



## ***TOWN COUNCIL AGENDA***

July 31, 2024, 9am  
Town Hall  
204 Douglas Street

Skagit County Washington  
Incorporated 1890  
[www.townoflaconner.org](http://www.townoflaconner.org)

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### **NOTICE OF AND CALL FOR A SPECIAL MEETING OF THE LA CONNER TOWN COUNCIL**

DATE: Wednesday, July 31 2024  
TIME: 9:00 a.m. – 10 a.m.

The undersigned Mayor of the Town of La Conner is hereby calling for and providing notice of a special meeting in accordance with RCW 42.30.080.

#### **AGENDA**

The purpose of this meeting is for:

- 1) Budget Amendment (Fire Boat)
- 2) Agreement – Beckwith Consulting (CT Zone Plan)

A handwritten signature in blue ink, reading "Marna Hanneman".

Marna Hanneman, Mayor

This notice will be posted on the Town Website, Town Hall and emailed to the La Conner Weekly News on July 29, 2024.

#### **Distribution:**

Councilmembers: Annie Taylor  
Ivan Carlson  
Rick Dole  
Marylee Chamberlain  
Mary Wohleb

# ***TOWN OF LA CONNER***



## **Ordinance No. 1249 An ordinance amending the 2024 Budget**

**WHEREAS**, the Town of La Conner adopted the 2024 Budget in final form by Ordinance No. 1237 on the 12<sup>th</sup> day of December 2023; and

**WHEREAS**, subsequent thereto it has become necessary for the Town of La Conner to amend said ordinances because of revenues and expenditures of same, which could not reasonably have been foreseen at the time of adopting said budget, and

**NOW THEREFORE BE IT ORDAINED BY THE LA CONNER TOWN COUNCIL AS FOLLOWS:**

**Section 1.** The 2024 Budget, as represented in Ordinances No. 1237 and 1246 revenues and expenditures for 2024, is hereby amended as set forth below.

<b>Expenditure Funds</b>		<b>Previous Exp. Allocation</b>	<b>Increase</b>	<b>New Exp. Allocation</b>
001 – General	Increase For Fire Boat	2,315,503	163,500	2,479,003

**Section 2.**

This ordinance shall take effect upon publication.

Enacted by a vote of the La Conner Town Council this 31<sup>st</sup> day of July, 2024.

\_\_\_\_\_  
Marna Hanneman, Mayor

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Maria A. DeGoede, Town Clerk

\_\_\_\_\_  
Scott Thomas, Town Attorney



## COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT

This AGREEMENT is between the Town of La Conner, a Washington municipal corporation (the "Town"), and Beckwith Consulting Group (the "Consultant"). This Agreement includes the Basic Provisions and the attached Exhibits as identified in the Basic Provisions. The Town Council has authorized the Town to expend U.S. Department of Housing of Urban Development (HUD) fund monies, provided through the State of Washington, for the project specified in this Agreement in accordance with the provisions of this Agreement.

### BASIC PROVISIONS

#### Consultant

Beckwith Consulting Group

Consultant Contact Name: Tom Beckwith

Consultant Contact Email:

Consultant UEI#:

Consultant EIN/TIN:

*beckwith@beckwithconsult.com*  
*91-1249302*

Project Name: La Conner Subarea Plan

The program will provide .

Project Period

Beginning Date: July 15, 2024

Completion December 31, 2024

Maximum Reimbursement Amount

\$45,000.00

Exhibits

(1) Scope of Service attached hereto as Exhibit "A."

(2) General Terms attached hereto as Exhibit "B."

END OF BASIC PROVISIONS

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement, which includes the above Basic Provisions and the attached Exhibits.

**TOWN OF LA CONNER**

By \_\_\_\_\_  
Mayor Marna Hanneman

**BECKWITH CONSULTING GROUP**

By  \_\_\_\_\_  
Tom Beckwith

Attest:

\_\_\_\_\_  
Town Clerk

Approved as to form:

\_\_\_\_\_  
Town Attorney

**Exhibit "A"****Scope of Services, Time of Performance, Budget,  
Payment, Notices, and Representatives****I. Scope of Service****A. Activities/Project Description**

The Consultant will be responsible for administering the program as described in the Basic Provisions in a manner satisfactory to the Town and consistent with any standards required as a condition of providing these funds. Such program will include activities eligible under the Community Development Block Grant Program program for grant management, payment submission, accomplishment tracking, and additional responsibilities from the Consultant as needed for Town monitoring.

**B. National Objectives**

The Consultant certifies that the activities carried out with funds provided under this Agreement will meet the following CDBG National Objective, as identified by the Town of La Conner, "Benefit low/moderate income persons" - as defined in 24 CFR Part 570.208.

**C. Performance Monitoring**

The Town will monitor the performance of the Consultant against goals and performance standards required herein through quarterly reports. Substandard performance as determined by the Town will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Consultant within a reasonable period of time, as determined by the Town and after being notified by the Town, contract suspension or termination procedures will be initiated.

**D. Levels of Accomplishment - Goals and Performance Measures**

In addition to the normal administrative services required as part of this Agreement, the Consultant agrees to provide services as described in the attached Appendix A.

The Consultant agrees to track performance accomplishments as required by the U.S. Department of Housing and Urban Development (HUD) and the Town. The Consultant will report the accomplishments to the Town quarterly.

**E. Personnel**

1. The parties intend that an independent contractor relationship will be created by this Agreement. The Town is interested only in the results to be achieved. The implementation of the Project will lie solely with the Consultant. No agent, employee, or representative of the Consultant shall be deemed to be an employee, agent, servant or representative of the Town for any purpose, and the

employees of the Consultant are not entitled to any of the benefits the Town provides for Town employees. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, during the performance of this Agreement.

