitters and distribution fiber from there to locally placed fiber Multi-Service Terminals (MSTs) where drop fiber is terminated to our customers. In low density rural areas in particular, fiber drops can be a challenge with drop lengths reaching hundreds and occasionally thousands of feet. In some cases, it may required to place a remote OLT closer to the locations to be served due to distance from the Central Office or to be more cost effective in fiber utilization. Another cost optimization option is to utilize distributed splits with splitters placed in multiple FDHs cascaded between the Central Office and the customer locations (i.e. 1x8 and 1x4 instead of a centralized single 1x32).

Ziply routinely plans current and future GPON feeder and distribution fiber sizing anticipating requirements for spare fiber in case of individual fiber trouble, multi-tenant and multi-dwelling unit needs, mobile service towers, and locations/customers that may require direct Ethernet fiber connectivity instead of a GPON connection.

6. Is this project part of a larger, phased project?

If Yes, explain how this phase fits in the overall project

No.

7. Provide the project's anticipated completion date.

Within 24 months of the award.

8. Does the Applicant have control of the project site for at least 25 years, either through ownership or a long term lease?

If 'No' please briefly explain and include the date you expect to meet this condition.

Yes

No, explain:

9. Does the infrastructure funded by this grant provide broadband connectivity for at least 25 years?

If no, give an explanation for a shorter service period.

Yes.

10. Is this project designed to deliver broadband service, as part of a contiguous network that: At minimum, delivers transmission speeds of 100 megabits per second download and 100 megabits per second upload (100/100)

Yes

No, explain:

11. Is this project designed to deliver broadband service, as part of a contiguous network that: Is deployed in unserved areas, defined as areas lacking access to reliable (wireline connection) service at speeds of at least 25/3.

Yes

No

12. Has the Applicant consulted with incumbent service providers in the area and the incumbent's position on the project (support, neutral, opposed)? Documentation will be required in phase two.

If known, is the incumbent ISP planning to improve services in the next 24 months? Please avoid requesting funds for projects in areas in which there are existing agreements to build reliable wireline service with minimum speeds of 100/20 by 12/31/24

Snohomish County's partner is the incumbent local exchange carrier – Ziply Fiber Northwest, LLC. Ziply Fiber has successfully bid on census blocks adjacent to this project through the FCC's Rural Digital Opportunity Fund (RDOF) that has yet to be finalized. If this project is selected, Ziply Fiber will accelerate it's RDOF build from the planned six year to deployment to within two years bringing this high quality network to our constituents faster than otherwise would have been realized by Ziply Fiber alone.

13. Is the applicant prepared to demonstrate commitment by at least one internet service provider (ISP) to provide broadband service using the infrastructure funded. A signed contingency agreement from the ISP will be required

Yes

No

14. Is the Applicant prepared to provide anticipated pricing structure for the broadband service. Affordable pricing is a priority, as is an income-based service plan for all customers.

Yes

No, explain:

Documents Requested *Required? **Attached Documents ***[530 Corridor Shapefile](#)[530 Corridor Database File](#)[530 Corridor SHX file](#)[US Rep DelBene Support Letter](#)[Senator Wagoner - Rep Eslick Support Letter](#)[Snohomish County Council Support Letter](#)[Snohomish County BAT Letter of Support](#)**Application Questions** [top](#)**Project****1. Project Description:**

In 1000 characters or less, BRIEFLY describe the scope of the broadband project. Please do not describe history or need.

The Snohomish County-Ziply Fiber SR530 Project will construct a Fiber to the Premise (FTTP) network across Snohomish County from the City of Arlington to the town of Darrington along the State route 530 corridor. The proposed project will enable fiber connectivity to approximately 5,598 premises. The project scope of work will include Central Office equipment and network infrastructure upgrades to enable Gigabit Passive Optical Network (GPON) to enable gigabit connectivity at each end user location.

2. Project Area:

Describe the project area. Include boundary information such as street names, landmarks, etc. If the project accedes the applicant's jurisdictional boundaries please describe why the applicant is working outside it's jurisdictional boundary.

The area served by the Snohomish-Ziply FTTP project is along and adjacent to State Route 530, from the City of Arlington to the Town of Darrington. From Arlington the network will connect Trafton, Cicero. Oso, Rowan, Hazel, Whitehorse, and Darrington.

3. Legislative (1-49) and congressional (1-9) districts:

See Library for Washington State Legislative District Finder at: <https://app.leg.wa.gov/DistrictFinder/> Legislative Districts 10 & 39. Congressional Districts 1 and 2.

Scope of Work**4. Is middle mile construction part of the project?**

If Yes, explain the need for middle mile and why existing infrastructure is not available for use or a viable option for this project.

 No Yes, explain:**5. Connection points of "middle mile" and of "last mile":** Number of last mile connections (passings) Number of middle miles, if any included in this project **TOTAL****6. Miles of fiber to be installed and method of installation for the type of technology deployed:** Pole - Fiber Optic Miles Trench - Fiber Optic Miles Pushed(blow)/pulled - Fiber Optic Miles Pole - Fixed Wireless Trench - Fixed Wireless Other, explain: **TOTAL****Method of Installation****7. If Fiber optic technology will be deployed, what is the grade?**

If not applicable, please write N/A.

 OM5

- OM4
- OM3
- OM2
- OM1
- N/A

Other explain: Ziplly Fiber uses Single Mode (OS2) technology which produces higher bandwidth and longer distance than OM architecture.

8. What are the linkages and what are the distances between links (towers, transmitters, etc.) and include the longest distances in miles:

Ziplly Fiber designs its GPON architecture with a linkage distance of 20 kilometers (12.4 miles) but have the flexibility with long range optics to expand that distance to approximately 30 kilometers (18.6 miles).

9. Describe the challenges unique to this location that are avoided or addressed as a result of this technology or installation methodology:

Ziplly Fiber will replace an existing low-capacity copper network with fiber optics capable of delivering 1/1 Gigabit per second to each premise at or below 80 milliseconds total round-trip latency. The available speed tiers for business, residential and Community Anchor Institutions are 100/100 Mbps at a rate of \$40.00 per month or 1/1 Gbps at a rate of \$60.00 per month. Customers can use their own customer provided equipment (CPE) on the network or can rent equipment from Ziplly Fiber for \$10.00 per month.

The network will be designed to support gigabit speeds over a gigabit passive optical network (GPON) network architecture. The last-mile will consist of single-mode fiber terminated on fiber terminals within drop distance of a customer address. The network drop and customer network interface will be provided to a customer's property based on a service request. Supporting infrastructure in the Central Office will be Optical Line Terminal (OLT). The OLT connects to the Data Switch/Router for Transport back to the Ethernet drain. The OLT and core upgrades will be required to support the current need as well as anticipated future growth necessitating additional capacity across the PSA.

10. Will customer premise equipment be needed to enable last mile connections? Is this responsibility, along with maintenance and service of the equipment, included in the Contingency Agreement with the ISP or in the Operating Agreement if the project includes multiple parties?

Yes/No. If yes, identify which party to this project will be providing the equipment and cite the appropriate section in the Agreement. If no, who is responsible for maintenance and service of end user equipment?

Yes, CPE will be needed to establish last mile connections. This is the responsibility, along with maintenance and service, of Ziplly Fiber.

11. What is the furthest distance between premises serviced by the project and the closest fiber connection?

Each addressable location will have fiber passing in the public right of way accessible through a customer drop that will be installed upon order. Customer drops cannot be pre-installed because the connections are placed on private property.

Maximum Speed Capacity

12. Identify the built broadband maximum speed capacity (both download/upload):

Mbps/Gbps

For residential up to 10/10 Gbps will be available. Business customers can have significantly more capacity if needed.

13. If less than 100 Mbps symmetrical to every premise in the service area, explain why not and how capacity will be scalable to 100 Mbps symmetrical:

This project will construct a network capable of up to 10/10 Gbps capacity.

14. How will the technology advance progress towards meeting the state's broadband goals of 150 Mbps symmetrical for all Washingtonians by 2028:

The proposed FTTP construction will immediately meet and exceed the state of Washington goal of 150/150 Mbps to Washingtonians by 2028.

15. Identify the backhaul technology the project will utilize:

Ziplly Fiber will deploy a single 100G circuit on the MPLS network into the local areas deploying a ring configuration.

16. If any wireless is included in the project describe how minimum speed requirement to all premises will be consistently met. (e.g., limiting subscribers):

This project does not include wireless.

Internet Service Provider

If the ISP is a local government, please contact WSBO for additional requirements in accordance with Engrossed Substitute House Bill 1336. See Library for more information.

17. ISP Name:

Committed ISP to deliver service to end users upon project completion. Be sure to also attach in the Documents tab the Executed contingency operating agreement between the applicant and the ISP.
Zipty Fiber Northwest, LLC dba Zipty Fiber

18. ISP UBI number:
313013420

Incumbent Local Exchange Carrier (ILEC)

19. Name of Incumbent Local Exchange Carrier (ILEC):
Zipty Fiber Northwest, LLC dba Zipty Fiber

20. If consultation with any other ISP (beyond the ILEC and the ISP partner to this project) has occurred, please describe:
Attach any available documentation of consultation with any other ISP where indicated in the Documents tab.
There has been no consultation with any other ISP's regarding this grant application.

21. Provide a description of communication with ILEC regarding the ILEC's service to the project area, both present service and any future service plans. If no communication with the ILEC has been made, please explain the lack of outreach:

Attach documentation of dated written and email correspondence where requested under the Documents tab.

Snohomish County is applying in concert with Zipty Fiber, the ILEC serving the proposed project service area. The area has been a long-standing area of concern for Snohomish County and the Snohomish County BAT who wholly support this project.

Readiness to Proceed

22. Are any of the materials/supplies as well as labor needed for project construction on hand, or readily available?

Describe the inventory status of the materials and supplies as well as the labor needs for the project. Explain if the needs will be met by existing staff, or if the the project will be wholly, or in part, contracted to outside entities.

Zipty Fiber maintains a force account team of experts in development, engineering, finance and field agents. To support the Zipty Fibers' aggressive infrastructure build out plan, Zipty Fiber has secured access to fiber, equipment and supplies to ensure construction projects are adequately equipped. To ensure the availability of skilled workforce, Zipty Fiber has solicited the local and regional areas to build a readily available workforce. Contract agreement terms include living wage rates and benefit options that attract the most skilled workforce available. This network of diverse and highly skilled team of contractors, facilitates nimble and rapid deployment.

23. Describe how the applicant will ensure site control for 25 years, either through ownership, long term lease, Tribal lands, or right-of-way:

Partnering with the ILEC, Zipty Fiber, Snohomish County will ensure long term service to its residents, businesses and community institutions in the project area. The County will also have an IRU for the network, ensuring availability for the public need.

24. Can you certify that the grant funded project will provide broadband connectivity for at least 25 years?

Yes/No. Describe any assurances or risks related to the applicants' ability to ensure 25 years of connectivity.

