

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: April 27, 2020

AGENDA ITEM:	
Professional Services Agreement between the City of Marysville and MAKERS Architecture and Urban Design	
PREPARED BY:	DIRECTOR APPROVAL:
Chris Holland, Planning Manager	
DEPARTMENT:	
Community Development	
ATTACHMENT:	
<ol style="list-style-type: none"> 1. Interagency Agreement with City of Marysville through Growth Management Services 2. Professional Services Agreement 	
BUDGET CODE:	AMOUNT:
SUMMARY:	

The City of Marysville received a \$125,000 grant from Washington State Department of Commerce to assist with increasing urban residential building capacity and streamlining regulations within the Downtown Planning Area. In order to fulfill the grant obligations the City requested proposals from multi-disciplinary firms capable of providing urban design, land use planning, landscape architecture, transportation (motorized and non-motorized), stormwater and general infrastructure planning services associated with the development and implementation of an update to the Downtown Master Plan (DMP).

The Community Development Department interviewed four qualified firms to provide consulting services for the development and implementation of the DMP. Staff is recommending City Council authorize the Mayor to enter into a Professional Services Agreement with MAKERS Architecture and Urban Design, LLP, to provide consultant services in the amount of \$125,000.00 in order to adopt an update to the DMP pursuant to RCW 43.21C.420, update the Downtown Planned Action Environmental Impact Statement and adopt a Form-Based Code within the Downtown Planning Area:

<p>RECOMMENDED ACTION: Staff recommends Council authorize the Mayor to sign a Professional Services Agreement with MAKERS Architecture and Urban Design, LLP, to provide consultant services in the amount of \$125,000.00 in order to prepare an update to the Downtown Master Plan, an update to the Planned Action Environmental Impact Statement and a Form Based Code within the Downtown Planning Area.</p> <p>RECOMMENDED MOTION: I move to authorize the Mayor to sign a Professional Services Agreement with MAKERS Architecture and Urban Design, LLP to provide consultant services in the amount of \$125,000.00 in order to prepare an update to the Downtown Master Plan, an update to the Planned Action Environmental Impact Statement and a Form Based Code within the Downtown Planning Area.</p>



Interagency Agreement with

City of Marysville

through

Growth Management Services

For

E2SHB 1923 Grant program:
Selected actions to increase residential building capacity

Start date:

Date of Execution

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General Terms and Conditions


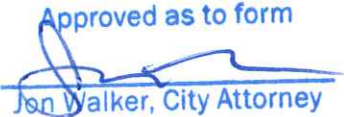
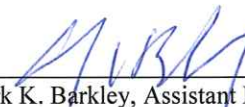
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Attachment A, Scope of Work
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FACE SHEET

Contract Number: 20-63314-015

**Washington State Department of Commerce
Local Government Division
Growth Management Services
E2SHB 1923 Grant**

1. Contractor City of Marysville 80 Columbia Avenue Marysville, WA 98270		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative Jeff Thomas Community Development Director (360) 363-8211 jthomas@marysvillewa.gov		4. COMMERCE Representative Matt Ojennus Senior Planner (360) 725-4047 matthew.ojennus@commerce.wa.gov PO Box 42525 1011 Plum Street SE Olympia Washington 98504-2525	
5. Contract Amount \$125,000	6. Funding Source State of Washington	7. Start Date Date of Execution	8. End Date June 30, 2021
9. SWV # SWV0000432-00		10. UBI # 314-000-001	
11. Contract Purpose E2SHB 1923 (2019) grant funding to address housing affordability.			
12. Signing Statement COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: Attachment "A" – Scope of Work and Attachment "B" – Budget.			
FOR CONTRACTOR  _____ Jon Nehring, Mayor City of Marysville _____ Date  Approved as to form _____ Jon Walker, City Attorney		FOR COMMERCE  _____ Mark K. Barkley, Assistant Director Local Government Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 08/22/2019. APPROVAL ON FILE.	

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. CONTRACT MANAGEMENT

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

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

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

3. COMPENSATION

COMMERCE shall pay an amount not to exceed **one hundred twenty-five thousand dollars (\$125,000)** for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

Actions selected from the menu of twelve actions must be adopted by April 1, 2021 to receive full funding. Budget managers should be aware that the final thirty percent (30%) of the grant award is contingent upon adoption of the selected Action(s).

The final due date for deliverables must be no later than June 15, 2021.

4. EXPENSES

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable.