2. The Consultant shall provide all personnel required to perform the Project under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Town. All personnel engaged in the work pursuant to this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such service.
3. The Consultant shall be responsible for total supervision of the Project.
4. No member of Consultant's governing body or its personnel shall have any direct or indirect personal financial interest in any real property for which a plan is to be developed under this Agreement.

## **II. Time of Performance**

- A. The term Project Period as used in this Agreement means the period of time between the beginning date stated in the Basic Provisions and the completion date stated in the Basic Provisions.
- B. Consultant shall commence work beginning date. Consultant shall work expeditiously, diligently and continuously to complete the Project to the reasonable satisfaction of the Town on or before the completion date.
- C. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Consultant remains in control of CDBG funds or other assets, including program income. The Town may, at its discretion, extend the term of this Agreement to allow for the expenditure of unexpended funds.

## **III. Budget**

- A. The Consultant shall complete a budget and all budgetary amendments in relation to the project.
- B. Any indirect costs charged must be consistent with the conditions of Paragraph II (C)(2) of Exhibit B of this Agreement. In addition, the Town may require a more detailed budget breakdown than the one contained herein, and the Consultant shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Town.

## **IV. Payment**

- A. It is expressly agreed and understood that the total amount to be paid by the Town under this Agreement shall not exceed the Maximum Reimbursement Amount (stated in the Basic Provisions) for undertaking the Project. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III, Budget, herein and in accordance with performance. Expenses for general

administration shall also be paid against the line item budgets specified in Paragraph III, Budget, and in accordance with performance.

B. Payments may be contingent upon certification of the Consultant's financial management system in accordance with the standards specified in 2 CFR 200 Uniform Administrative Requirements.

C. Requests for reimbursement must be in the format acceptable to the Town of La Conner. Requests for reimbursement shall be submitted to the Town no less than once per quarter following execution of this agreement unless otherwise approved by the Finance Director or designee.

#### **V. Pre-Award Costs**

Pre-award costs incurred by the Agency from the beginning of the time of performance set forth in Paragraph II, Time of Performance, of this agreement shall not be eligible for reimbursement.

#### **VI. Notices**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by email. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement (1) to Consultant shall be addressed to the Consultant contact in the Basic Provisions and (2) to Town as shall be addressed as indicated below, unless otherwise modified by subsequent written notice.

Town

Town of La Conner Department of Planning,  
P.O. Box 400  
La Conner, WA 98257  
Voice: (360) 466-3125  
e-mail: [planning@townoflaconner.org](mailto:planning@townoflaconner.org)

## **Exhibit B - 1**

### **General Terms and Conditions**

#### **I. General Conditions**

##### **A. General Compliance**

The Consultant agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Consultant does not assume the Town's environmental responsibilities described in 24 CFR 570.604 and (2) the Consultant does not assume the Town's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Consultant also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The Consultant further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

##### **B. "Independent Contractor"**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Consultant shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Town shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the Consultant is an independent Contractor.

##### **C. Workers' Compensation**

The Consultant shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement provided for by the Workers Compensation Act of the State of Washington.

##### **D. Insurance & Bonding**

**Public Liability and Property Damage:** The Consultant shall maintain during the life of this Agreement public liability and property damage insurance covering the Consultant hereunder in the sum of not less than one million dollars (\$1,000,000) combined single limits bodily injury/property damage. Insurance shall cover work done by the Consultant or subcontractors and shall protect, as additional insured, the Town from suits or claims for damages arising from operations under this Agreement or actions of the Consultant, subcontractors, and employees either direct or Community Development Director or designee. Consultant shall provide the Town with a certificate of insurance in a form acceptable to the Town Attorney and, by endorsement, naming the Town, its officers, employees and agents as additional insured prior to performing any services pursuant to this agreement. The Consultant shall comply with the bonding and insurance



requirements of 2 CFR 200 Uniform Administrative Requirements for Bonding and Insurance.

#### E. Grantor Recognition

The Consultant shall ensure recognition of the role of the Town in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Consultant will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

#### F. Amendments

The Town or Consultant may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by the Mayor of the Town and by a duly authorized representative of the Consultant. Such amendments shall not invalidate this Agreement, nor relieve or release the Town or Consultant from its obligations under this Agreement.

The Town may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Town and Consultant.

#### G. Agreement Suspension or Termination

In accordance with 2 CFR 200 Uniform Administrative Requirements, the Town may suspend or terminate this Agreement if the Consultant materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Consultant to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Consultant to the Town reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200 Uniform Administrative Requirements, this Agreement may also be terminated for convenience by either the Town or the Consultant, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Town determines that the remaining portion of the award will not

accomplish the purpose for which the award was made, the Town may terminate the award in its entirety.

#### H. Termination for Withdrawal, Reduction or Limitation of Funding

In the event that funding from the Federal government is withdrawn, reduced or limited in any way after the effective date of this Agreement, and prior to its normal completion, the Town may summarily terminate this Agreement as to the funds reduced or limited, notwithstanding any other termination provision of this Agreement. If the level of funding so reduced or limited is so great that the Town deems that the continuation of the program covered by this Agreement is no longer in the best interest of the public, the Town may summarily terminate this Agreement in whole notwithstanding any other termination provisions of this Agreement. Termination under this Section shall be effective upon receipt of written notice by the Consultant or its representative.

The Town agrees to promptly notify the Consultant of any proposed reduction in funding by Federal or other officials. The Consultant agrees that upon receipt of such notice it shall take appropriate and reasonable action to reduce its spending in the affected funding area so that expenditures do not exceed the funding level which would result if said proposed reduction became effective.

#### I. Hold Harmless

The Consultant shall hold harmless, defend and indemnify the Town from any and all claims, actions, suits, liability, charges, losses and judgments whatsoever that arise out of the Consultant's performance or nonperformance of the services or subject matter called for in this Agreement.