Yes, our project partner and an ILEC is obligated to provide operations and maintenance on communications infrastructure within their service areas. Zipty Fiber will provide broadband connectivity in the project area.

25. Applicants experience administering federal funds:

0-1 year

1-3 years

3+ years

TOTAL

26. List sources of federal funds administered: (e.g., American Recovery and Reinvestment Act, CDBG, USDA-RD):

Snohomish County is a certified agency to administer federal funds including but not limited to: FHWA-ER, BRAC, PSRC-STIP/CMAQ, NHS grants, HSIP grants, & USDOT – RAISE.

27. In the event that this project is awarded funding, does the accounting system currently in use by the applicant have the ability to record revenues and expenditure for each funding source by required budget categories?

If no briefly explain how this tracking will be accomplished.

Yes

No, explain:

28. Do you have written accounting and record keeping policies and procedures, when were they last reviewed and updated, and how often are they reviewed and updated?

Yes/No. If yes, indicate how often the policies and procedures are reviewed and updated and when the policies and procedures last updated. If no, explain how you will ensure that accurate and timely accounting and record keeping is maintained?

Yes, policies and procedures are updated annually.

29. Describe in detail your experience constructing and managing broadband infrastructure projects:

If the applicant has limited experience do you plan to contract out the project management?

Ziply Fiber's management team has built over one million fiber to the premise locations over their careers spanning several decades. This team has demonstrated experience in cultivating and supporting public-private partnerships. Our management team includes: Harold Zeitz, Chief Executive Officer and Director: Mr. Zeitz was president and chief operating officer of Wave Broadband from May 2014 until the company was sold to RCN/Grande in January 2018. For the 10 years prior to Wave Broadband, he led internet businesses as president or chief operating officer, including social media, online gaming and financial services. Prior to these roles, Mr. Zeitz was an executive at AT&T Wireless/McCaw cellular.

Bambang Biau Soen Liem, Chief Technical Officer: Mr. Liem was the executive vice president, responsible for technology, operations and systems, of Wave Broadband from October 2014 to May 2018, where he oversaw deployment and management of Wave Broadband's fiber & IP network technology. Mr. Liem is a telecommunications industry veteran with 35 years of experience in engineering, operations and system development for mobile, cable and telephone companies around the world.

Brian Stading, Chief Operations Officer: Mr. Stading has over 30 years of telecommunications industry experience. Most recently Mr. Stading was the northwest region president at CenturyLink from 2011 to 2016 and west region president at CenturyLink from 2016 to 2019. His responsibilities include profit and loss performance, competitive positioning, market share, network capability and reliability, and regional operations including technicians and service delivery, customer satisfaction, customer and stakeholder relationships.

David Bohan, Chief Financial Officer: Mr. Bohan brings more than 25 years of proven executive experience in roles including President, COO and CFO for public and private companies both domestically and internationally.

30. If the applicant is also the ISP, indicate the number of years of experience providing internet service to end users.

Snohomish County is not an ISP.

Community Impacts

31. Describe your organizations efforts to include input from the community, including people of color and other communities, and/or other affected populations:

Consider in your response the following areas: Efforts to include input in the development of projects; Policies; Promotion of fairness; Fostering of trust and dignity; and Promoting the community voice in the development of projects.

Snohomish County Public Works has a Title VI of the Civil Rights Act of 1964 Plan and program. Key elements include: doing community outreach and engagement as part of communications plans tailored to each department project and program; complying with environmental justice requirements including evaluating how minority and low-income populations are impacted and how we can avoid, minimize and/or mitigate impacts; and complying with limited English proficiency (LEP) requirements in offering translations and interpretations as needed and requested. In doing this work department staff review and use demographic data from sources such as the U.S. Census Bureau, American Community Survey, Washington Office of Superintendent of Public Instruction/schools, and local community members and local knowledge.

Communication Plans encourage public input in the development of projects, including people of color, other communities and/or other affected populations. Recently we completed a Public Works Diversity, Equity and Inclusion Plan, and Goal 2 is: Snohomish County Public Works provides excellent customer service to our colleagues, all County residents, and businesses we serve. Two of the objectives under this goal directly relate to promoting fairness, fostering trust and dignity and promoting the community voice in development of projects: 1) Leaders meaningfully engage government, community, and private sector partners across the County to advance racial, gender, environmental, and social justice; and 2) Leaders meaningfully engage people from communities of color and underrepresented communities to inform improvement of PW services to their communities. Our DEI Plan has strategies and action items to implement in doing this work.

Preliminary review of the demographics of this project area shows approximately 40,100 people living in 26 U.S. Census Block Groups within 13 Census Tracts. Several Block Groups have significant Hispanic/Latino populations, and populations of two or more races, and a couple have significant numbers of American Indian and Alaska Native populations. Populations with incomes at or below the poverty line range from approximately 0.00% to 34.50%. 14 out of 26 Block Groups have no data available on LEP populations, and Spanish appears to be the primary language called out for significant LEP populations. Additional review of communities and populations affected will be done as part of the project work, including development of a communication plan for community outreach and engagement in partnership with key stakeholders in this project.

32. Describe how you conduct a self-assessment to ensure fair and just practices and cultural competency, including both internal and external input. Give examples, if possible of instances in which such input caused changes in policy, agency administration, or service delivery:

Our department Title VI of the Civil Rights Act program is continually evolving based on lessons learned, employee and customer feedback, new management perspectives, and new direction and guidance from Washington Department of Transportation and U.S. Department of Transportation. As part of our Title VI Plan we are required to do periodically conduct compliance reviews, and this includes considering fair and just practices. Examples where such input has resulted in modifications or changes include updates to our notices to the public relating to our work; refined demographic analysis work; updating guidance on hiring translators and interpreters; use of a public involvement form at meetings, hearing and events; internal environmental justice (EJ) guidance on and documentation of EJ reviews, and most recently in 2020 and 2021 an intentional focus on DEI work, including improving cultural competency in our department. For example, leadership has had monthly DEI meetings on different DEI topics; employees have been invited to monthly small virtual group chats on DEI topics, employees have been surveyed and interviewed on DEI topics, and a department DEI Task Force was developed to help us develop our first DEI Plan. A key element of our DEI Plan is to provide extensive training to our leadership and all employees, which will add to cultural competency at all levels within our department. In carrying out the strategies and action items in our first DEI Plan, our department will continue to have changes in policies, agency administration and service delivery, with improved practices and cultural competency. Besides the Title VI compliance reviews, our new DEI Plan also

includes the key element: Strategic Measurement, Evaluation, Inquiry and Engagement for Learning and Continuous Improvement (Accountability and Transparency).

33. Describe the project’s regional significance, including the role of various community partners in the project development, and specific community benefits expected from the infrastructure’s construction:

The SR530 corridor connecting the City of Arlington and the Town of Darrington is an essential regional corridor providing access to timber, outdoor recreation, and community festivals. As small business and other business activities continue to expand into this area, the development of a robust broadband network is essential. An example of this growth is the recently announced Timber Innovation Center being constructed in the Town of Darrington will house a mass-timber production facility and serve as a hub for innovative wood product manufacturing, further.

After the heartbreaking Oso landslide in 2014 that effectively cut off the Town of Darrington and communities throughout most of the corridor, it became apparent these communities would be best served by a more robust broadband network, as proposed in this application. The increased broadband speeds as provided with this project would allow additional opportunities for regional commerce/growth by enhancing small business opportunities, promoting online education, and creating remote work options to communities that have historically suffered from being underserved and unserved.

34. What if any, school district areas or Tribal school areas are served by the project?

Arlington School District #16, Darrington School District #330, Stanwood-Camano School District #401.

35. How many students are served by the schools in the project area?

Approximately 6500 students.

36. Digital Equity means the project incorporates factors supporting access, affordability, and adoption. How does the project incorporate Digital Equity into the project design and delivery plans?

May include activities such as digital literacy and skills training, translation and interpretation services, additional affordability considerations, support for devices, and other services focused on enhancing access, affordability, and adoption.

By partnering with Ziplly Fiber, residents in the project area will benefit by having access several subsidy programs to increase both access to and affordability of broadband. Ziplly Fiber is an eligible telecommunications carrier who provides customers access to the Federal Lifeline and Tribal Linkup programs, the Emergency Broadband Benefit program, is a provider through Washington’s K-20 network and is a participant in the FCC Rural Digital Opportunity Fund recent reverse auction.

37. RCW 70A.45.070 requires competitive infrastructure funding programs to take into consideration the reduction of greenhouse gas emissions (GHG) in their project selection process. Please document any adopted policies, activities or standards undertaken that reduce these emissions such as telework policies, commute trip reduction programs, adoption of environmentally sustainable construction materials standards, etc.:

Snohomish County has had a five-year Sustainable Operations Action Plan (SOAP) that integrated environmentally sustainable practices into County government operations, including reducing greenhouse gas (GHG) emissions generated through County operations. Other topics covered by goals, and actions included implementing green building practices and using green materials; conserving resources and using renewable energy technologies; reducing, recycling and repurposing waste; implementing green purchasing practices; and promoting ecological preservation and healthy ecosystems. There have been many accomplishments including issuance of an environmentally preferable purchasing and utilization policy, a green product resource guide, a new County Code Ch. 3.06 on green and high performance building, and a joint resolution with County Council and Executive on committing to a goal of 100% clean energy by 2045. The County has a commute trip reduction program adopted in County Code Ch. 32.40, which covers affected employers that employ 100 or more affected employees, and it includes support for car/van pooling and provides County employees with ORCA cards for free use of the regional bus/transit system. Because of the Covid-19 pandemic, there have been mandated telework policies. We anticipate the new normal will include significant new permanent opportunities for telecommuting for many employees that are not required to work at specific locations, the field and/or interact with the public on a regular basis. In February 2021 the County started the process for updating the existing SOAP seeking input from County employees and the public. The new SOAP will build on the first with a focus on climate action and environmental stewardship for County government operations with the following seven goal areas: GHG emissions, transportation and mobility, energy and water, consumption and materials, green building, ecosystems and open space, and adaptation and resiliency.

38. Other factors unique to this project and the community it serves:

Discuss any other factors that you want reviewers to be aware of that have not been expressed in other parts of the application.

This project will expedite the completion of adjacent FCC Rural Digital Opportunity Fund locations in which Ziplly Fiber was the prevailing auction bidder. The RDOF program allows for six years to complete the construction of the awarded locations, however if this project is supported by the Washington Broadband Office the adjacent RDOF census blocks will be positioned for construction in the first two years of the RDOF build cycle.