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

5. BILLING PROCEDURES AND PAYMENT

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

The parties agree this is a performance-based contract intended to produce the deliverables identified in Scope of Work (Attachment A). Payment of any invoice shall be dependent upon COMMERCE'S acceptance of Contractor's performance and/or deliverable. The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 20-63314-015. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

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

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

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

COMMERCE will pay Contractor for costs incurred prior to the start date of this Agreement, if such costs would have been allowable on or after July 28, 2019, the effective date of Engrossed Second Substitute

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
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House Bill 1923 (2019). To be allowable, such costs must be limited to the completion of tasks and deliverables outlined in the Scope of Work (Attachment A).

Duplication of Billed Costs

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

Disallowed Costs

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

Line Item Transfers

The total amount of transfers of funds between line item budget categories shall not exceed ten percent (10%) of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a contracts amendment by the Contractor and COMMERCE.

Ineligible Costs

Only eligible project-related costs will be reimbursed. Ineligible costs include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. SUBCONTRACTOR DATA COLLECTION

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

8. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

**GENERAL TERMS AND CONDITIONS
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1. DEFINITIONS

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

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

2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

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

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
 - iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality.

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COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

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

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

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

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

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

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

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

**GENERAL TERMS AND CONDITIONS
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10. LICENSING, ACCREDITATION AND REGISTRATION

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

11. RECAPTURE

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

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

12. RECORDS MAINTENANCE

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

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

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

13. SAVINGS

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

14. SEVERABILITY

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

15. SUBCONTRACTING

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

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

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

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

16. SURVIVAL

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

17. TERMINATION FOR CAUSE

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

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

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

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

18. TERMINATION FOR CONVENIENCE

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

19. TERMINATION PROCEDURES

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

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

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

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

- A. Stop work under the contract on the date, and to the extent specified, in the notice;

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

20. TREATMENT OF ASSETS

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

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

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

21. WAIVER

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

Scope of Work

Selected actions to increase residential building capacity:
RCW 36.70A.600(1)

(f) Adopt a subarea plan pursuant to RCW [43.21C.420](#);

(g) Adopt a planned action pursuant to RCW [43.21C.440\(1\)\(b\)\(ii\)](#), except that an environmental impact statement pursuant to RCW [43.21C.030](#) is not required for such an action;

(i) Adopt a form-based code in one or more zoning districts that permit residential uses. "Form-based code" means a land development regulation that uses physical form, rather than separation of use, as the organizing principle for the code;

Commerce will be monitoring the contracts in May and November of 2020 to review progress in meeting milestones, deliverables and invoicing.

Scope of Work

Action 1: Adopt a subarea plan pursuant to RCW 43.21C.420.			
Steps/ Deliverables	Description	Start Date	End Date
Action 1	Adopt a subarea plan pursuant to RCW 43.21C.420. Specifically, repeal the existing <i>Downtown Master Plan</i> and replace with a new Downtown Plan with potentially a more expansive boundary, streamlined zoning, and modified standards.	02.01.20	03.29.21
Step 1.1	Request for proposal (RFP) for professional services.		02.28.20
Step 1.2	Visioning process engaging with community members, business members and key stakeholders.		04.30.20
Step 1.3	Identify key recommendations and implementation strategies, including boundary, development options, transportation, utilities, street improvements, parks and trails		06.05.20
Step 1.4	Establish design guidelines or standards to direct new development to meet public as well as private objectives.		07.31.20
Step 1.5	Develop recommendations to Planning Commission		08.28.20
Step 1.6	Present recommended amendments to Planning Commission		09.22.20
Deliverable 1	Draft Sub Area Plan Ordinance and Staff Report		12.22.20

Attachment A

Step 1.7	Prepare notices, distribute information and conduct public hearings before the Planning Commission		12.22.20
Step 1.8	Make amendments based on public input from the community and Planning Commission.		01.29.21
Step 1.9	Present to City Council and finalize Ordinance for Council Adoption.		02.22.21
Deliverable 2	Adopted Sub Area plan Ordinance		03.29.21

Scope of Work

Action 2: Update Planned Action Environmental Impact Statement (EIS).			
Steps/ Deliverables	Description	Start Date	End Date
Action 2	Update Planned Action EIS.	02.01.20	03.29.21
Step 2.1	Evaluate different boundaries and development options		07.28.20
Step 2.2	Evaluate environmental impacts of development options		09.29.20
Deliverable 3	DRAFT Update of Planned Action EIS		01.29.21
Step 2.3	Designate the Planned Action Projects by Ordinance		02.22.21
Deliverable 4	Adopted Update of Planned Action Ordinance		03.29.21