### **II. Administrative Requirements**

#### A. Financial Management

1. Accounting Standards: The Consultant agrees to comply with 2 CFR 200 Uniform Administrative Requirements and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all reimbursable costs incurred.

2. Cost Principles: The Consultant shall administer its program in conformance with 2 CFR 200 Uniform Administrative Requirements as applicable. These principles shall be applied for all reimbursable costs incurred whether charged on a direct or indirect basis.

#### B. Documentation and Record-Keeping

1. Records to be Maintained: The Consultant shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the National Objective and subcategory of the CDBG program listed in the Basic Provisions;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR Part 570.502, and 2 CFR 200 Uniform Administrative Requirements; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention: The Consultant shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of seven (7) years. The evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the seven-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the seven-year period, whichever occurs later.

3. Property Records: The Consultant shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8), as applicable.

4. Close-Outs: The Consultant's obligation to the Town shall not end until all close-out requirements are completed, notwithstanding any expiration or termination of this Agreement. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Town), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Consultant has control over CDBG funds, including program income. In the event that this Agreement is terminated in whole or part for any reason, the following provisions shall apply:

- a. Upon written request by the Consultant, the Town shall make or arrange for payment to the Consultant of allowable reimbursable costs not covered by previous payments.

b. The Consultant shall submit within thirty (30) days after the date of expiration of this Agreement all financial, performance and other reports required by this Agreement, and in addition, will cooperate in a program audit by the Town of La Conner or its designee.

c. In the event a financial audit has not been performed prior to close-out of this Agreement, the Town retains the right to withhold a just and reasonable sum from the final payment to the Consultant after fully considering the recommendation on disallowed costs resulting from the final audit.

5. Audits & Inspections: All Consultant records with respect to any matters covered by this Agreement shall be made available to the Town, its designees or the Federal Government, at any time during normal business hours, as often as the Town deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Consultant within 30 days after receipt by the Consultant. Failure of the Consultant to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Consultant hereby agrees to have an annual agency audit conducted in accordance with current Town policy concerning Consultant audits and, as applicable, 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

#### C. Reporting and Payment Procedures

1. Program Income: The Consultant shall report quarterly all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Consultant shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Consultant may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to the Town at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the Town.

2. Indirect Costs: If indirect costs are charged, the Consultant will develop an indirect cost allocation plan for determining the appropriate Consultant's share of administrative costs and shall submit such plan to the Town for approval, in a form specified by the Town.

3. Payment Procedures and Timing: The Town will pay to the Consultant funds available under this Agreement based upon information submitted by the Consultant and consistent with any approved budget and Town policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Consultant, and not to exceed actual cash requirements. Payments will

be adjusted by the Town in accordance with advance fund and program income balances available in Consultant accounts. The Consultant agrees to submit payment request at least quarterly. In addition, the Town reserves the right to liquidate funds available under this Agreement for costs incurred by the Town on behalf of the Consultant.

#### D. Procurement

1. Compliance: The Consultant shall comply with current Town policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Town upon termination of this Agreement.

2. OMB Standards: Unless specified otherwise within this agreement, the Consultant shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200 Uniform Administrative Requirements.

3. Travel: The Consultant shall obtain written approval from the Town for any travel outside the La Conner area with funds provided under this Agreement.

4. Build America, Buy America (BABA): The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project.

#### E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR 200 Uniform Administrative Requirements and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Consultant shall transfer to the Town any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Consultant's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Town deems appropriate]. If the Consultant fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Consultant shall pay the Town an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of nonCDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Town. The Consultant may retain real property acquired or improved

under this Agreement after the expiration of the five-year period [or such longer period of time as the Town deems appropriate].

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Consultant for activities under this Agreement shall be (a) transferred to the Town for the CDBG program or (b) retained after compensating the Town [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

### **III. Relocation, Real Property Acquisition and One-for-One Housing Replacement**

The Consultant agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Ant displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in § 570.606(d) governing optional relocation policies. The Consultant shall provide relocation assistance to persons, as defined by 24 CFR 570.606(b)(2), that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Consultant also agrees to comply with applicable Town resolutions and policies concerning the displacement of persons from their residences.

### **IV. Personnel & Participant Conditions**

#### **A. Civil Rights**

1. Compliance: The Consultant agrees to comply with Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968, as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975; Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12086, and 12107.

2. Nondiscrimination: The Consultant agrees to comply with the non-discrimination inemployment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants: This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Consultant shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting

discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Town and the United States are beneficiaries of and entitled to enforce such covenants. The Consultant, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504: The Consultant agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program. The Town shall provide the Consultant with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement

#### B. Affirmative Action

1. Affirmative Action Plan: The Consultant agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.

2. Women and Minority Owned Businesses W/MBE: The Consultant will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians. The Consultant may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records: The Consultant shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Town, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications: The Consultant will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement: The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that it is an Equal Opportunity or Affirmative Action

employer. The Consultant will include the appropriate Equal Opportunity logo and/or slogan in their institutional brochures.

The goal is the use of the Equal Opportunity logo or slogan as a part of the outreach effort which will help affirmatively further fair housing.

### C. Employment Restrictions

1. Prohibited Activity: The Consultant is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.

2. Labor Standards: The Consultant agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C 327 et seq.), and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Consultant agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Consultant shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Town for review upon request.

The Consultant agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all Consultants engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Town pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Consultant of its obligation, if any, to require payment of the higher wage. The Consultant shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

Washington State Prevailing Wages: The Consultant shall comply with all applicable provisions of Chapter 39.12 of the Revised Code of Washington concerning prevailing wages, shall provide the Town with all documents required therein, and shall pay not less than the prevailing rate of wage to such laborers, workers, or mechanics in each trade or occupation required for the work, whether performed by the Consultant, subcontractors, or other persons doing or contracting to do the whole or any part of the work subject to prevailing wages and contemplated by this Agreement. The execution date of this Agreement shall be the effective date for any prevailing wages required to be paid under this Agreement. The State of Washington prevailing wage rates



applicable for this project, which is located in Snohomish County, may be found at the following website address of the Department of Labor and Industries:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>.

