

City of Blaine  
Request for Council Action  
Meeting Date: February 13, 2023

Subject: Housing Action Plan Professional Service Agreement – Maul, Foster & Alongi

Departments: Community Development Services

Prepared By: \_\_\_\_\_  
(Digital Signature)

Agenda Location:  Consent Agenda  Council Action  Unfinished Business

Action Requested:

The Community Development Services Department (“the Department”) respectfully requests that Council consider authorizing the City Manager to execute a contract with Maul, Foster & Alongi for professional planning services to provide the City of Blaine with a Housing Action Plan.

Attachments:

1. Washington State Department of Commerce Grant Award Letter
2. Draft Professional Services Agreement for Maul, Foster & Alongi

Summary & Background:

The objective of the housing action plan is to encourage construction of affordable and market rate housing in a variety of housing types and at prices that are accessible to a variety of incomes. This includes strategies aimed at the for-profit single-family home market, increasing urban residential building capacity and streamlining regulations. Data collected will also be used to guide the Housing Element update of the Comprehensive Plan.

The City was awarded a grant from the Washington State Department of Commerce for \$75,000 to complete a housing action plan (Attachment 2). The Department completed a Request for Qualifications process on December 30, 2022 soliciting interest from consulting firms with expertise in economic development and planning services. Three sets of qualifications were received and the Department determined that Maul, Foster & Alongi were the most qualified.

Budget Implications:  Current Budget  New Budget Request  Non-Budgetary

The Department has coordinated with Maul, Foster & Alongi to prepare a draft Professional Services Agreement and scope of work (Attachment 1). The draft contract is for \$65,000 with the remaining \$10,000 of the \$75,000 state grant allocated to the City to provide compensation for staff time, or as a project contingency.

Recommendation:

The Departments respectfully request that Council consider authorizing the City Manager to execute a contract with Maul, Foster & Alongi to develop a Housing Action Plan for a total estimated budget of \$65,000.

Reviewed By:

City Manager \_\_\_\_\_ Finance Director \_\_\_\_\_ City Clerk \_\_\_\_\_  
(Digital Signature) (Digital Signature) (Digital Signature)



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000  
www.commerce.wa.gov

April 21, 2022

City of Blaine  
435 Martin St.  
Ste 3000  
Blaine, WA 98230  
Delivered via Email to [mjones@cityofblaine.com](mailto:mjones@cityofblaine.com)

RE: Housing Action Plan and Implementation Grant – Increasing Residential Building Capacity

Dear City Manager Michael Jones:

I am pleased to inform you that the City of Blaine has been awarded \$75,000 in grant funds for the 2021-23 Biennium to assist with increasing urban residential building capacity and streamlining regulations. The Washington State Legislature created this grant program under Engrossed Second Substitute House Bill (E2SHB) 1923 (Chapter 348, Laws of 2019), and appropriated funding in the 2021 legislative session. This funding supports cities as they study their housing needs and develop strategies to meet those needs with a Housing Action Plan (HAP), or implement housing strategies of an adopted HAP or comparable housing study to increase housing capacity.

This grant will be administered by the Washington Department of Commerce, Growth Management Services (GMS) unit. Before we disburse the funds, a contract with an agreed upon scope of work and budget will need to be executed between your organization and the Department of Commerce. Your scope of work and budget under this grant must be consistent with the scope of work and budget included in your grant application or as adjusted with Commerce staff. Funds may be retroactively applied to project costs related to your grant scope of work, beginning July 1, 2021, the beginning of the 2021-23 Biennium.

Daniel Cambre, Housing Contracts Specialist, will be in touch with you to develop the contract and answer any questions you may have. Daniel can be reached at [daniel.cambre@commerce.wa.gov](mailto:daniel.cambre@commerce.wa.gov).

Sincerely,

A handwritten signature in black ink that reads "Dave Andersen".