Scope of Work

Action 3: Adopt a form-based code in one or more zoning districts that permit residential uses. "Form-based code" means a land development regulation that uses physical form, rather than separation of use, as the organizing principle for the code.			
Steps/ Deliverables	Description	Start Date	End Date
Action 3	Adopt a form-based code within the Downtown Master Plan area.	02.01.20	03.29.21
Step 3.1	Request for proposal (RFP) for professional services.		02.28.20
Step 3.2	Establish form-based design guidelines or standards to direct new development to meet public as well as private objectives.		07.31.20
Step 3.3	Develop recommendations to Planning Commission		08.28.20
Step 3.4	Present recommended amendments to Planning Commission		09.29.20
Deliverable 5	Draft form-based code and Staff Report		12.22.20

Attachment A

Step 3.5	Prepare notices, distribute information and conduct public hearings before the Planning Commission		12.22.20
Step 3.6	Make amendments based on public input from the community and Planning Commission.		01.29.21
Step 3.7	Present to City Council and finalize Ordinance for Council Adoption.		02.22.21
Deliverable 6	Adopt Form-based code Ordinance		03.29.21

Budget

Deliverables	Commerce Funds
<i>Deliverable 1.</i> Draft Sub Area Plan Ordinance and Staff Report	\$42,000
<i>Deliverable 2.</i> Adopted Sub Area Plan Ordinance	\$18,000
<i>Deliverable 3.</i> DRAFT Update of Planned Action EIS	\$20,000
<i>Deliverable 4.</i> Adopt Update of Planned Action Ordinance	\$10,000
<i>Deliverable 5.</i> Draft form-based code and Staff Report	\$24,500
<i>Deliverable 6.</i> Adopt form-based code Ordinance	\$10,500
Total:	\$125,000

NOTE: The final Deliverable(s) for this grant represents thirty percent (30%) of the total grant award and payment is contingent upon submittal of a copy of the final, adopted local action(s).

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF MARYSVILLE
AND MAKERS ARCHITECTURE AND URBAN DESIGN, LLP**

THIS AGREEMENT (“Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (“City”), and MAKERS Architecture and Urban Design, a Limited Liability Partnership (LLP), organized under the laws of the state of Washington, located and doing business at 500 Union Street, Suite 700, Seattle, WA 98101 (“Consultant”).

In consideration of the terms, conditions, covenants, and performances contained herein, the parties hereto agree as follows:

- 1. SCOPE OF SERVICES.** The Consultant shall provide the work and services described in the attached **EXHIBIT A**, incorporated herein by this reference (the “Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.
- 2. TERM.** The term of this Agreement shall commence on May 1, 2020 and shall terminate at midnight on April 1, 2021. The parties may extend the term of this Agreement by executing a written supplemental amendment.
- 3. COMPENSATION.** The Consultant shall be paid by the City for Services rendered under this Agreement as described in **EXHIBIT A** and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed **One Hundred Twenty-Five Thousand Dollars (\$125,000.00)** within the term of the Agreement, including extensions, without the written agreement of the Consultant and the City. Such payment shall be full compensation for the Services and for all labor, materials, supplies, equipment, incidentals, and any other expenses necessary for completion.

The Consultant shall submit a monthly invoice to the City for Services performed in the previous calendar month in a format acceptable to the City. The Consultant shall maintain time and expense records and provide them to the City upon request.

The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

4. CONSULTANT’S OBLIGATIONS.

4.1 MINOR CHANGES IN SCOPE. The Consultant agrees to accept minor changes, amendments, or revisions to the scope of the Services, as may be required by the City, when such

changes, amendments, or revisions will not have any impact on the cost of the Services or the proposed delivery schedule.

4.2 ADDITIONAL WORK. The City may desire to have the Consultant perform additional work or services which are not identified in the scope of the Services. If the parties agree to the performance of additional work or services, the parties will execute a written supplemental amendment detailing the additional work or services and compensation therefore. In no event will the Consultant be compensated for preparing proposals for additional work or services. In no event shall the Consultant begin work contemplated under a supplemental amendment until the supplemental amendment is fully executed by the parties.

4.3 WORK PRODUCT AND DOCUMENTS. The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the Services shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the Services, the work product, and all documents produced under this Agreement, even though the Services have been accepted by the City.