### 3. "Section 3" Clause

#### a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 75, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the Town, the Consultant and any of the Consultant's subcontractors. Failure to fulfill these requirements shall subject the Town, the Consultant and any of the Consultant's subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Consultant further agrees to comply with the "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701) and as implemented by the regulations set forth in 24 CFR 75. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to Section 3 workers within the metropolitan area in which the project is located, and where feasible, given to Section 3 workers residing within the service area or the neighborhood of the project and to participants in YouthBuild programs. Furthermore that contracts for work awarded in connection with the Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing in the metropolitan area in which the project is located and, where feasible, to Section 3 workers within the service area or the neighborhood of the project and YouthBuild programs."

The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons particularly those who receive government assistance for housing and/or residents of the project area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is

located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood in which the project is located, and to low- and very low income participants in other HUD programs.

The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Consultant agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Consultant will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Consultant will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability: The Consultant shall not assign or transfer any interest in this Agreement without the prior written consent of the Town thereto; provided, however, that claims for money due or to become due to the Consultant from the Town under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Town.

2. Subcontracts:

a. Approvals

The Consultant shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Town prior to the execution of such Agreement.

b. Monitoring

The Consultant will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Consultant shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Consultant shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Town along with documentation concerning the selection process.

e. Debarment

The Consultant shall not contract with any business who has been debarred, suspended, or deemed ineligible to work with Federal funds as set forth in 24 CFR 570.609

3. Hatch Act: The Consultant agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Conflict of Interest: The Consultant agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Consultant hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Town, or of any designated public agencies or Consultants which are receiving funds under the CDBG Entitlement program.

5. Lobbying:

The Consultant hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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;

b. 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, it will complete and submit Standard Form accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Consultants shall certify and disclose accordingly:

d. Lobbying Certification

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.C. 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.

6. Copyright: If this Agreement results in any copyrightable material or inventions, the Town reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization: The Consultant agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

## **V. Environmental Conditions**

### **A. Air and Water**

The Consultant agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

Clean Air Act, 42 U.S.C., 7401, et seq.

Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.

## B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Consultant shall assure that for activities located in an area identified by Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

## C. Lead-Based Paint

The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

## D. Historic Preservation

The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

## VI. Notice to Proceed

No work on the program shall occur prior to the notice to proceed without written approval from the Town. The Town shall furnish the Consultant with written notice to proceed upon release of funds from HUD related to the project pursuant to 24 CFR Part 58.

## VII. General Budget Provisions

The Consultant agrees to the following provisions in satisfying the terms and conditions of this Agreement:

A. Payment and Disbursements. Disbursements by the Town from this Agreement/grant award shall be on a reimbursement basis covering percentage of work performed or

actual expenditures by the Consultant or obligation of the Consultant currently due and owing, but not paid. Disbursements shall be limited to allowable costs and so shall be made upon the occurrence of both of the following, in addition to any other conditions contained herein or in the special conditions:

1. Receipt by the Town of a Pay Request supported by copies of vouchers, invoices, and other acceptable or other acceptable documentation; and
2. Determination by the Town that the expenditures or obligations for which reimbursement is sought constitute allowable costs under Federal law and come within the Project Budget.

B. No payment shall be made for any service rendered by the Consultant except for services within the scope of a category set forth in the budget, and all funds received must be used for service as identified in the Basic Provisions of this Agreement.

C. Consultant shall submit to the Town a request for approval of budget revision/amendment when a proposed revision increases or decreases an approved budget subcategory or line item. The Consultant must submit a revised budget to the Town and receive approval of the revisions/amendment prior to the submittal of claims against the budget.

Amendments to the budget cannot occur more than once per quarter.

#### **VIII. Billing Procedures**

A. The Consultant shall submit no fewer than quarterly Pay Requests for reimbursement of services performed under this Agreement in the manner prescribed in Paragraph VII, General Budget Provisions, and as prescribed by the Town.

B. Pay Requests shall be submitted to the Town by the 10th day of each month or quarter following the month or quarter during which the services were provided.

C. The Town will not process claims for reimbursement until all supporting documentation is provided in the correct and proper format. The Town reserves the right to withhold payments pending timely delivery of program reports or documents as may be required under this Agreement.

#### **IX. Licensing and Program Standards**

The Consultant agrees to comply with all applicable Federal, State, County or Municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services.

#### **X. Budget Adjustments**

A. The Town reserves the right to withdraw such funds as the Town may deem appropriate at any time while this Agreement is in effect from the Budget of the

Consultant if the Consultant is not in the opinion of the Town spending at a reasonable rate, is not providing services at a level consistent with the approved Agreement, is not providing proper reports, or is not maintaining adequate records

B. The Town shall notify the Consultant in writing of a proposed transfer, at least ten (10) working days before the actual transference occurs.

#### **XI. Local Financial Support**

This Agreement shall not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

#### **XII. Budget Surplus**

The Consultant agrees that funds determined by the Town of La Conner to be surplused at the end of the year within the budget of this Agreement will be subject to cancellation by the Town of La Conner and may be negotiated if they are to be included in future Agreements.

#### **XIII. Assignment and/or Subcontracting**

The Consultant shall not assign or subcontract any portion of the services provided within the terms of this Agreement without obtaining prior written approval from the Town. All terms and conditions of this Agreement shall apply to any approved subcontract or assignment related to the contract.