Dave Andersen, AICP  
Managing Director  
Growth Management Services

cc: Alex Wenger, Economic Development & Tourism Coordinator  
Dan Heverling, Finance Director  
Lexine Long, Senior Planner  
Anne Fritzel, Housing Programs Manager

## CITY OF BLAINE PROFESSIONAL SERVICES AGREEMENT

### Housing Action Plan Implementation (HAPI) Grant to Adopt a Housing Action Plan

**THIS AGREEMENT** is between the City of Blaine, a municipal corporation (hereinafter referred to as “City”) and Maul Foster & Alongi, Inc. (hereinafter referred to as “Consultant”).

#### WITNESSETH:

#### 1. SCOPE

Consultant agrees to provide City with consulting services to work to develop a Housing Action Plan. A more detailed description of the scope of services is attached hereto as Exhibit “A” and incorporated herein by this reference.

1.1 The CITY may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affect any other provision of this Agreement, the CONSULTANT shall immediately notify the CITY and take no further action concerning those written directions. No additional work shall be performed or charges incurred unless and until the CITY approves in writing the change of work and the increased cost thereof through a written contract modification or by issuance of a new task order by the CITY. Any work done in violation of this paragraph shall be at the sole expense of the CONSULTANT. Additionally, the CITY reserves the right to modify the amount spent for identified project tasks within the scope of work, provided that the Contract Amount, as may be modified under Section 3 is not exceeded.

1.2 The CONSULTANT shall make all revisions and changes in the completed work under this Agreement as are necessary to correct the CONSULTANT’s, and those of its sub-consultants errors or omissions, without additional compensation from CITY.

#### 2. TERM OF AGREEMENT

This Agreement shall commence on January 14, 2023 and will terminate on September 01, 2023 unless extended by separate amendment to this Agreement.

The CONSULTANT shall not begin work under the terms of this Agreement until the CITY has specifically authorized the CONSULTANT to do so in writing. The time required for completion of all work under each Task and, if appropriate under a schedule for completion of phases of the work, shall be specified in the project schedule as attached hereto as Exhibit “B” and incorporated herein by this reference. The completion dates for Tasks, or for phases of work under this Agreement may be modified only upon written agreement of the parties hereto. The completion dates for the Tasks, or for phases of work may be, but are not required to be, extended in the event of a delay caused by Extra Work requested in writing by the CITY, or if the CONSULTANT’s work is delayed by unavoidable circumstances beyond the control of the CONSULTANT and which the CONSULTANT could not reasonably have anticipated and only if the CONSULTANT has notified the CITY in writing as soon as reasonably practicable upon learning of or experiencing such delay event.

#### 3. COMPENSATION, INVOICING, PAYMENT

A. City shall pay Consultant on a time and material basis not to exceed \$65,000 for completed work and services rendered under this Agreement as provided in Exhibit “C” attached hereto, and by this reference made part of this Agreement. The CONSULTANT shall receive no other payment for direct or indirect

costs (e.g., office rental, office supplies, postage, telephone, fax, business insurance, office utilities, routine correspondence preparation, invoicing, or payment receipt processing and accounting), materials or disbursements unless expressly allowed by the Task Order. The CONSULTANT shall not adjust the wage rates in Exhibit "B" without written authorization from the CITY.

B. CONSULTANT shall supply the CITY with a monthly invoice and written documentation, satisfactory to the CITY, for all amounts due under this Agreement, including, but not limited to, project budget status and a narrative progress description of services rendered that is acceptable in form to the CITY.

Monthly invoice statements shall include the following information:

1. For direct professional services:
  - a. An itemized short description of the task performed and the specific time period,
  - b. The name(s) of the corresponding person(s) performing the task,
  - c. The corresponding hourly reimbursement rate(s) of the person(s) performing the task,
  - d. The corresponding hours, to the nearest quarter of an hour, spent performing each task,
  - e. Work task subtotal cost (hours x hourly rate), and
  - f. Subtotal for direct professional services.
2. For any other direct charges:
  - a. Qualified mileage charges: A short description of the trip's purpose, date, mileage for the trip, mileage reimbursement rate, and total charge (mileage x rate).
  - b. All other charges: An itemized short description explaining the charge, the reimbursable cost, and a subtotal of all such charges.
  - c. Subtotal for indirect or other charges.
3. Any past-due amounts.
4. Uninvoiced balance remaining on each work task.
5. Total amount of the invoice.