Budget [top](#)

Funding Sources	Proposed Amount	Committed Amount	Application Date	Award Date	Grant/Loan
Ziplly Fiber Northwest, LLC Match	USD\$ 3,777,000.00	USD\$ 9,120,854.00			
RDOF Support Grant - Not Awarded 1/29/21 Submission	USD\$ 5,343,854.00	USD\$ 0.00	USD\$ 0.00		USD\$ 5,343,854.00
WSBO IAG - Not Awarded	USD\$ 18,461,464.00				USD\$ 18,461,464.00
Total	USD\$ 19,582,318.00	USD\$ 9,120,854.00	USD\$ 0.00	USD\$	USD\$

27,582,318.00

0.00

23,805,318.00

Funding Uses/Expenses	Total Project Cost	WSBO Requested Amount	Non-WSBO Funding
Permitting	USD\$ 120,000.00	USD\$ 60,000.00	USD\$ 60,000.00
Engineering	USD\$ 335,880.00	USD\$ 167,940.00	USD\$ 167,940.00
Construction	USD\$ 27,126,438.00	USD\$ 18,233,524.00	USD\$ 8,892,914.00
Total	USD\$ 27,582,318.00	USD\$ 18,461,464.00	USD\$ 9,120,854.00

Budget Narrative

Zipty Fiber Northwest, LLC (dba Zipty Fiber) will deliver Fiber to the Premise (FtTP) along Hwy 530 to the surrounding communities of Arlington, Washington to Darrington, Washington. The cost to construct this FtTP network is \$27,582,318. Zipty Fiber used cost averages from similar projects deployed in the recent past. The costs represented herein are reflective of the Zipty Fiber teams' experience. The final construction plan engineering is a component of the overall proposed project costs.

Zipty Fiber will deploy fiber optic cable which can enable a customer drop to each premise once service is ordered, allowing Zipty Fiber to access private customer owned property. The residential customer premise drops will support speeds up to 1 gigabit per second. As the Incumbent Local Exchange Carrier serving Snohomish County, Zipty Fiber has existing copper facilities. The proposed project will overbuild this existing infrastructure with a fiber optic network. The existing infrastructure include approximately 49% aerial and 51% buried infrastructure. Zipty Fiber will utilize its existing poles and conduit whenever possible.

Administrative and Legal

The Zipty Fiber proposal has no anticipated administrative or legal costs.

Right of Way Permitting, Pole Attachments

Throughout the project area, Zipty Fiber will use its existing network path. In some cases, this will involve attachment to utility poles and in others the network will be placed underground in conduits. In all cases, the local jurisdictions and Washington State Department of Transportation will require permits to complete this work. In cases where the poles are not owned by Zipty Fiber, pole attachment applications will be necessary. Zipty Fiber estimates the costs of these permit and pole attachment applications to be \$120,000.

Engineering

The Zipty Fiber engineering team consists of Zipty Fiber employees and contracted engineering services. It is common practice for Zipty Fiber to utilize contract expertise to manage multiple fiber expansion projects the company has underway across its network. Zipty Fiber estimates \$335,880 for engineering costs associated with designing the Hwy 530 fiber network. Engineering activities will produce the detailed plans which will guide the network construction team.

A Zipty Fiber Senior Network Planning Engineer will define the desired network layout and targeted build area. Either a Zipty Fiber Engineer or a contracted engineer will then work on the details of the desired fiber network. The Engineer will validate the proposed network detail in the field and provide a complete set of network design construction plans. The Zipty Fiber Senior Network Planning Engineer will provide final review and sign off on the FTTP network design construction plans.

Once the FtTP network plans are complete, an Engineer will submit all permits determined by the planning process necessary for the construction to begin.

Construction

Construction will be completed by contract resources working under defined and detailed unit price contract. Zipty Fiber may request competitive bids from vendors to ensure quality, innovation and cost control in construction projects. The specific construction scope of work will be determined by the final network construction plans.

Zipty Fiber will follow the traffic control processes defined through the permitting processes for work in the rights of way. The anticipated costs associated with these activities is included within the fund request.

The Zipty Fiber project planning team estimates \$26,883,469 as the cost to build a FtTP along Hwy 530. The construction cost includes fiber optic cable, construction labor, traffic control and customer premise materials and supplies.

Equipment

Zipty Fiber estimates upgrades to its Central Office (CO) equipment upgrades to support a Gigabit Passive Optical Network (GPON) of \$242,969. Costs included in the equipment line item include the electronics, racks, associated cabling and outside plant splitters.

The Nokia 7360 Optical Line Termination is expected to be the GPON platform selected to support customer services. It supports gigabit GPON and is upgradable to support 10 Gbps symmetric data transport. Splitters will be utilized and placed within hubs and splice cases as determined by final engineering plans.

Matching Funds

Ziply Fiber commits to provide \$9,120,854 in cash match.

Tables [top](#)

PROJECT SCHEDULE

Tasks	Completed	In Process (Month/Year)	Not Started (Month/Year)	Percent Complete	Date completed/Estimated Completion Date (Either/Or)	Notes / Status	Total Project Cost	WSBO Requested Amount
Site Control								
Right of way/Purchase & Sale Agreement/Easement	✓			100 %	10/2021	Utilizing existing rights of way	\$	\$
Feasibility/Due Diligence								
Engineering Report (Preliminary Engineering)	✓			100 %	10/2021		\$	\$
Cultural and Historical Resources Review (Section 106 or Executive Order 21-02)	<input type="checkbox"/>			%		N/A; Use of existing pathways	\$	\$
Environmental Review (SEPA or NEPA, NEPA is not required by WSBO)	<input type="checkbox"/>			%		N/A; Use of existing pathways	\$	\$
Permits - Applied for	<input type="checkbox"/>	4/2022		0 %	3/2023		\$ 120,000	\$ 60,000
Permits - Issued	<input type="checkbox"/>	6/2022		%	3/2023		\$	\$
Public Involvement / Information	<input type="checkbox"/>	10/2021		0 %	12/2024	Ongoing throughout project	\$	\$
							\$ 120,000	\$ 60,000
Financing								
Full funding secured:	<input type="checkbox"/>			%			\$	\$
Construction								
Bid Documents (Design Engineering)	<input type="checkbox"/>	1/2022		0 %	12/2022		\$ 335,880	\$ 167,940
Award Construction Contract	<input type="checkbox"/>	6/2022		0 %	1/2023		\$	\$
Estimated Construction Start	<input type="checkbox"/>	6/2022		0 %		Due to the nature of this project, it is anticipated construction can be fast-tracked, beginning prior to completing project design and obtaining all project permits.	\$ 27,126,438	\$ 18,233,524

Estimated Construction Completion	<input type="checkbox"/>	0 %	12/2024	\$	\$
End-User Service Delivery Date	<input type="checkbox"/>	0 %	12/2024	\$	\$
				\$ 27,462,318	\$ 18,401,464
Total				\$ 27,582,318	\$ 18,461,464

BROADBAND EXISTING SPEEDS TABLE

Total Number of Premises to be Served	Number with UNSERVED Speed BEFORE build	Number with UNDERSERVED Speed BEFORE build	Number with SERVED Speed BEFORE build
5598	5,598	0	0

BROADBAND SPEED IMPROVEMENTS TABLE

Number of Premises by Speed to be served	Number with UNSERVED Speed AFTER build	Number with UNDERSERVED Speed AFTER build	Number with SERVED Speed AFTER build	Pricing for End User Years 1-3	Pricing for End User Years 4+	Does ISP offer Emergency Broadband Benefits - EBB? (check box if yes)	Does ISP offer stand alone broadband services at reasonable prices? (check box if yes)	Does ISP offer other income-based services (check box if yes)
Less than 100/20 Mbps						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
100/100 Mbps						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
150/150 Mbps						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1 Gbps or greater	0	0	5,598	1/1 Gbps \$60/month	1/1 Gbps \$60/month	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Total	0	0	5,598					

APPLICANT ENTITY TYPE (IF APPLICABLE)

Entity Type	Entity Name	UBI Number	Role in Project	Primary Contact Email	Primary Contact Phone
Public Agency	Snohomish County	N/A	Administration of Funds	spwbxc@co.snohomish.wa.us	425-261-9849
Internet Service Provider	ZiPLY Fiber NW, LLC	313013420	Construction & Operation	jessica.epley@ziPLY.com	503-431-0458
Total					

PREMISE TYPES SERVED

Premise Type	# in the Service area	# of Last mile	# of permanently affordable housing properties	CAI Type	# of users	CAI Speed after build greater than 1 Gig?	On Tribal Land?
Single family Residences	4,997	4,997		Darrington High School		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Multi-Family Residential Buildings	68	68		Skagit Regional Health		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Businesses	16	16				<input checked="" type="checkbox"/>	<input type="checkbox"/>
Farms	517	517				<input checked="" type="checkbox"/>	<input type="checkbox"/>
Community Anchor							

Institution (CAI)					
Darrington Clinic EMS Heliport	1	1			✓ <input type="checkbox"/>
Darrington Library	1	1			✓ <input type="checkbox"/>
Darrington Fire District	1	1			✓ <input type="checkbox"/>
Oso Fire Department	1	1			✓ <input type="checkbox"/>
Snohomish County Fire District 21	1	1			✓ <input type="checkbox"/>
Snohomish County Fire District 18	1	1			✓ <input type="checkbox"/>
North County Regional Fire Station #92	1	1			✓ <input type="checkbox"/>
Darrington Elementary School	1	1			✓ <input type="checkbox"/>
Total	5,606	5,606	0	0	

Documents [top](#)

Documents Requested *

Required? **Attached Documents ***

Hardship Template if Applicable.
[download template](#)

Executed Contingency Operating Agreement between the Applicant and the Internet Service Provider (ISP)



[Executed Contingency Operating Agreement](#)

Letter of Support from County (ies) in which project is located



[Snohomish County Council Support Letter](#)

Evidence of consultation with the Incumbent Local Exchange Carrier (ILEC) Provider



[Ziplay Fiber NW, LLC Interest Letter](#)

Pricing structure, including speeds per price point



[Ziplay Fiber Pricing Structure](#)

Excel spreadsheets with the entire project area information a) 15- digit census block numbers; b) Average current service speeds; and c) Expected service speeds upon project completion.



[Project Area Information - Excel Spreadsheet](#)

PDF of network design



[Network Design PDF Map](#)

Project shape files including at a minimum the three component files; a) shp, b).shx c) .dbf NOTE: This requirement may have been satisfied during the pre-application process with submittals received on or around November 5, 2021.



[530 Corridor Database File](#)
[530 Corridor SHX file](#)
[530 Corridor Shapefile](#)

PDF of the project shape for public posting of the proposed project area. NOTE: This requirement may have been satisfied during the pre-application process with submittals received on or around November 5, 2021.



[SR530 Project Map](#)

IF APPLICABLE: MultiParty Agreement between the local government, non-profit, for-profit, and any other parties to the project.

[IRU Agreement](#)

IF APPLICABLE: Letter of Support from the Tribal Nation, if on Tribal land.

IF APPLICABLE: Letter of Support from the area Broadband Action Team (BAT)

[Snohomish County BAT Letter of Support](#)

IF APPLICABLE: Federal Indirect rate letter.

IF APPLICABLE: Evidence of consultation with any other ISP besides the ILEC and ISP partner to this project.

IF APPLICABLE: Articles of incorporation - Corporate entities only (Nonprofits, For profits)

IF APPLICABLE: Bylaws - Corporate entities only (Nonprofits, For profits)

Additional documents not listed above

[Senator Wagoner - Rep Eslick Support Letter](#)
[US Rep DelBene Support Letter](#)

* ZoomGrants™ is not responsible for the content of uploaded documents.