#### **XIV. Standards for Fiscal Accountability**

A. The Consultant agrees to maintain books, records, documents, accounting procedures, and practices which accurately reflect all direct and indirect costs related to the performance of this Agreement. Such fiscal books, records, documents, reports and other data shall be retained in a manner consistent with the "Budgeting, Accounting, Reporting System for Counties and Cities, and Other Local Governments", hereinafter referred to as "BARS", as issued by the Office of State Auditor, State of Washington. The Consultant further agrees that the Town shall have the right to monitor and audit the fiscal components of the organization to ensure that actual expenditures remain consistent with the terms of this Agreement. The Consultant shall retain all books, records, documents and other material relevant to the Agreement for three (3) years after settlement of this Agreement. The Consultant agrees that the Town, the U.S. Department of Housing and Urban Development, the Washington State Auditor, or their designees, shall have full access to and right to examine any of said materials at all reasonable times during said period. B. The Consultant agrees that any contributions or payments made for services furnished under this Agreement shall be used for the sole benefit of this program.

#### **XV. Covenant Against Contingent Fees**

The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the Consultant for the purpose of securing business. The Town of La Conner shall have the right, in the event of breach of this clause by the Consultant, to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such commissioner, percentage, brokerage or contingent fee.

#### **XVI. Conflict of Interest**

A. In the event this Agreement is terminated because it is determined by the Town that gratuities in the form of entertainment, gifts, or otherwise offered or given by the Consultant, or agent or representative of the Consultant, to any officer or employee of the Town of La Conner, with a view towards securing this Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to this Agreement.

B. The Town shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of a breach of the Agreement by the Consultant. The rights and remedies of the Town provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

#### **XVII. Nonassignability of Claims**

No claim arising under this Agreement shall be transferred or assigned by the Consultant without written consent of the Town.

#### **XVIII. Rights in Data**

The Town may duplicate, use and disclose in any manner and for any purposes whatsoever, and have others so do, all data delivered under this Agreement. The Consultant hereby grants to the Town a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all data now or hereafter covered by copyright, provided, that with respect to data not originated in the performance of this Agreement, such license shall be only to the extent that the Consultant has the right to grant such license without becoming liable to pay compensation to others because of such grant. The Consultant shall exert all reasonable effort to advise the Town at the time of delivery of data furnished under this Agreement, of all invasions of the right of privacy contained therein and of all portions of such data copied from work not composed or produced in the performance of this Agreement and not licensed under this clause. The Consultant shall report to the Town promptly and in written detail each notice or claim of copyright infringement received by the Consultant with respect to all data delivered under this Agreement. The Consultant shall not affix any restrictive markings upon any data, and if



such markings are affixed, the Town shall have the right at any time to modify, remove, obliterate, or ignore such markings.

### **XIX. Relationship of the Parties**

The parties intend that an independent Consultant/Town relationship will be created by this Agreement. The Town is interested only in the results to be achieved; the implementation of services will lie solely with the Consultant. No agent, employee, or representative of the Consultant shall be deemed to be an employee, agent, servant or representative of the Town for any purpose, and the employees of the Consultant are not entitled to any of the benefits the Town provides for Town employees. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of this Agreement.

### **XX. Program Property**

Any personal property having a useful life of more than one year and purchased wholly or in part with sub-grant funds from this Agreement at a cost of three hundred dollars (\$300) or more per item shall upon its purchase or receipt become the property of the Town. The Consultant shall be responsible for all such property, including its care and maintenance, and shall comply with the following procedural requirements:

A. Property records shall be maintained accurately and provide for: A description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of block grant funds used in the purchase of property; location, use, and condition of the property.

B. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

C. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of the property shall be investigated and fully documented.

D. Adequate maintenance procedures shall be implemented to keep the property in good condition.

E. If the Consultant elects to capitalize and depreciate such non-expendable personal property in lieu of claiming the acquisition cost as a direct item of cost, title to such property shall remain with the Consultant. An election to capitalize and depreciate or claim acquisition cost as a direct item of cost shall be irrevocable.

F. Non-expendable personal property purchased by the Consultant under the terms of this Agreement, in which title is vested in the Town or Federal Government, shall not be rented, loaned, or otherwise passed to any person, partnership, corporation, association or organization without the prior express approval of the Department.

G. Any non-expendable personal property furnished to, or purchased by, the Consultant, title to which is vested in the Town or federal government, shall, unless otherwise provided herein or approved by the Town, be used only for the performance of activities defined in this Agreement. H. The Consultant shall be responsible for any loss or damage to the property of the Town of La Conner or federal government (including expenses entered thereunto) which results from negligence, willful misconduct, or lack of good faith on the part of the Consultant to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the Town or federal government in like condition to that in which condition the property was acquired by purchase, fair wear and tear accepted.

## **XXI. Rule of Construction**

In the event of an inconsistency in this Agreement/grant award, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. Appropriate provisions of state and federal statutes and regulations including HUD Community Development Block Grant Regulations,
2. General Terms and Conditions (Exhibit B),
3. Those attachments incorporated by reference herein, including the statement of work/project description, approved HUD grant budget, in the order in which attached, and
4. Any other provisions whether incorporated by reference herein or otherwise provided that nothing herein shall be construed as giving preference to provisions of this Agreement/grant award over any provisions of law.

## **XXII. Venue Stipulation**

This Agreement has been and shall be construed as having been entered into and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction at La Conner in Skagit County, Washington.

## **XXIII. Severability**

It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

If it should appear that any provision hereof is in conflict with any statutory provision of the United States or the State of Washington, said provision which may conflict, therewith, and shall be deemed modified to conform to such statutory provision.

#### **XXIV. Minimum Length of Time for Intended Use**

In order to meet the Department of Housing and Urban Development National Objections, property purchased or improved with CDBG funds must remain in the intended use for at least five years.

#### **XXV. Compliance with Town Ordinance**

The Consultant must comply with all Town ordinances. No variance may be applied for property purchased or rehabilitated with funds provided through this Agreement.