City shall review these submitted invoices and make payment based thereon for work completed to City's satisfaction. City shall pay Consultant all undisputed amounts within 30 days of receipt of Consultant's invoice. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Services. City shall promptly notify Consultant of any disputed invoice amounts.

C. The CONSULTANT shall obtain the prior written approval of the CITY for any charges for additional services by the CONSULTANT, the additional services of others retained by CONSULTANT, or the furnishing of additional supplies, materials or equipment. The CONSULTANT shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

D. CONSULTANT, at such times and in such forms as CITY may require, shall furnish City such reasonable periodic reports and documents as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection herewith, and any other matters covered by this Agreement.

CONSULTANT will maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all invoiced amounts. All plans, drawings, reports, specifications, data, information or other documents provided to CONSULTANT and/or prepared or assembled under this Agreement are and shall remain the sole property of City. Consultant shall retain all such documentation generated in conjunction with the undertaking of the Project, and CONSULTANT shall, upon completion, termination, expiration and/or conclusion of the Project, provide same to CITY.

E. At the time of project completion, the CONSULTANT agrees to certify, in writing, to the CITY that all employees (including without limitation any union fees and any benefit plans), and Subconsultants have been paid in full. Final payment shall be preconditioned upon receipt of such

certification by the CITY; the CITY may, in its sole discretion, withhold final payment until receipt of such certification. The CONSULTANT shall be solely responsible for the performance and payment of any and all Subconsultants. All such sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington, the City of Blaine and by this Agreement as if the sub-consultant(s) were the CONSULTANT, including without limitation a City of Blaine business license.

#### **4. TERMINATION**

4.1 This Agreement may be terminated by either party upon thirty (30) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the CONSULTANT, the determination of "fail to perform in accordance with its terms" shall be in the reasonable judgment of the CITY. In the event of termination for default, the CONSULTANT shall be compensated for satisfactory services performed to the termination date by reimbursement of the CONSULTANT's actual costs directly related to the project plus normal overhead and reasonable profit. The CITY shall have authority for reasonably determining when all work has been satisfactorily performed by the CONSULTANT. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the CITY. Any work product generated by the CONSULTANT prior to such termination shall be the sole property of the CITY, and the CONSULTANT agrees to provide the CITY with all such materials. If the accumulated payment made to the CONSULTANT prior to notice of intent to terminate exceeds the total amount that would be due as set forth herein above, then no final payment shall be due and the CONSULTANT shall promptly reimburse the CITY for the excess paid.

4.2 Further, this Agreement may be terminated by the CITY at any time for any reason whatsoever, at the sole discretion of the CITY, with seven (7) days' written notice. If the CITY terminates for convenience, the CITY will pay according to the payment terms as provided in Paragraph 3, above. If, after termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT has not so failed, the termination shall be deemed to have been effected for the convenience of the CITY.

4.3 In addition to the above, the CITY reserves the right to suspend all or any portion of the work and services for CONSULTANT's default or CITY's convenience. If the CONSULTANT's work is delayed for more than thirty (30) calendar days due to circumstances for which the CONSULTANT is responsible, the CITY may find the CONSULTANT in default and terminate the Task Order and/or this Agreement.

#### **5. PROJECT OVERSIGHT**

Within the performance of these duties, Consultant shall work under the direction of the Economic Development & Tourism Coordinator. Consultant specifically understands that no City employee other than the Economic Development & Tourism Coordinator is authorized to direct the work of Consultant unless the Economic Development & Tourism Coordinator designates in writing another representative of City to provide such direction. The Economic Development & Tourism Coordinator may, at any time, issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, then Consultant shall immediately notify the Economic Development & Tourism Coordinator and take no further action concerning those written directions until such time as the parties have executed a written change order.