In the event that the Consultant defaults on this Agreement or in the event that this Agreement is terminated prior to the completion of the Services or the time for completion, all work product and all documents and other materials produced under this Agreement, along with a summary of work as of the date of default or termination, shall become the property of the City. The summary of Services provided shall be prepared at no additional cost to the City. Upon request, the Consultant shall tender the work product, all documents, and the summary to the City within five (5) business days. Tender of said work product shall be a prerequisite to final payment under this Agreement.

The Consultant will not be held liable for reuse of work product or documents produced under this Agreement or modification of the work product or documents for any purpose other than those identified in this Agreement without the written authorization of the Consultant.

4.4 PUBLIC RECORDS ACT. Consultant acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the “PRA”). All records owned, used, or retained by the City are public records subject to disclosure unless exempt under the PRA, whether or not the records are in the possession or control of the City or Consultant. All exemptions to the PRA are narrowly construed.

a. **Confidential Information.** Any records provided to the City by the Consultant which contain information that the Consultant in good faith believes is not subject to disclosure under the PRA shall be marked “Confidential” and shall identify the specific information that the Consultant in good faith believes is not subject to disclosure under the PRA and a citation to the statutory basis for non-disclosure.

b. **Responding to Public Records Requests.** The City shall exercise its sole legal judgment in responding to public records requests.

- (1) The City may rely upon the lack of notification from the Consultant in releasing any records that are not marked “Confidential.”
- (2) If records identified as “Confidential” by the Consultant are responsive to a PRA request, the City will seek to provide notice to Consultant at least ten (10) business days before the date on which the City anticipates releasing records. The City is under no obligation to assert any applicable exemption on behalf of the Consultant. The Consultant may seek, at its sole cost, an injunction preventing the release of information which it believes is protected. In no event will the City have any liability to Consultant for any failure of the City to provide notice prior to release.
- (3) If the City, in its sole legal judgment, believes that the Consultant possesses records that (1) are responsive to a PRA request and (2) were used by the City, the City will request the records from the Consultant. The Consultant will, within ten (10) business days:
 - i. Provide the records to the City in the manner requested by the City;
 - ii. Obtain a court injunction, in a lawsuit involving the requester, covering all, or any confidential portion of, the records and provide any records not subject to the court injunction; or
 - iii. Provide an affidavit, in a form acceptable to the City Attorney, specifying that the Consultant has made a diligent search and did not locate any requested documents.

c. **Indemnification.** In addition to its other indemnification and defense obligations under this Agreement, the Consultant shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorneys fees and litigation expenses), suits, judgments, or damages (collectively “Damages”) arising from or relating to any request for records related to this Agreement, to the extent such Damages are caused by action or inaction of the Consultant. This indemnification and defense obligation shall survive the expiration or termination of this Agreement.

4.5 MAINTENANCE/INSPECTION OF RECORDS. The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit.

Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

4.6 INDEMNITY.

a. **Indemnification and Hold Harmless.** The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

c. The provisions of this Section 4.6 shall survive the expiration or termination of this Agreement.

d. The Consultant hereby knowingly, intentionally, and voluntarily waives the immunity of the Industrial Insurance Act, Title 51 RCW, solely for the purposes of the indemnity contained in subpart "a" of this Section 4.6. This waiver has been mutually negotiated by the parties.

_____ (City Initials) _____ (Contractor Initials)

4.7 INSURANCE.

a. **Insurance Term.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Consultant, its agents, representatives, or employees.

b. **No Limitation.** Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

c. **Minimum Scope of Insurance.** Consultant shall obtain insurance of the types and coverage described below:

- (1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
- (2) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Professional Liability insurance appropriate to the Consultant's profession.

d. **Minimum Amounts of Insurance.** Consultant shall maintain the following insurance limits:

- (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- (3) Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

e. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

f. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

g. **Verification of Coverage.** The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the Services.

h. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation within two business days of the Consultant's receipt of such notice.

i. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

j. **Insurance to be Occurrence Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy. Professional liability insurance may be written on a "Claims-made" basis if it is maintained for a period of three (3) years following completion of the services.

k. **City Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

4.8 LEGAL RELATIONS. The Consultant shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the Services to be performed under this Agreement. The Consultant represents that it and all employees assigned to perform any of the Services under this Agreement are in full compliance with the statutes of the State of Washington governing the Services and that all personnel to be assigned to the Services are fully qualified and properly licensed to perform the work to which they will be assigned.