#### **XXVI. Hold Harmless - Indemnification**

Consultant expressly agrees, to the maximum extent allowed by law and in addition to any other obligation in this Agreement, to indemnify, defend and hold harmless the Town and all of its officers, agents, an employees, from any and all liability, claims, suits, charges, judgements, loss or damage, including reasonable cost of defense they may suffer as a result of claims, demands, actions, or damages to any and all persons or property, costs or judgments against the Town, its officers, agents and/or employees which result from, arise out of, or are in any way connected with this Agreement or the services to be performed by the Consultant under this Agreement or the subject matter called for in this Agreement. This section shall survive the expiration or termination of this Agreement.

This section is specifically and expressly intended to constitute a waiver of Consultant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide the Town with a full and complete indemnity from claims made by Consultant and its employees, to maximum extent allowed by law. THE CONSULTANT AND TOWN ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

#### **XXVII. Section Headings and Subheadings**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

#### **XXVIII. Waiver**

Consultant does not waive its right to act with respect to subsequent or similar breaches. The failure of the Town to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

#### **XXX. Entire Agreement**

This Agreement constitutes the entire agreement between the Town and the Consultant for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Town and the Consultant with respect to this Agreement.



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## Scope of work

Following is a brief description of the tasks of work outlined in the gantt chart on the preceding page based on your RFQ, our experience with similar projects, and our knowledge of this site.

### 1: Public participation plan

#### **Task 1.1: Identify outreach participants**

We will coordinate with you on preferred methods of incorporating the following interested parties in your subarea planning process.

- **Town officials** – consulting with you and your departments staff, Town Council, Planning, Parks, Arts, Design, and Emergency Management Commissions during workshops at key milestones during the subarea planning process.
- **Property owner** - involving Moore Clark property owner Dacia Hsueth of Triton Industries to determine their interests and preferences concerning redevelopment options, implementation strategies, and other particulars.
- **Stakeholders** - soliciting ideas, suggestions, and comments from Town residents, tourists, artists, and adjacent property and business owners with surveys and workshops on a continuous basis.
- **Jurisdictions** - consulting with Port of Skagit County, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, Housing Authority of Skagit County, and Skagit County Climate Science Consortium staff and officials during workshops.
- **Organizations** - soliciting suggestions and interests during workshops with the La Conner School District, La Conner Regional Library, Chamber of Commerce, Museum of Northwest Art (MoNA), Skagit County Historical Museum, La Conner Quilt & Textile Museum, Skagit Valley College, WSU Northwest Research & Extension Center (NWREC), Peterson Conservatory of Music & Arts, La Conner Institute of Performing Arts, Gail Harker Creative Studies, and Skagit Artists Together, among others.
- **Local developers** - soliciting ideas and interests during workshops with local nonprofit and private market developers including Community Action of Skagit County, Home Trust of Skagit, Skagit/Island Counties Builders, Skagit Habitat for Humanity, Landed Gentry,

Conner Homes, Gilbane Development, and CJ Ebert, among others.

- **Regional developers** - soliciting ideas and interests during workshops with regional nonprofit and private market developers including Artspace, Blokable, Low-Income Housing Institute (LIHI), Northwest Association of Housing Affordability (NAHA - formerly Catholic Charities), GMD Development, Bridge Housing, DevCo, Homesight, Vitus, and TWG Development, among others.

#### **Task 1.2: Program outreach events**

We will conduct a variety of outreach events with which to engage the participants identified in Task 1.1 including:

- **Website** - adding pages to your Town website or providing a separate stand-alone website with schedules, surveys, findings, proposals, and other evolving contents.
- **Surveys** - of Town and Fidalgo/Mount Vernon market area residents, tourists, artists, downtown business and property owners, jurisdictions, organizations, local, and regional developers on a continuous basis during the subarea planning process on existing site conditions, housing and commercial market demand, alternative development concepts, economic feasibilities, and implementation particulars.
- **Workshops** - with Town residents, tourists, artists, downtown business and property owners, jurisdictions, organizations, local, and regional developers on a continuous basis.
- **Hybrid open houses** - at milestone stages of the subarea planning process where graphic findings and examples can be displayed at Maple Hall, Town Hall, La Conner Regional Library, La Conner Brewery, Pioneer Market, and other public spaces and in hybrid interactive in-person and streamed and recorded sessions.
- **Pop-up events** - in booths during special Town events where graphics can be presented, and survey invites can be handed out.
- **Hearings** - with the Planning Commission and Town Council to review and adopt the subarea plan and initiate implementation tasks.

#### **Deliverable: Public engagement plan/results**

- **Public engagement process** - per tasks 1.1-1.2 using website, surveys, workshops, open houses, pop-up events, and hearings.

- **Outreach materials** - including examples of existing conditions, alternative development scenarios, and implementation tasks.

## 2. Existing conditions

### 2.1 Housing profile

Developing housing profile information for existing and potential population and employee base of the Town and Fidalgo Island/Mount Vernon market area from the American Community Survey (ACS) 2018-2022, the 2020 US Census, Claritas, ESRI, WA Office of Financial Management (OFM), US Housing & Urban Development (HUD) Consolidated Housing Affordability Statistics (CHAS), and other sources.

Identifying buying and renting capability by occupation, income group, and household type for different types of housing products including "Missing Middle". Identifying affordability mismatch including sale or rent units able to be afforded by households with 30%, 31-50%, 51-80%, up to 120% of Median Family Income (MFI) and what households are currently paying for such units according to HUD CHAS data.

Assessing the WA Legislature's recent affordable housing mandates HB 1110 and 1337 and what impact the mandates will have on development regulations and allowances in Town and for the Moore Clark property.