#### **6. LICENSE AND TAXES**

Consultant shall possess a current Blaine Business License and any regulatory license(s) required to fulfill its obligations under this Agreement. Furthermore, Consultant agrees to pay when due all taxes, assessments, levies or tariffs.

## 7. INSURANCE

Prior to and during the performance of the work covered by this Agreement, Consultant shall provide to City evidence that it has obtained and maintains in full force and effect during the term of this Agreement:

- (a) Professional Liability Insurance covering Errors and Omissions of the CONSULTANT in the amount of not less than One Million Dollars (\$1,000,000) per claim and an annual aggregate limit of \$2,000,000.
- (b) Workers' Compensation Insurance as required by law;
- (c) Employers' Liability Insurance (bodily injuries) with a limit of not less than One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such insurance in all states where the CONSULTANT will have employees located in the performance of its work covering its common law liability to such employees.
- (d) Comprehensive General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles and vehicles used by or on behalf of Consultant with One Million Dollars (\$1,000,000) combined single limit for bodily injury and/or property damage per occurrence and an annual aggregate limit of Two Million Dollars (\$2,000,000).
- (e) Except with regard to the Professional Liability Insurance and statutory workers compensation insurance, each of the policies required herein **shall name the City as an additional insured**. Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the CITY except upon thirty (30) days' prior written notice from the insurance company to the CITY; (iii) contain an express waiver of any right of subrogation by the insurance company against the CITY and its elected officials, employees, or agent; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of the CONSULTANT which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to CONSULTANT and CITY.
- (f) With regard to the Professional Liability Insurance, the CONSULTANT shall maintain the same in full force and effect during the term of this Agreement and for a period of one year thereafter.
- (g) The CONSULTANT shall furnish the CITY with copies of Certificates of Insurance evidencing policies of insurance required herein, including copies of the insurance policies required to be provided by a sub-consultant. The CONSULTANT shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one year thereafter. The CITY's failure to request such certificates shall not relieve the CONSULTANT of the obligation to provide them.
- (h) The CONSULTANT shall maintain the insurance in effect at all times that it is performing work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the CITY to find the CONSULTANT in default and terminate the Agreement accordingly. Alternatively, the CITY may at its option purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the CONSULTANT.

City shall be provided thirty (30) days' written notice of any cancellation of said professional liability insurance.

## 8. RELATIONSHIP OF PARTIES

CONSULTANT is **not** an Agent or Employee of the CITY. In performing work and services hereunder, the CONSULTANT and CONSULTANT's employees, agents, and representatives shall be acting as independent CONSULTANTs and shall not be deemed or construed to be partners, employees or agents of the CITY in any manner whatsoever. No employee of the CONSULTANT shall be considered an employee of the CITY even while performing work required under this Agreement. Furthermore, the

CONSULTANT shall not hold itself out as, nor claim to be, an officer or employee of the CITY by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY.

**9. CONFLICT OF INTEREST**

CONSULTANT covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or any of its Sub-consultants.

**10. COMPLIANCE WITH APPLICABLE LAWS**

The CONSULTANT shall comply with all the CITY's resolutions and all federal, state, and local laws, regulations and ordinances that are applicable to the work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable CITY's resolutions, federal, state or local laws, regulations or ordinances during the performance of the work affect the cost of performing the work. The CONSULTANT shall register (and shall require the same of all Subconsultants), if and as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the CITY. By executing this Agreement, the CONSULTANT further certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. It further agrees by acceptance of this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/CONSULTANT or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The CITY reserves the right to require the CONSULTANT to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirement.

**11. WARRANTY**

Consultant represents and agrees that their services will conform to the standard of care applicable to the professional services covered by this Agreement, and that they shall be performed with the degree of skill and diligence normally employed by professional consultants performing the same or similar work under similar circumstances. For example, should the consultant be providing professional engineering or architectural services, such services shall conform to the applicable standard of care for such licensed professionals.