4.9 INDEPENDENT CONTRACTOR.

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant's status as an independent contractor in the performance of the Services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the Services required under this Agreement. The Consultant shall not make

a claim of City employment and shall not claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work to the Services that the Consultant performs under this Agreement.

d. Prior to commencement of Services, the Consultant shall obtain a business license from the City.

4.10 EMPLOYMENT.

a. The term “employee” or “employees” as used herein shall mean any officers, agents, or employee of the Consultant.

b. Any and all employees of the Consultant, while performing any Services under this Agreement, shall be considered employees of the Consultant only and not of the City. The Consultant shall be solely liable for: (1) any and all claims that may or might arise under the Workman’s Compensation Act, Title 51 RCW, on behalf of any said employees while performing any Services under this Agreement, and (2) any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while performing any Services under this Agreement.

c. The Consultant represents, unless otherwise indicated below, that all employees of the Consultant that will perform any Services under this Agreement have never been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please use initials to indicate No or Yes below.)*

_____ No, employees performing the Services have never been retired from a Washington state retirement system.

_____ Yes, employees performing the Services have been retired from a Washington state retirement system.

In the event the Consultant checks “no”, but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, the Consultant hereby agrees to save, indemnify, defend and hold the City harmless from and against all expenses and costs, including reasonable attorney fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event the Consultant checks “yes” and affirms that an employee providing work has ever retired from a Washington State retirement system, every said employee shall be identified by the Consultant and such retirees shall provide the City with all information required by the City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

4.11 NONASSIGNABLE. Except as provided in **EXHIBIT B**, the Services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

4.12 SUBCONTRACTORS AND SUBCONSULTANTS.

a. The Consultant is responsible for all work or services performed by subcontractors or subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors or subconsultants the Consultant directly hires meet the responsibility criteria for the Services. Verification that a subcontractor or subconsultant has proper license and bonding, if required by statute, must be included in the verification process. If the parties anticipate the use of subcontractors or subconsultants, the subcontractors or subconsultants are set forth in **EXHIBIT B**.

c. The Consultant may not substitute or add subcontractors or subconsultants without the written approval of the City.

d. All subcontractors or subconsultants shall have the same insurance coverage and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

4.13 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant’s client base and shall obtain written permission from the City prior to providing services to third parties when a conflict or potential conflict of interest exists. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

4.14 CITY CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate, or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or the Services provided to the City.

4.15 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Consultant agrees to comply with equal opportunity employment and not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age, or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training; or rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth its nondiscrimination obligations. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

4.16 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

5. CITY APPROVAL REQUIRED. Notwithstanding the Consultant's status as an independent contractor, the Services performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if the Services have been completed in compliance with the Scope of Services and City requirements.

6. GENERAL TERMS.

6.1 NOTICES. Receipt of any notice shall be deemed effective three (3) calendar days after deposit of written notice in the U.S. mail with proper postage and address.

Notices to the City shall be sent to the following address:

CITY OF MARYSVILLE

Chris Holland

80 Columbia Avenue

Marysville, WA 98270

Notices to the Consultant shall be sent to the following address:

MAKERS ARCHITECTURE AND URBAN DESIGN, LLP

Rachel Miller

500 Union Street, Suite 700

Seattle, WA 98101

6.2 TERMINATION. The City may terminate this Agreement in whole or in part at any time by sending written notice to the Consultant. As per Section 6.1, the Consultant is deemed to have received the termination notice three (3) calendar days after deposit of the termination notice in the U.S. mail with proper postage and address. The termination notice is deemed effective seven (7) calendar days after it is deemed received by the Consultant.

If this Agreement is terminated by the City for its convenience, the City shall pay the Consultant for satisfactory Services performed through the date on which the termination is deemed effective in accordance with payment provisions of Section 3, unless otherwise specified in the termination notice. If the termination notice provides that the Consultant will not be compensated for Services performed after the termination notice is received, the City will have the discretion to reject payment for any Services performed after the date the termination notice is deemed received.

6.3 DISPUTES. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

6.4 EXTENT OF AGREEMENT/MODIFICATION. This Agreement, together with exhibits, attachments, and addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by a written supplemental amendment properly signed by both parties.

6.5 SEVERABILITY.

a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

b. If any part, term, or provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that part, term, or provision shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

6.6 NONWAIVER. A waiver by either party of a breach by the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

6.7 FAIR MEANING. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

6.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

6.9 VENUE. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

6.10 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

6.11 AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth herein.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20_____.