**Surveys and workshops** - reviewing findings and strategies and soliciting comments and suggestions from residents of the Town and Fidalgo/Mount Vernon market area, employees of downtown and port businesses, and a variety of local and regional nonprofit and private developers per task 1.2 outreach events.

### 2.2: Economic analysis

Determining the market for potential uses of the Moore Clark property that compliment and do not compete with or dilute market demand for existing downtown businesses or Port of Skagit County marina activities.

Identifying public activities possibly including excursion boats and seaplane use of the Waterfront Landing as well as farmers' and fish markets, farm products, and culinary arts in Moore Clark's potential public gathering areas.

Assessing potential market and promotion opportunities of the Town, Swinomish Indian Tribal Community, and Moore Clark in a Cultural Arts District.

**Surveys and workshops** - reviewing findings and strategies and soliciting comments and suggestions from downtown and port business and property owners per task 1.2 events.

### 2.3: Environmental survey

Incorporating the findings and proposals of the Skagit Climate Science Consortium for rising tides on Swinomish Channel and Engineer Evan Henke's flood mitigation report for managing stormwater during peak storm events at highest high tides on the Moore Clark property.

Identifying what impact climate change will contribute to stormwater runoff during highest high tides, and what it could be from alternative redevelopment options of the Moore Clark property if not mitigated.

**Surveys and workshops** - reviewing findings and strategies and soliciting comments and suggestions from Town residents, downtown and port business and property owners, and jurisdiction and agency representatives per task 1.2 outreach events.

### Deliverable: existing conditions report

- **Data** - including complete data sets, charts, and graphics for housing profile, economic analysis, and environmental conditions.
- **Documents** - including technical memorandums and reports for each condition assessment.

## 3: Goal establishment - objectives

Based on task 1 public outreach and the results of the existing conditions evaluations in task 2, we will develop the following detailed goals, objectives, and performance measures for the Moore Clark property.

### 3.1: Thriving economy

Identifying destination related retail activities that complement the Town's existing tourism markets including Native arts, textile arts, culinary arts, wooden boat crafts, and other activities that could increase demand during shoulder seasons.



Assessing potential opportunities augmenting Maple Hall including dance, voice, music, and other performing arts classes, lectures, workshops, and events.

Identifying destination related excursions that augment the Town's tourism attractions possibly including seaplane, wildlife excursion boat tours, kayak rentals, and other waterborne use of Waterfront Landing.

Evaluating the potential for incubator artist, culinary, office, service, and food product entrepreneurs in a live-work shared fabrication, workshop, studio, office, business center, and conference setting.

Identifying recruitment targets that could augment downtown and port business activities possibly including agriculture and marine related crafts, products, and services able to draw customers from larger regional markets.

**Workshops** - reviewing objectives and soliciting comments and suggestions from downtown and port business and property owners per task 1.2 outreach events.

### **3.2: Vibrant and walkable neighborhood**

Analyzing potential "Missing Middle" housing types to meet the housing needs identified in task 2.1 including cottage, townhouse, courtyard building, multiplex, live-work, and small efficiency dwelling units (SEDU).

Assessing the extent to which each housing type can accommodate rising Swinomish Channel levels and storm event flooding risks during highest high tides.

Developing and evaluating potential street options aligning or re-aligning First, Second, Third, Moore, and Caledonia Streets to improve access with and through the downtown and accommodate downtown and Moore Clark parking requirements including potential site housing occupants.

**Workshops** - reviewing objectives and soliciting comments and suggestions from Town residents and downtown and port business and property owners per task 1.2 outreach events.

### **3.3: Recreation attributes**

Developing and assessing the feasibility of extending Channel Passage, the overwater

boardwalk, from Douglas Street through the Moore Clark site, Waterfront Landing, and Upper Skagit Tribe's industrial plant and dock to connect with the Town's Public Boat Launch, Waterfront, and Pioneer Parks.

Identifying potential public uses and gathering activities that could extend into the Moore Clark site from the Waterfront Landing including spaces for outdoor performances, farmers' markets, art markets, street fairs, parades, and other activities.

Identifying potential artworks that could be incorporated into the Moore Clark site including sculpture parks, kinetic artworks using water and wind, arboretums, gardens, and play areas.

**Surveys and workshops** - reviewing objectives and soliciting comments and suggestions from the Parks and Arts Commissions per task 1.2 outreach events.

### **3.4: Environmental improvements**

Consulting with Skagit Climate Science Consortium and Engineer Evan Henke on forecasts for future Swinomish Channel sea level rise and flooding from climate change and during storm events at highest high tides with possible mitigation strategies for the property under various redevelopment scenarios.

Based on the above, identifying possible mitigations for rising Swinomish Channel tides and of managing stormwater runoff during peak highest high tides possibly including hard improvements like berms, dikes, and flood walls along the waterfront and Caledonia Street and soft solutions using bioswales, green roofs, cisterns, and other stormwater storage and retention/reuse concepts.

Assessing whether the site can store on-site and/or pump excess stormwater to the regional detention facility located behind the wastewater treatment plant on Chilberg Road.

Evaluating alternatives that could focus building developments on the high ground adjacent Maple Hall and Moore Street, of elevating structures, and locating buildings on platform structures on the east end of the site and possibly next to the bluff along Douglas Street.



**Workshops** - reviewing objectives and soliciting comments and suggestions from adjacent business and residential property owners per task 1.2 outreach events.

### **3.5: A sense of place - place-making**

Assessing the viability of the 1898 Albers Warehouse (Big Blue) for retention and retro use as a possible building element, or of removing and reusing the east portion of the Albers Warehouse to be a landmark element and public space activity due to its historical importance and significant visual presence or demolishing the structure if any reuse is not viable.

Evaluating options that focus on Waterfront Landing as an organizing design element to extend the public space into and through the site. Determining how this multipurpose space could be framed by building elements and furnished to support public events as well as circulation needs.