In the event of a default hereunder, or in the event that Consultant fails to perform the Project work in conformance with the standard of care set forth in this Agreement, including this section, then the City may, in addition to exercising all of those rights and remedies available to it in law and equity, (i) terminate the Contract, (ii) cure any defect arising from Consultant's negligence, recklessness or willful misconduct and charge the cost of such repair back to Consultant, and/or (iii) seek specific remedial performance under the Contract at no additional cost to City. The remedies provided for herein and in this Agreement are cumulative. Consultant shall be given at least seven working days written notice of such failure to conform to the standard of care and a reasonable time to cure such failure.

**12. INDEMNIFICATION**

The CONSULTANT shall defend indemnify and hold harmless the CITY, its officers, employees, and agents from any and all demands, claims demands, claims, judgments, costs (including expert witness fees) or liabilities arising from and to the extent caused by any negligent act or omission of the CONSULTANT or its directors, officers, agent or employees in execution the work, except to the extent that such negligence is caused by the sole negligence of the City. At the conclusion of the matter, the CITY and the CONSULTANT will reasonably apportion attorney fees and cost on the basis of respective fault as determined in the action. Pursuant to Title 51 RCW, the CITY and the CONSULTANT expressly waive any defense as between them arising from Title 51 RCW and state that this provision was mutually negotiated by the parties.

**13. WORK PRODUCT CONFIDENTIALITY**

Any reports, documents, questionnaires, records, information or data given to or prepared or assembled

under this Agreement which the CITY requests to be kept confidential shall not be made available by the CONSULTANT to any individual or organization without prior written approval of the CITY except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, or software programs provided by the CITY or other documents produced in whole or in part by the CONSULTANT under this Agreement shall be the subject of an application for copyright by or on behalf of the CONSULTANT.

**14. PUBLIC RECORD REQUEST**

Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Records Act (RCW 42.56 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to provide all parties the opportunity to seek injunctive relief pursuant to RCW 42.56 *et. seq.* so as to protect the vital functions of those entities. This clause shall survive the termination or expiration of this Agreement.

**15. DELIVERABLES PROPERTY OF CITY**

All work performed under this Agreement is work for hire. All drafts and all deliverables, including, but not limited to, original plans, drawings and specifications, prepared by the CONSULTANT and any and all sub-consultant for the CITY and funded by the CITY are and shall remain the property of the CITY under any and all circumstances. This shall not apply to proprietary software or documentation that may be provided to the CITY and that was developed independent of funding by the CITY, provided that such proprietary documentation is identified as such prior to or with the first delivery of such documentation to the CITY. The CONSULTANT assumes no liability for any use of any plans other than that originally intended for this Project. Originals, including electronic forms of the data prepared by the CONSULTANT and funded by the CITY, shall become the property of the CITY. No reports, records, questionnaires, software programs provided by CITY or other documents produced in whole or in part by the CONSULTANT under this Agreement shall be the subject of an application for copyright by or on behalf of the CONSULTANT or any Subconsultant. Upon the satisfactory completion of the work, the CONSULTANT may seek permission from the CITY to use the final deliverable for the purpose of specific marketing efforts provided that the CONSULTANT which shall not be unreasonably denied The CONSULTANT's work shall not infringe on any copyright, patent, trade secret, or other proprietary rights held by any third party.

**16. ELECTRONIC FILE COMPATIBILITY**

All electronically- transmitted output must be compatible with existing CITY software, and shall be provided to the CITY in an appropriate electronic format as directed by the CITY. Any computer automated dispatch (CAD) deliverables shall be consistent with the CITY's standard CAD layering system, as provided by the CITY to the CONSULTANT. CONSULTANT shall check with the CITY for software application, system compatibility and preferred file type.

**17. NON DISCRIMINATION**

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran or a member of any other protected class. The CONSULTANT shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran or a member of any other protected class.

**18. FEDERAL RESTRICTION ON LOBBYING**

The CONSULTANT certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 *et seq.*, no Federal appropriated funds have been paid or will be paid, by or on behalf of



the CONSULTANT, 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.