Application ID: 373563

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EXHIBIT F
CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

GRANTEE certifies that "all laborers and mechanics employed by contractors and subcontractors in the performance of the project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate state entity pursuant to a corollary state prevailing-wage-inconstruction law (commonly known as "baby Davis-Bacon Acts").

GRANTEE certifies that "the indicated project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)).

For any funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

Robert N. A. CDC
GRANTEE SIGNATURE, TITLE

8/24/22
DATE

#14 Nakashima Heritage Barn and Centinal trailhead

Nakashima Heritage Barn Trailhead

#13 Fiber Pedestal

Pilchuck

#12 Fiber Pedestal

Bryant

#10 Firestation District 18 Station 90

#11 Stillaguamish Reservation AW

Angel Of The Winds Casino Resort

River Rock Tobacco & Fuel

#15 fiber Pedestal 1 strand

#17 N

#16 F

North Cascades River Expedition

Nature's Connection

T & R Ranch

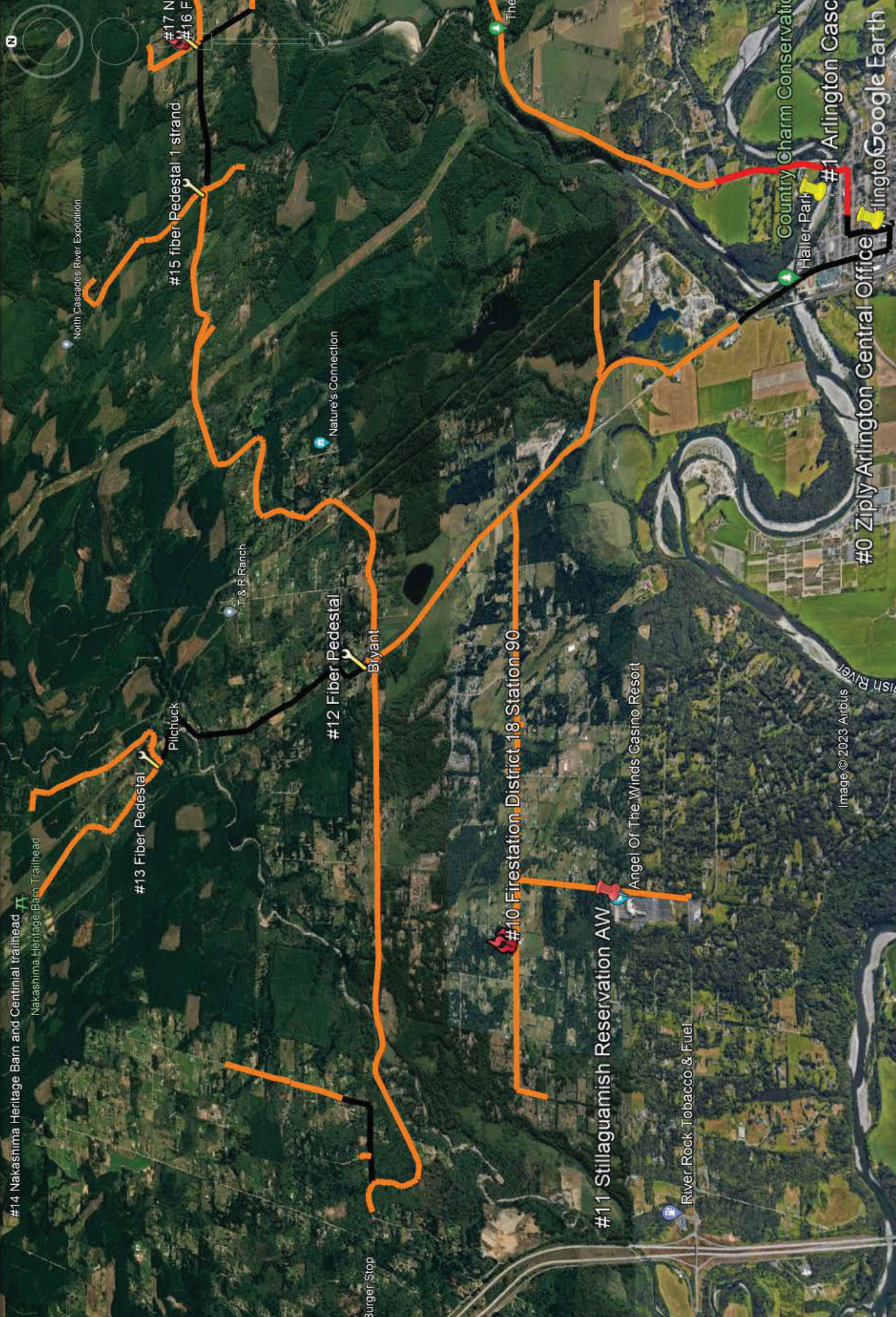
Country Charm Conservati
Haller Park

#1 Arlington Casc

#0 Zipy Arlington Central Office

Image © 2023 Airbus

lingto Google Earth



#14 Nakashima Heritage Barn and Centennial Trailhead
Nakashima Heritage Barn Trailhead

Storybook Flowers

kurt.mcway.glass

Heritage Portable Buildings - Bryant

#13 Fiber Pedestal

Image © 2023 Airbus

1985

Imagery Date: 4/28/2023

48°16'31.56" N 122°10'37.23" W elev. 203 ft eye alt. 6155 ft

Google Earth





#12 Fiber Pedestal

Bryant

Bryant Blueberry Farm and Nursery

#10 Firestation District 18 Station 90

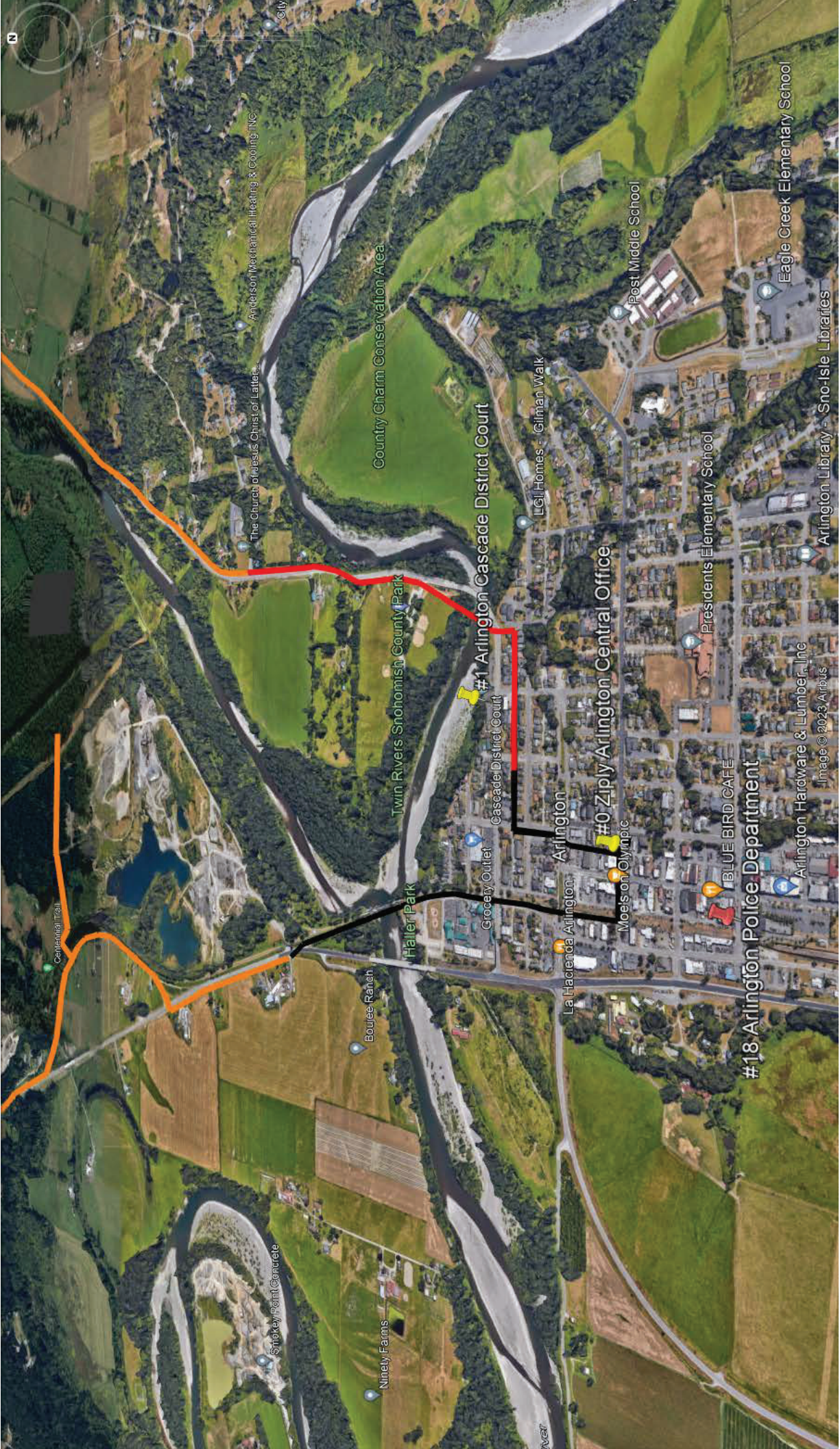
#11 Stillaguamish Reservation AW
STILLAGUAMISH RESERVATION

Image © 2023 Airbus

Google Earth

Imagery Date: 4/28/2023 48°13'15.70" N 122°10'41.41" W elev 175 ft eye alt 10568 ft

1985



Callender High Trail

Snokey Point Concrete

Ninety Farms

Boulee Ranch

Haller Park

Twin Rivers Snohomish County Park

Country Charm Conservation Area

The Church of Jesus Christ of Latter-day Saints

Anderson Mechanical Heating & Cooling, INC.