Evaluating massing concepts using building elements as well as landscape improvements to extend the pedestrian scale from the historic downtown into this public space opportunity.

Initiating adoption of a Cultural Arts District or Creative District to include the site and downtown with which to promote the multifaceted creative arts and cultural activities available the Town, Swinomish Indian Tribal Community, Museum of Northwest Art (MoNA), Pacific Northwest Quilt & Fiber Arts Museum, Skagit County Historical Museum, and the Moore Clark property.

**Workshops** - reviewing objectives and soliciting comments and suggestions from the Arts, Parks, Design, and Planning Commissions per task 1.2 outreach events.

### **3.6: Appropriate scale of development**

Evaluating different massing concepts including the use of elevated structures, platforms with structures located over parking in the floodplain, staggered elevations stepping back from low building heights along First Street to match downtown structures, higher building elevations at the northeast end of the site under the bluff along Douglas Street, and the inclusion of the Town's public parking lot, among others. Exploring alternative building envelopes that define the scale, heights, mass, modulation, and other characteristics of compatible development

concepts that don't over specify uses or solutions that may inhibit potential site developers. Developing a Form-Based Code (FBC) ordinance for the site to replace the previous development agreement.

### **3.7: Timing of development**

Identifying roads, sewer, water, stormwater, natural gas, power, telecommunications, and other infrastructure for each redevelopment alternative under phased sequences.

Assessing whether WA Department of Commerce's (DOC) Connecting Housing to Infrastructure (CHIP) program for projects involving affordable housing could apply to and finance the improvements necessary to support a Moore Clark project including the relocation or undergrounding of the existing power lines on Second Street through the site.

**Workshops** - reviewing objectives and soliciting comments and suggestions from the Town's Public Works and Planning Departments per task 1.2 outreach events.

## **4: Recommended strategies**

### **4.1: Land use**

Including the Town's First and Second Streets rights of way and utility parcel, Triton properties, and the Town's public parking lot east of Moore/Third Street in a potential subarea Form-Based Code (FBC) Regulating Plan.

The FBC Regulating Plan will specify building types, building standards, open space, landscape, street and sidewalk typologies, and mixed-use ground floor standards that complement the downtown historic district as well as provide transitions with single-family residential uses on South 3rd and 4th Streets and overlooking the site from Douglas Street.

### **4.2: Housing and density**

The FBC Regulating Plan will incorporate recent housing initiatives adopted by the WA Legislature in HB 1337 and HB 1110 for more allowable housing types and higher densities within single-family neighborhoods.

The FBC Regulating Plan for the Moore Clark subarea will provide Missing Middle housing with elevated structures, or platforms with housing on top in suitable portions of the site

including stick-built and modular solutions.

#### **4.3: Open space and pedestrians**

The FBC Regulating Plan's open space and trail typologies will define required parameters for open space configurations and contents that produce a sense of place focused on Waterfront Landing and extending Channel Passage along the waterfront from Douglas Street to Waterfront and Pioneer Parks.

The FBC Regulating Plan will define performance standards by which to evaluate different potential redevelopment scenarios as well as implementation requirements.

#### **4.4: Environment and sustainability**

The FBC Regulating Plan landscape standards will define environmental and sustainability concepts using bioswales, green roofs, cisterns, and other stormwater storage and retention/reuse concepts.

#### **4.5: Economic development/feasibilities**

Developing cost estimates, capital requirements, economic returns, and financing strategies to determine the economic feasibility of alternative redevelopment scenarios including what direct, indirect, or assistance measures make a Moore Clark project(s) feasible.

This may include the use of indirect or non-cash incentives including density increases, parking reductions, height and lot coverage variances, impact and utility connection fee deferments, or other inducements for affordable housing units.

This may also include the use of direct or cash incentives such as Land Trusts where a nonprofit retains title to the property and the resale of structures is controlled to be affordable and the Multifamily Property Tax Exemption (MFTE) for 8 years if 10-15% of units are affordable, 12 years if 20% are affordable, or 20 years if 25% are affordable, among other incentives.

Evaluating the incentives, the Legislature has recently authorized for the Town to use to finance affordable housing including the Local Sales Tax Fund HB 1590 for a 0.1% retail sales tax allocation for housing, the Real Estate Excise Tax (REET) authorization of an additional 0.25%

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in housing dedicated money, and a property tax levy of up to \$0.50 per \$1,000 assessed value for the construction and foreclosure prevention programs of affordable housing.

#### **4.6: Implementation**

Completing a Planned Action SEPA document on the redevelopment options available the Moore Clark property to simplify the Town's adoption of the subarea plan and subsequent development of the site as a single action.

**Implementation by Triton** - working with Dacia Hsueh of Triton Industries to establish performance requirements and schedules if they wish to proceed with the redevelopment of their property subject to provisions of the subarea plan and a defined schedule of accomplishment.

**Implementation by the Town** - also completing a declaration of "blight" for the site in accordance with the provisions of Chapter 35.80A to allow the Town to acquire the property by condemnation in the event Triton fails to meet their requirement for redevelopment including the use of the following implementation actions:

- **Land Acquisition Program (LAP)** - identifying the steps necessary to acquire some or all the property using Washington State Department of Commerce (DOC) Land Acquisition Program (LAP) for the eventual construction of affordable housing. LAP can also acquire land for facilities that provide supportive services to affordable-housing residents and local low-income households.
- **Competitive RFP** - developing the RFP criteria, procedures, qualifications, proposal contents, jury selection, and bonding requirements with which to conduct a competitive process to select a land trust, design/development concept, development team, performance requirements, and contract sale of the property.

## **5: Adopt/Implement Subarea Plan**

### **Task 5.1: Adoption**

Assisting you in the Planning Commission and Town Council workshops, public hearings, and other particulars necessary to review and adopt the subarea plan and implementation documents.