**19. FEDERAL DEBARMENT AND SUSPENSION**

The CONSULTANT certifies, that neither it nor its “principals” (as defined in 49 CFR.29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

**20. SUBLETTING or ASSIGNING OF AGREEMENT**

The CONSULTANT shall not sublet or assign any of the work covered by this Agreement without the express written consent of the CITY.

**21. NOTICES**

Any notices required to be delivered by CONSULTANT to the CITY or by CITY to the CONSULTANT shall be in writing and delivered to the parties at following addresses:

Attn: City Project Lead, Alex Wenger  
Blaine City Manager or designee  
435 Martin Street, Suite 3000  
Blaine, WA 98230

Attn: Matt Hoffman  
Maul Foster & Alongi, Inc  
109 East 13th Street  
Vancouver, WA 98660

**22. REVIEW OF TITLE DOCUMENTS**

Prior to the execution or recordation of any documents effecting title to any property, said document shall be reviewed by the CITY. The CONSULTANT shall not execute or record (or make to be executed or recorded) any such document prior to the CITY’s review and approval.

**23. LITIGATION/VENEUE/ARBITRATION**

This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely in the Superior Court of the State of Washington in and for Whatcom County and shall be subject to section 25.1, below. Except as provided in Paragraph 12, in the event of any other dispute arising out of or under this Agreement, the substantially prevailing party shall be entitled to its reasonable attorney's fees and costs.

22.1 Arbitration: In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees incurred by the other party, and in the event any judgment is secured by such prevailing party all such costs and attorneys' fees of collection shall be included in any such judgment. In the event of any dispute arising between the parties to this Agreement, any such dispute shall be submitted to binding arbitration as provided herein. The parties shall select an independent and unbiased arbitrator who is not affiliated directly or indirectly with either party within ten (10) days after any party demands arbitration. If the parties fail to select or cannot agree upon an arbitrator within this time, then they shall make application to the Superior Court of Whatcom County, pursuant to RCW 7.04A et seq., for an order appointing an arbitrator. Such application may be made at any time after the ten (10) day period has expired. Upon application to the court for an arbitrator, the Court shall select an arbitrator who shall render his/her decision no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator’s appointment. The arbitrator’s decision shall be binding on both parties. Each party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. RCW Chapter 7.04A and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court (“MAR”) shall govern the arbitration. In the event of any inconsistencies between this

Arbitration section, RCW Chapter 7.04A, and MAR 5.2 through 5.4, the terms of this Arbitration section shall take precedence over RCW Chapter 7.04A and MAR 5.2 through 5.4; and RCW Chapter 7.04A shall take precedence over MAR 5.2 through 5.

**24. FORCE MAJEURE**

Consultant shall not be responsible for delays caused by circumstances beyond its reasonable control, including but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents, (2) acts of God, (3) failure of district to furnish timely information or to approve or disapprove Consultants instruments of service promptly, and (4) faulty performance or nonperformance by City, City's independent consultants or contractor, or governmental agencies. Consultant shall not be liable for damages arising out of any such delay, nor shall the Consultant be deemed to be in breach of this Agreement as a result thereof.

**25. POLLUTION**

The CITY acknowledges that the CONSULTANT is not responsible for the creation or presence of contamination or pollution, if any, at the property except to the extent that such a discharge, release or escape is caused by the negligent act or failure to act of the CONSULTANT. For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The CONSULTANT will promptly notify the CITY of contamination conditions, if identified. Notwithstanding the foregoing, the CITY does not herein waive any cause of action for damages resulting from the CITY's reliance on any misrepresentation (made either knowingly or negligently) by the CONSULTANT with regard to the presence of any contamination or pollution.

**26. ENTIRE AGREEMENT**

This is the entire agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The CONSULTANT specifically understands that no CITY employees other than the Project Manager or his/her supervisors are authorized to direct the work of the CONSULTANT.

**27. SIGNING AUTHORITY**

Anyone signing this Agreement by said signature certifies that he/she has the authority to execute said document on behalf of the CONSULTANT and that his/her signature is binding upon the firm or corporation.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this Agreement, which shall be binding upon the parties according to its terms.