#1 Arlington Cascade District Court

Cascade District Court

Grocery Outlet

Arlington

La Hacienda Arlington

Moets on Olympic

#0 Ziplly Arlington Central Office

LGI Homes - Gilman Walk

Post Middle School

BLUE BIRD CAFE

#18 Arlington Police Department

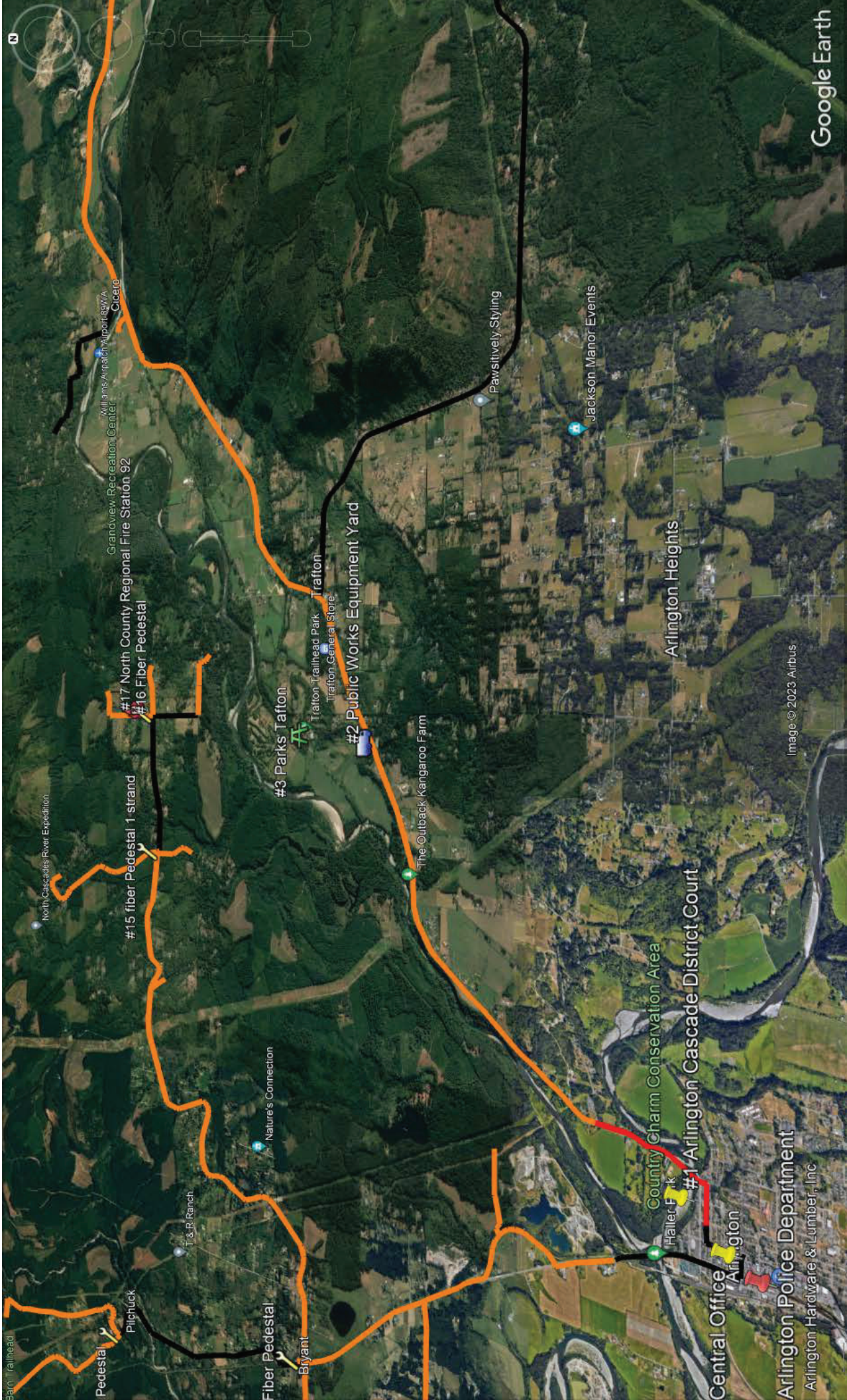
Arlington Hardware & Lumber, Inc

Image © 2023 Airbus

Presidents Elementary School

Arlington Library - Sno-Isle Libraries

Eagle Creek Elementary School



Pedestal

Pilchuck

T & B Ranch

Nature's Connection

Fiber Pedestal

Bryant

#3 Parks Trafton

Trafton Trailhead Park

Trafton General Store

#2 Public Works Equipment Yard

The Outback Kangaroo Farm

#15 fiber Pedestal 1 strand

#17 North County Regional Fire Station 92

#16 Fiber Pedestal

Williams Airport

Cicero

Grandview Recreation Center

Pawstively Styling

Jackson Manor Events

Arlington Heights

Country Charm Conservation Area

Haller Park

#1 Arlington Cascade District Court

Central Office

Arlington

Arlington Police Department

Arlington Hardware & Lumber, Inc

Image © 2023 Airbus



Ceantraak Garage

#15 fiber Pedestal 1 strand

#17 North County Regional Fire Station 92

#16 Fiber Pedestal

Grandview Community Center

Chubby Bunny Farm

Image © 2023 Airbus

CASPER RIVER

Flying Duchess Ranch



#3 Parks Tafton
Trafton Trailhead Park

Trafton General Store

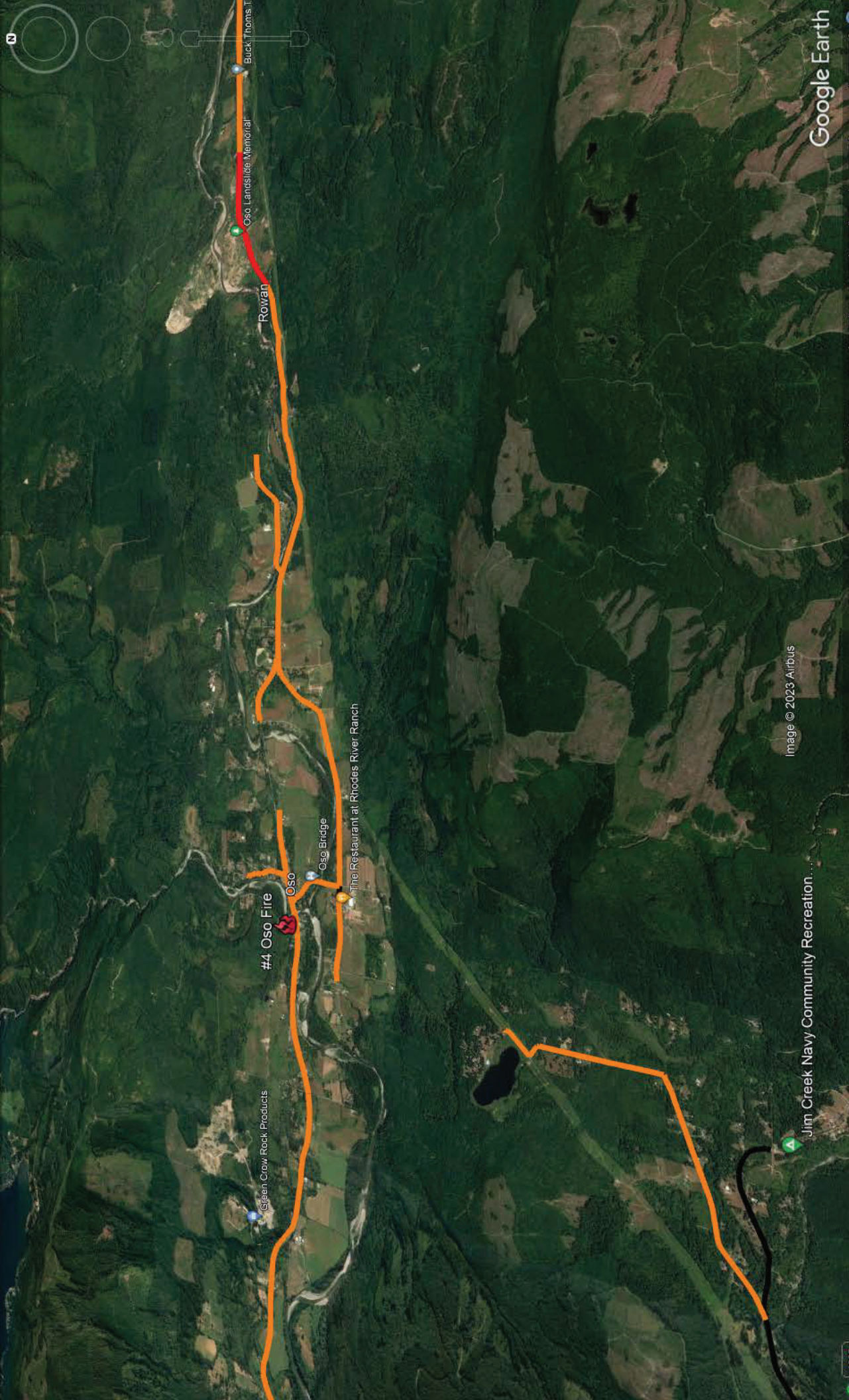
Chuck's Nursery

Olson's Saw Shop

#2 Public Works Equipment Yard

Guamish River

Guamish River



Green Crow Rock Products

#4, Oso Fire

Oso

Oso Bridge

The Restaurant at Rhodes River Ranch

Rowan

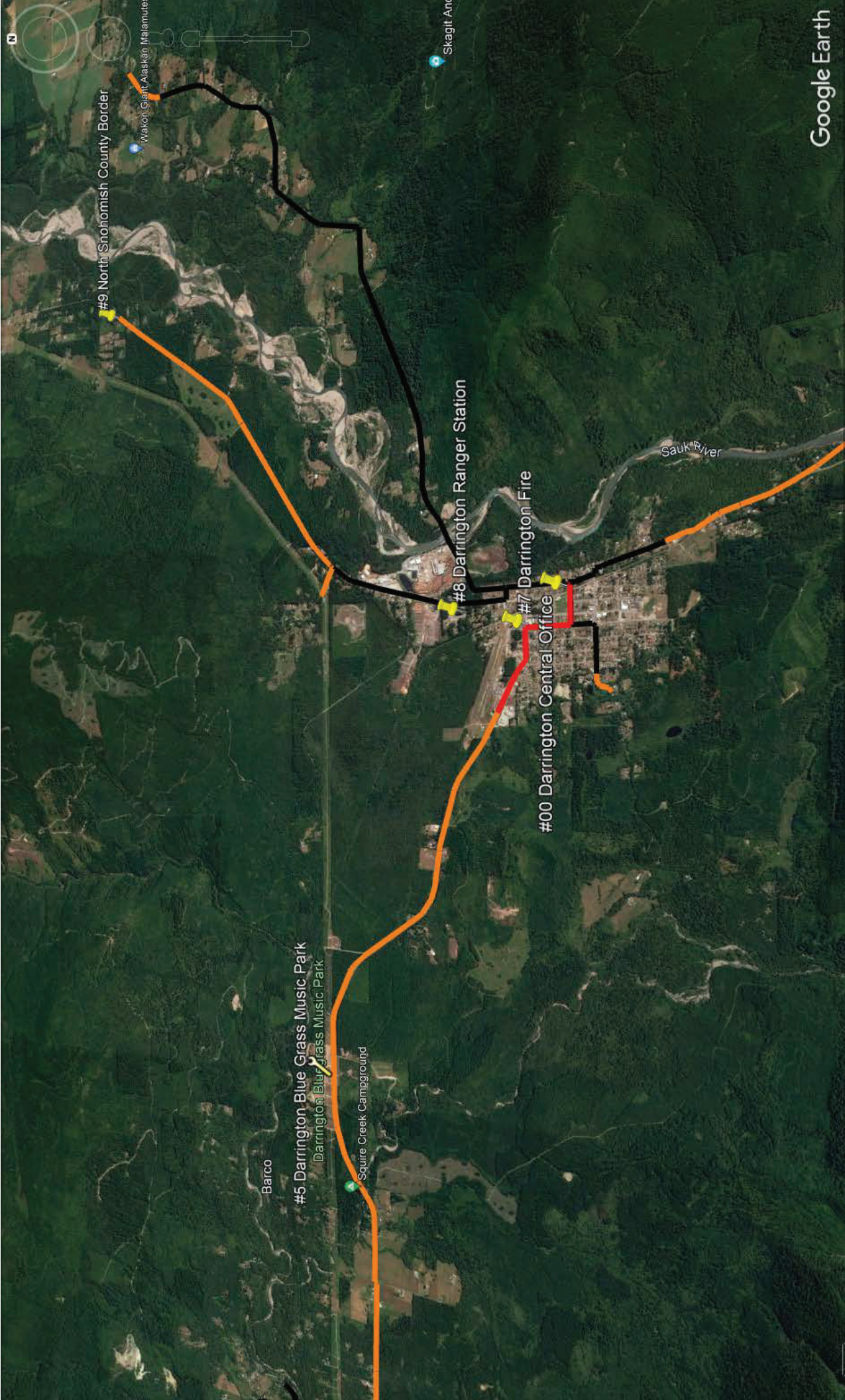
Oso Landslide Memorial

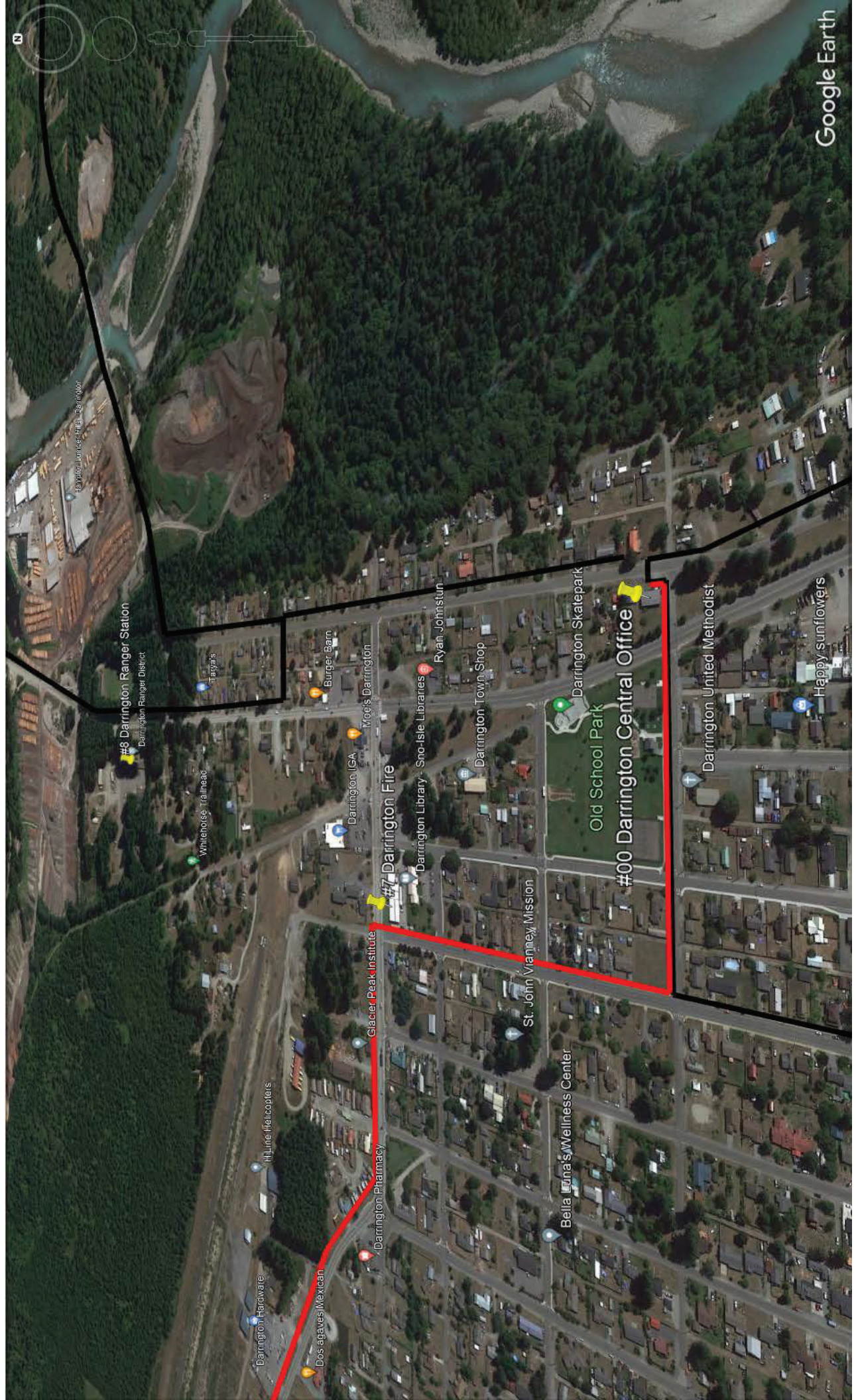
Buck Thoms T

Jim Creek Navy Community Recreation...

Image © 2023 Airbus

Google Earth





Keydon Construction Region

#8 Darrington Ranger Station
Darrington Ranger District

Whitehorse Trailhead

Tatyars

Darrington Hardware

Das agaves Mexican

HiLine Helicopters

Darrington Pharmacy

Glacier Peak Institute

#7 Darrington Fire

Darrington, WA

Burger Barn

Woo's Darrington

Darrington Library - Sno-Isle Libraries

Ryan Johnston

Darrington Town Shop

St. John Viannex Mission

Bella Luna's Wellness Center

Old School Park

#00 Darrington Central Office

Darrington Skatepark

Darrington United Methodist

Happy sunflowers



Capital Agreement with

Snohomish County

through

Washington State Broadband Office – Infrastructure Acceleration Grant
America Rescue Plan Act, State and Local Fiscal Recovery Funds

For

Snohomish County and Ziplly – SR 530 Project

Start date: July 1, 2021

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**Washington State Department of Commerce
Local Government Division
State Broadband Office
ARPA State and Local Fiscal Recovery Funds Grant**

1. Grantee Snohomish County 3000 Rockefeller Ave M/S #610 Everett, Washington 98201-4046		2. Grantee Doing Business As (optional) Snohomish County –Information 3000 Rockefeller Ave M/S #610 Everett, Washington 98201-4046	
3. Grantee Representative John Juker Senior Project Architect (425) 262-2203 John.Juker@co.snohomish.wa.us		4. COMMERCE Representative Chelsea Bagwell Broadband Infrastructure Specialist (360) 485-3890 Chelsea.Bagwell@commerce.wa.gov	
5. Grant Amount \$ 16,713,615	6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date July 1, 2021	8. End Date June 30, 2025, Contingent on reappropriation; June 30, 2023 if funds are not reappropriated.
9. Federal Funds (as applicable) \$ 16,713,615	Federal Agency US Dept. Treasury	ALN (CFDA #): 21.027	Indirect Rate: N/A
10. SWV # 0002794-07	11. UBI # 313-014-461	12. UNIQUE ENTITY ID # LG8NG8JNJD83	
13. Grant Purpose The outcome of this performance-based Grant Agreement is to undertake a legislatively approved project that furthers the goals and objectives of Infrastructure Projects Program as referenced in Attachment A – Scope of Work. COMMERCE, defined as the Department of Commerce and Grantee acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Attachment “A” – Scope of Work, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages, the following documents incorporated herein by reference: Grantee’s Application for Funding and the Washington State Broadband Office Infrastructure Acceleration Grants Handbook 21-23 prepared by Commerce.			
