

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension: Not Applicable

11.1 Termination for Default: Not Applicable

11.2 Termination for Reduction in Funding: Not Applicable

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards: Not Applicable

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement: Not Applicable

32.1 Confidentiality: Not Applicable

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years

after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance: Not Applicable

- a. Professional Liability - \$1,000,000 per occurrence: Not Applicable

34.2 Industrial Insurance Waiver: Not Applicable

34.3 Defense & Indemnity Agreement: Not Applicable

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is: Mark Personius, Director, Whatcom County Planning and Development Services.

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

- 38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable
- 38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable
- 38.3 E-Verify: Not Applicable
- 38.4 State Not Liable: The State Department of Commerce and the State of Washington are not liable for claims or damages arising from the city's performance of this contract.
- 38.5 Conformance to Interagency Agreement: The City shall follow all applicable terms of the *Interagency Agreement with Whatcom County through Washington State Department of Commerce Local Government Division Growth Management Services Buildable Lands Grants 2019-2021 Biennium*.

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

- 40.1 Modifications:
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.
- 40.2 Contractor Commitments, Warranties and Representations: Not Applicable
- 41.1 Severability:
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
- 41.2 Waiver:
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.
- 42.1 Disputes:
- a. General:
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.
 - b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
 - c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.
 - d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

Whatcom County is one of seven counties in western Washington subject to the Growth Management Act's Review and Evaluation (Buildable Lands) Program. The State Legislature allocated funds to Whatcom County to begin this work, and the County is subcontracting with the cities to conduct Buildable Lands analysis inside their respective city limits and engage in related tasks. This subcontract covers work to be conducted in State Fiscal Years 2020 and 2021 (July 1, 2019 to June 30, 2021).