**CONSULTANT:**

\_\_\_\_\_  
Seth Otto, Principal Planner  
Maul Foster & Alongi, Inc

\_\_\_\_\_  
Date

**CITY OF BLAINE:**

\_\_\_\_\_  
Mike Harmon,  
City Manager

\_\_\_\_\_  
Date

**DEPARTMENTAL APPROVAL:**

\_\_\_\_\_  
Stacie Pratschner  
Community Development Director

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Samuel Crawford  
Deputy City Manager/City Clerk

\_\_\_\_\_  
Date

## Exhibit A

### SCOPE OF SERVICES

Steps/Deliverables	Description	Start Date	End Date
<b>Action 1</b>	<b>Existing conditions review</b>	<b>February 2023</b>	<b>April 2023</b>
Step 1.1	Analyze population and employment trends, with documentation of projections.	February 2023	April 2023
Step 1.2	Quantify existing and projected housing needs for all income levels, including extremely low-income households, with documentation of housing and household characteristics, and cost-burdened households	February 2023	April 2023
Step 1.3	Gather and analyze data on existing housing stock (type, size, cost, and age)	February 2023	April 2023
Step 1.4	Review and evaluate the current housing element (per RCW 36.70A.070(2), as amended by House Bill 1220 (2021)) and other policies regarding housing, including an evaluation of success in attaining planned housing types and units, achievement of goals and policies, and implementation of the schedule of programs and actions	February 2023	April 2023
Step 1.5	Review the effectiveness of current programs, development regulations and permitting processes related to housing development	February 2023	April 2023
Step 1.6	Review land capacity analysis and review ability of existing zoning to provide for housing needs and all income brackets	February 2023	April 2023
Step 1.7	Identify areas that may be at higher risk of displacement from market forces	February 2023	April 2023
<b>Assumptions</b>	City to provide active development permits.		
<b>Deliverable 1</b>	<b>Existing Conditions and Housing Needs Analysis Report</b>		<b>4/21/2023</b>
<b>Action 2</b>	<b>Provide for participation and input from community members, community groups, local builders, local realtors, nonprofit housing advocates and local religious groups</b>	<b>March 2023</b>	<b>June 2023</b>
Step 2.1	Identify groups that should be included in outreach. Develop stakeholder groups to gather input from housing advocates, housing providers and social service organizations.	March 2023	June 2023
Step 2.2	Conduct public outreach to help develop goals and objectives	March 2023	June 2023
<b>Assumptions</b>	<ul style="list-style-type: none"> <li>- 2 community meetings, with presentations or outreach at the Blaine Library Open House (March) and the Blaine OysterFest 2023 (May).</li> <li>- 15 one-on-one interviews with stakeholders including developers (non- and for-profit), business leaders and community groups; interview with housing developer group.</li> <li>- 1 community-wide survey; website and communications support.</li> </ul>		
<b>Deliverable 2</b>	<b>Summary of Public Engagement Results</b>		<b>6/2/2023</b>