FOR GRANTEE _____ Ken Klein, Executive Director _____ Date APPROVED AS TO FORM ONLY _____ George B. Marsh, Deputy Prosecuting Attorney _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director, Local Government Division _____ Date APPROVED AS TO FORM ONLY  _____ Sandra Adix Assistant Attorney General August 08, 2022 _____ Date	

DECLARATIONS

CLIENT INFORMATION

Grantee Name: **Snohomish County**
Grant Number: **22-96810-011**

PROJECT INFORMATION

Project Name: **Snohomish County and Ziplly – SR 530**
Project City: **Scattered Sites, Multiple Cities**
Project State: **Washington**
Project Zip Code(s): **98223, 98241**

GRANT INFORMATION

Grant Amount: **\$ 16,713,615**
Local Match: **\$ 9,009,854**
Appropriation Number: **ESSB 1080, Section 1086**
Re-appropriation Number (if applicable):
Grant End Date: **June 30, 2023; may be extended up to June 30, 2025, contingent on State and Federal reappropriation**

Biennium: **2021-2023**
Biennium Close Date: **June 30, 2023**
Earliest Date for Reimbursement: **March 3, 2021**
Time of Performance: **In accordance with Special Terms and Conditions Number 4**

FUNDING INFORMATION

Federal Funding: **Sec. 602 Coronavirus State Fiscal Recovery Funds of Title VI of Social Security Act as added by American Rescue Plan Act of 2021 (ARPA or "Act"), Title IX, Subtitle M, Sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 et seq.**

Federal Award Agency: **US Department of Treasury**

Amount of Federal Funds Obligated by this Action: **\$ 16,713,615**

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

Extension of Grant Upon Reappropriation.

Notwithstanding General Term and Condition No. 4, the End Date of this Grant **may be extended upon written notice to Grantee from Commerce** for a period of time consistent with the effective date of any re-appropriation of funds, and/or with terms reflecting new Federal requirements for ARPA funds, if any. In Commerce's sole discretion, after review of any funding re-appropriation terms and applicable Federal law or guidance, a contract amendment in accordance with General Term and Condition No. 4 may be required to extend the End Date.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. AUTHORITY

Funding for this Grant has been provided in the 2021-2023 biennial state Capital Budget, SSB 1080, pursuant to Federal grants to Washington State under the American Rescue Plan Act of 2021 (ARPA or "Act"), sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq. The parties anticipate that funding under this Grant that is unexpended in the 2021-23 state biennium may be re-appropriated in future biennia, subject to Federal requirements.

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Identification Number (FAIN): SLRFP0002

Total amount of the federal award: \$ **16,713,615**

Federal Awarding Agency: US Department of Treasury

Research & Development (R&D): award will not be used for R&D

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

"This project was supported by grant awarded by the US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the America Rescue Plan Act, State and Local Fiscal Recovery Funds, Washington State Department of Commerce."

3. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

4. PERIOD OF PERFORMANCE, COSTS INCURRED, REIMBURSEMENT

a) Period of Performance. The initial period of performance for this award begins on the date hereof and ends on June 30, 2023. If unexpended funds under this Grant are re-appropriated, the period of performance (Contract End Date) will be extended to not later than October 30, 2026.

b) Costs Incurred Period. As set forth in Treasury's implementing regulations, Grantee may use funds awarded under ARPA to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024. Pursuant to Federal rules, a cost shall be considered to have been incurred if the Grantee has incurred an obligation with respect to such cost by December 31, 2024.

c) Reimbursement Period. All requests for reimbursement of eligible costs incurred between March 3, 2021 and December 31, 2024 payable from ARPA funds must be submitted to COMMERCE by the **earlier of** October 30, 2026 or 30 days prior to the Contract End Date.

d) In the event the grantee can't complete the full scope of work, due to material/supply chain delays, the parties may agree to amend the scope of work.