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 1	Public Participation – Work with the County and other cities to develop and implement a public participation approach for the Review and Evaluation Program	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. Participate in developing a coordinated County/City public participation approach for the Review and Evaluation Program, consistent with Whatcom County's Public Participation Plan. 2. The public participation approach will include a proposed schedule of County and City public participation activities. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Any written comments on the draft document outlining the coordinated County/City public participation approach. 	
Task 2	City/County Coordination - County/City collaboration to develop a unified Review and Evaluation Program approach	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. County/City collaboration, including City/County Planners' Group meetings, to develop a unified approach to buildable land requirements. 2. GIS coordination. 3. Work with the County and other cities to finalize methods to resolve disputes among jurisdictions. 	
Deliverable(s)	<p>N/A</p> <p>County will issue meeting agendas and maintain final dispute resolution methods document.</p>	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 3	Countywide Planning Policies – Work with the County and other cities to develop, adopt, and ratify County-wide Planning Policies (CWPPs) to establish the buildable lands program	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. City approval of interlocal agreement to establish interim procedures for amending the CWPPs. 2. County/City collaboration, including City/County Planners' Group meetings, to develop proposed CWPPs. 3. Participate in County Council review and adoption of CWPPs, if necessary. 4. City ratification of CWPPs. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Interlocal agreement signed by the City. 2. Documentation of City ratification of the CWPPs establishing the buildable lands program. 	
Task 4	Data Collection and Analysis - Collect annual data to the extent necessary to assess achieved development densities and land suitable for development and conduct preliminary analysis of data	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. County/City coordination 2. Collection of residential development data, including building permits and residential subdivisions. 3. Collection of commercial and industrial development data, including building permits. 4. Collection of land use data. 5. Work with the County and other cities on continued development and utilization of the data reporting and evaluation tool, including preliminary analysis of the data collected. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Completed data reporting tool, with all applicable data collected by the City inserted into the reporting tool. 	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 5	Methodology – Work with the County and other Cities to continue to develop and finalize the Whatcom County Review and Evaluation (Buildable Lands) Program Methodology	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. Review the updated State Buildable Lands Guidelines, as necessary. 2. Review Whatcom County Land Capacity Analysis (LCA) Methodology (2015) and consider whether the LCA Methodology should be combined with the Review and Evaluation Program Methodology. The review and evaluation (buildable lands) analysis and the land capacity analysis will be two separate reports issued at different times. Given this approach, review and provide input relating to whether a single methodology and spreadsheet format can be used for both the review and evaluation (buildable lands) analysis and land capacity analysis, recognizing that the planning periods and some inputs into the spreadsheets will be different for these two separate reports. 3. County/City collaboration, including City/County Planners' Group meetings, to develop a Review and Evaluation Program (Buildable Lands) Methodology. 4. In conjunction with the County and other cities, consult with key stakeholders, as appropriate. 5. Develop market factors for the City and its associated urban growth area. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Any written comments on the Review and Evaluation (Buildable Lands) Program Methodology 2. City market factors 	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 6	Review and Evaluation Program Report	June 30, 2021
Action(s)	<p>Work with the County and other cities to develop and finalize the Review and Evaluation Program Report with all elements required by RCW 36.70A.215.</p> <p>(a) Determine whether there is sufficient suitable land in the UGA to accommodate the population projection established in the existing Whatcom County Comprehensive Plan and city comprehensive plan.</p> <p>(b) The evaluation and identification of land suitable for development and redevelopment will include:</p> <ul style="list-style-type: none"> • A review and evaluation of the land use designations and zoning/development regulations; environmental regulations (such as tree retention, stormwater, or critical area regulations) impacting development; and other regulations that could prevent planned densities from being achieved; and infrastructure gaps (including but not limited to transportation, water, sewer, and stormwater). • Use of reasonable market factors when evaluating land suitable to accommodate new development or redevelopment of land for residential, commercial, and industrial development. <p>(c) Provide an analysis of county and/or city development assumptions, targets, and objectives contained in the county and city comprehensive plans when growth targets and assumptions are not being achieved.</p> <p>(d) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan.</p> <p>(e) Compare achieved densities to growth assumptions and targets contained in the County and City comprehensive plans to determine if planned densities are being achieved. Determine whether actual development patterns are consistent with growth and development targets and assumptions.</p> <p>(e) Based on the actual density of development, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed in the UGA for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.</p> <p>(f) Identify reasonable measures that the City may consider, if necessary, during the next comprehensive plan and development regulation update to comply with the Review and Evaluation Program requirements of the Growth Management Act (RCW 36.70A.215).</p>	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Deliverable(s)	1. Final Review and Evaluation Program Report required by RCW 36.70A.215, jointly issued by the County and cities.	
Task 7	Preliminary Draft Housing Element Revisions	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. Review "Housing Memorandum: Issues Affecting Housing Availability and Affordability" (State Department of Commerce, June 2019). 2. Review the housing element in the City comprehensive plan. 3. Work with the consultant to formulate preliminary draft revisions to the housing element, if needed, considering the Review and Evaluation Program Report and any reasonable measures identified in accordance with RCW 36.70A.070(2). 	
Deliverable(s)	1. Preliminary draft revisions, if needed, to the housing element of the City comprehensive plan.	
Task 8	On-Going Implementation	June 30, 2021
Action(s)	1. Work with the consultant to develop procedures and estimate resources needed for on-going implementation of the Review and Evaluation Program, including a user manual, projected staffing resources, and any software/equipment needs.	
Deliverable(s)	1. User manual for the Review and Evaluation Program	
Task 9	<p>Project Management</p> <ol style="list-style-type: none"> 1. Invoices and, if required, status reports. Invoices shall include attached documentation showing the amount expended on each task in the billing period. 2. Develop/administer contract with the County. 	<p>October 10, 2019 January 10, 2020 April 10, 2020 June 10, 2020 July 10, 2020 October 10, 2020 January 10, 2021 April 10, 2021 June 10, 2021 July 10, 2021</p> <p>Ongoing</p>

EXHIBIT "B"
(COMPENSATION)

The County will reimburse City of Lynden expenditures on wages (based on employee's actual hourly rate plus benefits) and contracted services (based on contractor invoices) for the tasks shown above.

The total reimbursement amount shall not exceed \$ 36,432.69, subject to the following provisions below:

- a. City reimbursable expenditures between July 1, 2019 and June 30, 2020 shall not exceed 50% of the total reimbursement amount unless approved in writing by Whatcom County Planning and Development Services.
- b. City reimbursable expenditures between July 1, 2020 and June 30, 2021 shall not exceed 50% of the total reimbursement amount unless approved in writing by Whatcom County Planning and Development Services.