Steps/Deliverables	Description	Start Date	End Date
<b>Action 3</b>	<b>Evaluation and Development of Policies and Tools for Increasing Housing Diversity</b>	<b>April 2023</b>	<b>May 2023</b>
Step 3.1	Develop strategies to increase the supply of housing, and variety of housing types, needed to serve the housing needs identified by the Existing Conditions and Housing Needs Analysis Report, including inclusion of anti-displacement strategies to minimize displacement of low-income residents resulting from redevelopment.	April 2023	May 2023
Step 3.2	Review strategies to plan for and accommodate existing and projected needs of all economic segments of the community, including documenting programs and actions needed to achieve housing availability including gaps in local funding, barriers such as development regulations, and other limitations.	April 2023	May 2023
Step 3.3	Identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing and identify policies and regulations to address and begin to undo these impacts.	April 2023	May 2023
Step 3.4	Develop a schedule of programs and actions to implement and monitor the recommendations of the housing action plan that will be based on: <ul style="list-style-type: none"> <li>a. Review of the City's downtown and citywide zoning and identification of opportunities for a mix of housing development types; and</li> <li>b. Consideration of housing locations in relation to employment locations;</li> <li>c. Consideration of gaps in local funding, barriers such as development regulations, and other limitations; and</li> <li>d. The review of the City's Unified Fee Schedule, including identifying opportunities to encourage affordable and market rate housing.</li> </ul>	April 2023	May 2023
<b>Assumptions</b>	<ul style="list-style-type: none"> <li>- A joint workshop with City Council and the Planning Commission will be conducted at the start of Action 3.</li> <li>- City to provide all relevant plans, strategies, and documents.</li> <li>- Existing data and resources available through the Whatcom Housing Alliance and Kulshan Community Land Trust will be made available.</li> </ul>		
<b>Deliverable 3</b>	<b>Draft Housing Action Plan</b>		<b>3/31/2023</b>
<b>Action 4</b>	<b>Adoption of Housing Action Plan</b>	<b>March 2023</b>	<b>June 2023</b>
Step 4.1	Present draft HAP and public hearing before the Planning Commission, make changes as needed	March 2023	June 2023
Step 4.2	Present draft HAP and public hearing record to City Council, make changes as needed	March 2023	June 2023
Step 4.3	Prepare ordinance and/or resolution for Council adoption	March 2023	June 2023
<b>Assumptions</b>	<ul style="list-style-type: none"> <li>- City staff will conduct two rounds of edits to the draft HAP: one before Planning Commission presentation, and a second following Planning Commission review.</li> </ul>		

Steps/Deliverables	Description	Start Date	End Date
	<ul style="list-style-type: none"> <li>- City staff will present the draft HAP to the Planning Commission and City Council. MFA will not attend in person.</li> <li>- City staff will prepare the ordinance and/or resolution</li> <li>- MFA will assist staff through virtual meetings as necessary.</li> </ul>		
<b>Deliverable 4</b>	<b>Adopted Housing Action Plan</b>		<b>6/30/2023</b>

## Exhibit B

### SCHEDULE

Month	2023				
	Feb	Mar	Apr	May	Jun
<b>1. Existing Conditions Review</b>					
1.1 Analyze population and employment trends	x x	x x			
1.2 Quantify existing and projected housing needs at all income levels	x x	x x			
1.3 Analyze existing housing stock	x x	x x			
1.4 Review current policies related to housing	x	x x			
1.5 Review current programs and regulations		x x	x x		
1.6 Review land capacity and existing zoning			x x		
1.7 Identify areas of displacement risk			x x		
Deliverable (Existing Conditions and Housing Needs Analysis Report)			x x		
<b>2. Community Participation</b>					
1.1 Identify and develop stakeholder groups		x x x			
1.2 Conduct public outreach			x x x x	x x x	
Deliverable (Engagement Summary)				x x x	
<b>3. Evaluation and Development of Policies and tools</b>					
1.1 Develop strategies to meet housing needs			x x x		
1.2 Review strategies to plan for all income segments			x x x		
1.3 Inclusion and racially disparate impacts analysis				x x	
1.4 Develop strategies and actions to support implementation				x x	
Deliverable				x x	
<b>4. Adoption of Housing Action Plan</b>					
4.1 Present draft HAP and public hearing before Planning Commission				x x	
4.2 Present draft HAP and public hearing before City Council					x x
4.3 Prepare ordinance/resolution for City Council Adoption					x x x

## Exhibit C

### FEE SCHEDULE

Steps	Description	Budget
Action 1	Existing conditions review	\$25,000
Action 2	Provide for participation and input from community members, community groups, local builders, local realtors, nonprofit housing advocates and local religious groups	\$10,000
Action 3	Evaluation and Development of Policies and Tools for Increasing Housing Diversity	\$25,000
Action 4	Adoption of Housing Action Plan	\$5,000
	<b>TOTAL</b>	<b>\$65,000</b>