5. COMPENSATION

COMMERCE shall pay an amount not to exceed the total contract amount listed on the contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

- A. Grantee purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. Grantee purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENSES

Grantee shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Grantee for authorized expenses shall not exceed the total contract amount listed on the contract Face Sheet.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Grantee shall receive compensation for travel expenses at current state travel reimbursement rates.

8. INDIRECT COSTS

Grantee shall provide their indirect cost rate that has been negotiated between their entity and the federal government as set forth on the Face Sheet, Sec. 9. If no such rate exists a de Minimis indirect cost rate of 10% of modified total direct costs (MTDC) can be used (requested in the application or the project data sheet).

9. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Grantee for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the Grantee shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The Grantee can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Grants Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

Grant funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. Grant funds will be reimbursed and Grantee's matching funds must be expended by Grantee in the amounts and as identified on the Declarations Page.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Grant Number listed on the contract Face Sheet. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

The voucher must be certified (signed) by an official of the Grantee with authority to bind the Grantee. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or if work is not completed or Grant terminated, within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Additional Special Terms and Conditions set forth in the Declarations page above.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the Grantee.

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COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE **not more often than monthly**.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, to extent that the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

Withholding

At its sole discretion, COMMERCE may withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

10. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

11. HISTORICAL OR CULTURAL RESOURCES, HUMAN REMAINS

Certain capital construction projects may be subject to the requirements of Washington State Executive Order 21-02 "Archaeological and Cultural Resources". Grantee will cooperate with Commerce as may be required, to fulfill the requirements of EO-21-02. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Grantee or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Grantee shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.

12. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

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- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

13. DEBARMENT

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.

The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, currently available online at [eCFR :: 22 CFR Part 513 Subpart A -- General](#)

14. INSURANCE

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subcontractor, or

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agents of either, while performing under the terms of this contract. Failure to maintain the required insurance coverage may result in termination of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, if required or requested, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subcontractors that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Grantee as beneficiary.

Grantees and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – Grantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Grantee shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards

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promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Grantee's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Annually Grantee shall provide upon written request by COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under Grantee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Agreement.

15. COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS

- A. Grantee agrees to comply with the requirements of 42 U.S. Code § 802 - Coronavirus State fiscal recovery fund, regulations adopted by Treasury pursuant to subsection (f) of that section, and guidance issued by Treasury regarding the foregoing. Grantee also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Grantee shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
 - x. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR [§ 200.216](#).
- C. Statutes and regulations prohibiting discrimination applicable to this award include, but are not necessarily limited to the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the

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- basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

16. FEDERAL EXCLUSION

These terms add to the terms in Section 12 Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion — Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Grantee also agrees to access the Federal Exclusion List at www.sam.gov and provide Federal Exclusion documentation to Commerce and to keep a copy on file with the Grantee's project records.

17. REGISTRATION WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)

By signing this Grant, the Grantee accepts the requirements stated in 48 CFR 52.204-7 to register with the System for Award Management at the SAM website (<https://www.sam.gov>). To register in SAM, a valid Unique Entity Identifier (UEI) is required. The Grantee is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Grantee must remain registered in the SAM database after the initial registration. The Grantee is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Grantee shall provide evidence documenting registration and renewal of SAM registration to Commerce.

In the event of the Grantee's noncompliance or refusal to comply with the requirement stated above, Commerce reserves the right to suspend payment until the Grantee cures this noncompliance.

18. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Period of Performance, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

19. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure performance and funds awarded under this Grant Agreement. For the avoidance of doubt, the foregoing replaces in its entirety the introductory paragraph of Section 46 of the General Terms and Conditions. This provision does not extend to claims that COMMERCE may bring against the Grantee in recapturing funds expended in violation of this Grant Agreement.

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20. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The Grantee understands and agrees that any and all real property or facilities owned by the Grantee that are acquired, constructed, or otherwise improved by the Grantee using state funds under this Grant Agreement, shall be held or used by the Grantee, pursuant to a deed of trust or IRU for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the Grantee from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C. In the event the Grantee is found to be out of compliance with this section, the Grantee shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture provision of the General Terms and Conditions).

21. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The Grantee understands and agrees that any facility leased by or used (pursuant to an IRU) the Grantee that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the Grantee for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. In the event the Grantee is found to be out of compliance with this section, the Grantee shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture Provision).

22. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the Grantee commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the Grantee under the Grant.

23. FRAUD AND OTHER LOSS REPORTING

Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Grant Agreement immediately or as soon as practicable to the COMMERCE Representative identified on the Face Sheet.

24. SUBCONTRACTORS

No prior approval of subcontracting to a Subcontractor of any tier shall be required and the first three paragraphs of Section 40 of the General Terms and Conditions shall be deemed to refer to "subrecipient" rather than Subcontractor or subcontracting. The parties acknowledge and agree that Grantee may perform work under this agreement using subrecipients and that Grantee is wholly responsible for selection of subrecipients and to ensure their compliance with applicable law.

25. COPYRIGHT PROVISIONS

Per the Scope of Work, Section 16 is not intended to apply to any architectural and engineering work funded by this Grant.

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26. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages

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1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director of Commerce and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate contract with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Special Terms and Conditions. Administrative services shared by other programs shall be assigned to this Grant based on an allocation plan that reflects allowable administrative costs that support services provided under each Grant administered by the Grantee. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

3. ALLOWABLE COSTS

Costs allowable under this Grant are actual expenditures according to an approved budget up to the maximum amount stated on the Grant Award or Amendment Face Sheet.

4. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

5. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. APPROVAL

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

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8. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

10. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this contract, the Grantee shall attach an explanation to this contract.
- C. The Grantee agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

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LOWER TIER COVERED TRANSACTIONS

- i. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - ii. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

12. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
 2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

14. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

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15. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program administering this contract, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

16. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

17. DISALLOWED COSTS

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

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18. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

19. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

20. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

21. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of, or resulting from, the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subcontractor's performance or failure to perform the contract. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

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22. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

23. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

24. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

25. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

26. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

27. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

28. PAY EQUITY

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

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(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Grantee is not in compliance with this provision.

29. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for lobbying or for working for or against ballot measures or for or against the candidacy of any person for public office.

30. PREVAILING WAGE LAW

The Grantee certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

31. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR 200 for all purchases funded by this contract.

All recipients of funds under this Contract, including Contractor and subrecipients or subcontractors of any tier, must follow the procurement standards in 2 CFR §§ 200.318 through 200.327, including ensuring that the procurement method used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320.

The Grantee's procurement system should include but not necessarily be limited to, the following:

- A. General procurement standards 2 CFR [§ 200.318](#). A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Competition 2 CFR [§ 200.319](#). Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).
- C. Methods of procurement to be followed 2 CFR [§ 200.320](#).
- D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms 2 CFR [§ 200.321](#).
- E. Domestic preferences for procurements 2 CFR [§ 200.322](#).

32. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial,

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or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

33. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

34. RECAPTURE

In the event that the Grantee fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this contract.

35. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Grantee shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

36. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

37. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

38. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

39. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

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40. SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

41. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

42. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

43. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Grantee or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

44. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

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45. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Grantee shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee, under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

46. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

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- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subcontractors.

47. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

48. WORK HOURS AND SAFETY STANDARDS

The Grant Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Grant Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

SCOPE OF WORK

Funds awarded under this grant will be used for capital expenditures for the **Snohomish and Ziplly – SR 530 project**. The project will construct a Fiber to the Premise (FttP) network along the State Route 530 Corridor. The communities to be connected include Trafton, Cicero, Oso, Rowan, Hazel, Whitehorse and Darrington. The proposed project will enable fiber connectivity to approximately 4,510 addresses.

Methodology for installation includes over-lashing existing aerial copper lines and micro-trenching within the public road right of way. Network electronic equipment will be placed in existing Central Offices (Arlington and Darrington) and in newly placed Remote pre-fab Huts (Oso and Swede Heaven). Fifteen distributive splitter hubs will be placed across the network, attached to existing poles or placed on the ground.

The broadband technology funded by this grant will result in minimum service speed to each of the above premises that reliably meets or exceeds 100 megabits per second download (Mbps) and between at least 20 Mbps and 100 Mbps and be scalable to a minimum of 100 Mbps symmetrical download and upload speeds.

Grantee must require that all retail internet service providers using the broadband funded through this grant to either participate in the Federal Communications Commission's Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to consumers with low incomes in the broadband infrastructure proposed service area that provides benefits commensurate with those provided under the ACP.

The location of the project is: Snohomish County

Project activities will include and not be limited to:

- **Engineering** – Includes detailed design engineering, permitting and rights of way, creation of construction documents
- **Procurement** – Identification, ordering, receiving, and inventory of all necessary materials and equipment.
- **Construction** – Advertisement of bids for contractor. Contractor Selection. Construction Management. Advertisement of bids for drops contractor, selection. Management
- **Customer Connection/Completion** – Installation of network equipment in customer homes. Network connections and provision of internet service.

Submit executed Partnership Agreement(s) and/or Indefeasible Rights of Use (IRU), no later than thirty (30) days prior to the anticipated construction completion date or contract end date.

The Internet Service Provider partnering with the Grantee may retain exclusive rights to the network constructed with grant funds upon contract execution for a maximum of three years after funded project construction is completed. After three years the network must be open access for the remainder of the useful life of the project constructed. Open access means access to broadband services and infrastructure on transparent terms that are offered at fair market price and do not discriminate among users of the network.

The project needs to meet all applicable Local, State, and/or Federal standards.

The "Copyright Provisions", Section 16 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

CERTIFICATION PERFORMANCE MEASURE – SCOPE OF WORK

The Grantee, by its signature, certifies that the declaration set forth above has been reviewed and approved by the Grantee's governing body as of the date and year written below.

Ken Klein, Executive Director

DATE

CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT

Type of Funding	Source Description	Amount
Grant	Washington State Department of Commerce	\$ 16,713,615.00
<i>Other Grants</i>		
Grant #1	N/A	\$ 0.00
Total Other Grants		\$ 0.00
<i>Other Loans</i>		
Loan #1	N/A	\$ 0.00
Total Loans		\$ 0.00
<i>Other Local Revenue</i>		
Source #1	N/A	\$ 0.00
Total Local Revenue		\$ 0.00
<i>Other Funds</i>		
Source #1	Ziply Fiber	\$ 3,777,000.00
Source #2	Ziply RDOF	\$ 5,232,584.00
Total Other Funds		\$ 9,009,854.00
Total Project Funding		\$ 25,723,469.00

CERTIFICATION PERFORMANCE MEASURE - AVAILABILITY OF FUNDS

The Grantee, by its signature, certifies that project funding from sources other than those provided by this Grant Agreement and identified above has been reviewed and approved by the Grantee's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The Grantee shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

Ken Klein, Executive Director

DATE

CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, including but not limited to the filing of the “Statement of Intent to Pay Prevailing Wages” and “Affidavit of Wages Paid” as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE’s review upon request.

GRANTEE certifies that “all laborers and mechanics employed by contractors and subcontractors in the performance of the project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate state entity pursuant to a corollary state prevailing-wage-in construction law (commonly known as “baby Davis-Bacon Acts”).

GRANTEE certifies that “the indicated project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)).

For any funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE’s governing body as of the date and year written below.

Ken Klein, Executive Director

DATE

FORM 1

CERTIFICATION REGARDING LOBBYING

AMERICAN RESCUE PLAN ACT OF 2021, SECTION 9901

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I hereby certify that I have read and understood the obligations described above, that the Contractor is in compliance with the above-described requirements, and by my signature on this document, acknowledge my understanding that any intentional or negligent misrepresentation or falsification of any information submitted in conjunction with this document could subject me to punishment under federal, civil liability and/or in criminal penalties, including but not limited to fine or imprisonment or both under Title 18, United States Code, Sec. 1001, et seq. and punishment under federal law.

CONTRACTOR **Zipty Fiber**
NAME:

By: Celia Dempio

Title: Chief Operating Officer

Date: 10/27/2023

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 1352 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C.

(See reverse for public burden disclosure.)

1. Type of Federal Action: a. contract X b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award X c. post-award	3. Report Type: X a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Prime Subawardee: Tier <u>First</u> , if known : Snohomish County 3000 Rockefeller Avenue, M/S 709 Everett, WA 98201 Congressional District , if known : CD #1	5. If Reporting Entity in No. 4 is a Subawardee: Enter Name and Address of Prime: Washington Department of Commerce 1011 Plum St SE, Olympia, WA 98504 Congressional District , if known :	
6. Federal Department/Agency: U.S. Department of the Treasury	7. Federal Program Name/Description: Coronavirus State and Local Fiscal Recovery Funds	
8. Federal Action Number , if known :	9. Award Amount , if known : \$16,713,615.00	
10a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): None (attach Continuation Sheet(s) SF-LLLA, if necessary)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): None	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: <u> <i>J. Epley</i> </u> Print Name: <u>Jessica Epley</u> Title: <u>VP – Regulatory & External Affairs</u> Telephone No.: (503) 431-0458 Date: 3/2/23	
Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Federal Use Only:		

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

CONTINUATION SHEET

0348-0046

Reporting Entity: _____ Page _____ of _____

Certification Regarding Conflict of Interest

STANDARDS OF CONDUCT

Purpose

The purpose of the Standards of Conduct is to ensure the efficient, fair and professional administration of federal grant funds in compliance with [2 CFR § 200.318](#) and other applicable federal and state standards, regulations, and laws.

Application

Standards of Conduct applies to all officials, employees or agents of Ziplly engaged in the selection, award or administration of contracts supported by federal grant funds.

Requirements

No official, employee or agent of Ziplly shall participate in the selection, award or administration of a contract supported by federal grant funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- the employee, official, or agent;
- any member of his/her/their immediate family;
- his/her/their partner; or
- an organization which employs, or is about to employ any of the above, has a financial or other interest in or tangible personal benefit from, the firm considered for contract.

The Ziplly officials, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors.

Remedies

To the extent permitted by federal, state or local laws or regulations, violation of these standards may cause penalties, sanctions or other disciplinary actions to be taken against Ziplly officials, employees or agents, or the contractors, potential contractors, subcontractors or their agents.

Jessica Epley, VP - Regulatory & External Affairs



2-17-2023

Ziplly Representative, Name and Title

Signature and Date



FORM 3

CIVIL RIGHTS ASSURANCES CERTIFICATION
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AMERICAN RESCUE PLAN ACT OF 2021, SECTION 9901

The funds provided to Contractor are available under section 603 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act.

The Contractor understands and acknowledges that:

As a condition of receipt of federal financial assistance from the Department of the Treasury, with monies distributed through Snohomish County, the Contractor named below (hereinafter referred to as the "Contractor") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Contractor's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or fund made available through the Department of Treasury.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Contractor's program(s) and activity(ies), so long as any portion of the Contractor's program(s) or activity(ies) is federally assisted in the manner prescribed above.

The Contractor certifies the following:

1. Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Contractor acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of

national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.

3. Contractor agrees to consider the need for language services for LEP persons when Contractor develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
4. Contractor acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor's successors, transferees, and assignees for the period in which such assistance is provided.
5. Contractor acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between Contractor and Contractor's subgrantees, contractors, subcontractor, successor, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Contractor understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property.
7. Contractor shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Contractor shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Contractor shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Contractor also must inform the Department of the Treasury if Contractor has received no complaints under Title VI.
9. Contractor must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Contractor and the administrative agency that made the finding. If the Contractor settles a case or matter alleging such discrimination, the Contractor must provide documentation of the settlement. If Contractor has not been the subject of any court or administrative agency finding of discrimination, please so state.
10. If the Contractor makes sub-awards to other agencies or other entities, the Contractor is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.
11. The United States of America has the right to seek judicial enforcement of the terms of this assurance document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

FORM 4
SNOHOMISH COUNTY AND ZIPLY – SR 530 PROJECT
REQUEST FOR REIMBURSEMENT - ACTUAL EXPENDITURES REPORT

Date:	
Project Title:	Snohomish County and Ziplly – SR 530 Project
Contracting Agency:	
Claim Period:	
Claim Amount:	\$
DAC to be charged:	315 - 5114493xxxx

Category	Expenditures This Period			Cumulative Expenditures to Date		
	WSBO Funds	Zipty (Specify)	Total	WSBO Funds	Zipty (Specify)	Total
Supplies 3101						
Lease/Rentals 4501						
Insurance 4101						
Utilities 4701						
Maintenance 4801						
Equipment 6401						
Acquisition 3101						
Misc. Construction						
TOTALS						

Contracting Agency warrant is to be payable to:	

CERTIFICATIONS:

- I, the undersigned, do hereby certify under penalty of perjury:
1. That I am duly authorized to submit this claim for reimbursement on behalf of the above Contracting Agency;
 2. That the above report of actual expenditures and attached documentation accurately reflects materials furnished, services rendered, and/or labor performed in furtherance of the above project;
 3. That payment has been made or is currently due or obligated for such materials, services and/or labor;
 4. That such expenditures or current obligation constitute allowable costs under the principles in applicable Office of Management and Budget Circulars and conform to the approved project budget and the terms and conditions of the Zipty Grant Agreement; and
 5. That the materials, services, and/or labor for which reimbursement from WSBO Grant funds is requested by this document have not and will not be paid or reimbursed by any other agency, corporation, partnership, firm or individual, OTHER THAN the Contracting Agency, its officers, agents, and/or employees.

X _____

Signature

Monthly Project Status Report

PROJECT STATUS REPORT

Submitted By: _____

Reporting Period: _____

This form must accompany each A19 voucher request for reimbursement.

Grantee:	
Grant Agreement Number:	
Project Name:	
Scheduled Project Completion Date:	6/30/2025 (subject to re-appropriation)

Project Progress

Describe the progress made to date on the project's scope of work (see Declarations page in Grant Agreement).

Approximately, what percentage of the project is complete?		%
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When do you expect the project to be completed (month/day/year)? _/_/___

If the scheduled completion date is different from the one above, what factors led to the change?



Audit Certification

AUDIT CERTIFICATION FORM

As a pass-through agency of federal grant funds, the Washington State Department of Commerce is required by the Office of Management and Budget (OMB) 2 CFR 200 to monitor activities of sub-recipients to ensure federal awards are used for authorized purposes and that sub-recipients have met the OMB [2 CFR 200 Subpart F](#) - Audit Requirements. Your entity is a sub-recipient subject to such monitoring by Commerce because it is a non-federal entity that expends federal grant funds received from Commerce as a pass-through entity to carry out a federal program.

A non-federal entity expending \$750,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR 200.501 – Audit Requirements.

Please complete the information below, provide additional documents as applicable and return via email from an authorized official's email address within the next 15 days to auditreview@commerce.wa.gov.

Organization Name:

Organization Name as reported to the Federal Audit Clearinghouse:

For Organization's Fiscal Year Ending On (FY MM/DD/YYYY):

Statewide Vendor No. (SWV#):

1. **We are not subject to the audit requirements of the Federal Audit Clearinghouse because:**

We did not expend \$750,000 or more of total federal awards from any source during the last fiscal year.

We are exempt for other reasons – explain: [Click or tap here to enter text.](#)

2. **We are subject to the requirement of the Federal Audit Requirements**

We completed our last federally compliant audit and have attached the audit report.

Our completed federally compliant audit will be available on [Click or tap here to enter text.](#)

Send this form and federally compliant audit (if required) to auditreview@commerce.wa.gov.

Authorized Official Name and Title (print):

Authorized Official Signature:

Date:

Email Address:

Phone Number:

Project Completion Report

Infrastructure Acceleration Grant (IAG) - PROJECT COMPLETION REPORT

This form must be completed and submitted, along with electronic photos of the completed project, with your final A-19 reimbursement request.

WSBO Recipient:	
Contract Number:	
Project Name:	
Initiation of Operations Date:	
Total Project Funds Expended (include all funds)	
Source	Amount
WSBO Expenditures to Date	
Amount of Final Reimbursement	
Total WSBO Funds Used	
Please identify other funding sources below:	
TOTAL PROJECT FUNDING: <i>(Include all sources and the WSBO grant amount used.)</i>	
Briefly summarize the results of your Project:	



Number of Passings (Please list the passings by connection speed pre-project and post-project)												
	25/5 Mbps		50/10 Mbps		100/20 Mbps		100/100 Mbps		300/700 Mbps		1G/1G	
	Pre	Post	Pre	Post	Pre	Post	Pre	Post	Pre	Post	Pre	Post
Households												
Businesses												
Anchor Institutions												
TOTAL												

Business definitions: all business types including farms, home-based businesses, and work-at-home/telecommuter use of broadband.

Community Anchor Institutions definitions: includes facilities such as libraries, township halls, fire and police stations, city halls, county buildings, state facilities, public safety locations, hospitals and nursing homes, and educational institutions.

Please email high resolution digital photographs of the completed project with this report.

By providing images, Recipient hereby consents to and authorizes the use and reproduction in print or electronic format by Commerce or anyone authorized by Commerce, of any and all photographs which have been provided to Commerce without compensation.

Certification of Final Report Accuracy:

I hereby certify that the information entered above and any attachments hereto are true and correct to the best of my knowledge and belief. Further, I certify that the infrastructure project was completed as described in the WSBO application and WSBO contract scope of work.

Signature of Authorized Official

Title

Print Name

Date of Signature