MAKERS ARCHITECTURE AND URBAN
DESIGN, LLP

By _____
_____(Name)
Its: _____(Title)

ATTEST/AUTHENTICATED:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A

Scope of Services

The consultant team—MAKERS, BERK, Perteet, and Transpo—will work with City of Marysville staff (staff) to complete the Downtown Master Plan (DMP), Planned Action EIS, and Form-based Code through the tasks and schedule identified below. The schedule assumes a start date in April but we can revise the schedule as needed.

The numbers in parentheses refer to the Commerce grant tasks and deliverables. We will meet the Commerce scope tasks; the work plan and schedule below indicate the timing and emphasis of key steps.

A. Kick-off and groundwork

- 1. Meet with staff to kick-off the project and update scope if needed.** In the virtual meeting, we will review scope, budget, schedule, communication, public engagement, and other project management activities. We will work with staff to develop a stakeholder and public engagement strategy.

Timeframe

April 2020

Products

Meeting results, including:

- Any updates to this scope of work and budget
- Public engagement plan (stakeholders, methods, and timeframes identified)
- Data requests

- 2. Conduct early public engagement (Commerce Step 1.1).** We will likely engage stakeholders/community members in the following ways to understand the problems this subarea plan should aim to solve and a vision for the future. City staff will advertise broad engagement activities through social media and other outlets (e.g., City listservs and local ethnic media) and help schedule activities.
 - a. Conduct a brief survey to local property and business owners, real estate developers (especially housing), and neighborhood representatives who will be most affected by any changes to ask them how they would like to be involved.
 - b. Through individual or small group phone/video calls (up to 4), interview priority stakeholders to identify their desires for downtown Marysville, barriers, and opportunities.
 - c. Post a digital [idea wall](#) and [interactive map](#) for broad communitywide visioning to understand unique “district” assets, opportunities, challenges, and values/principles and build community ownership of the DMP.
 - d. Summarize results as draft vision and objectives.

Timeframe
May 2020

Products

- Interview summaries
- Preliminary draft district characterization and challenges map (to be completed during existing conditions analysis)
- Community assets, challenges, and opportunities summary
- Draft vision and objectives

- 3. Confirm the SEPA approach and identify data needs (Commerce Action 2).** (BERK) Develop a template for the subarea plan's existing conditions analysis that also serves the Planned Action Supplemental EIS. Due to the likely preparation of a Supplemental EIS, scoping is optional and is not included in this scope; should the City determine scoping is beneficial for the public and agency review process, peer review of the City-prepared notice can be accommodated.

Timeframe
Late May 2020

Products

- Memo outlining SEPA approach
- Existing conditions analysis template

- 4. Set the study area boundary and produce basemap (Commerce Step 1.2 and 2.1).** Using early public engagement results and preliminary existing conditions information, confirm the study area boundary. City staff maps the boundary in GIS, and staff, with MAKERS' support, produces GIS-based map templates for team use.

Timeframe
Late May 2020

Products

- GIS-based study area map
- Map templates at variety of scales and page layouts for team use

- 5. Analyze existing conditions (Commerce Step 2.1 and 2.2).** Based on early public engagement, staff direction, and SEPA process needs, obtain and review only the necessary, relevant materials to update the 2009 DMP's existing conditions analysis. (For example, City staff might highlight sections in the 2009 plan that need updating.) Visit site (virtually, and as possible, in person) and document conditions. City staff produce GIS-based maps and provide consolidated comments on the draft for incorporation when the existing conditions analysis is incorporated in the subarea plan and/or EIS. Topics will likely include:

- a. Economic analysis.** Building off of existing studies such as the [Consolidated Plan](#) and Housing Affordability Regional Taskforce (HART) efforts, BERK will conduct an economic analysis to identify mid- to long-term development opportunities and challenges,

especially pertaining to housing. This information will provide the background necessary to conduct development feasibility analyses as part of this project. We assume that the City will provide buildable lands data that it is preparing for the regional process, as well as permit data and other relevant studies. Potential elements to be discussed in the high-level economic review include:

- i. Overall summaries of the residential and non-residential building stock, including summations of residential units by type
 - ii. Employment trends by sector (City staff will provide this element if needed)
 - iii. Prior trends in development and displacement in the city
 - iv. Housing demand in aggregate and by submarket/segment
 - v. Perceived short- and long-term barriers to development projects
 - vi. Potential locations for development, redevelopment, and infill given expected investments in transit and pending public and private development activity
 - vii. Uncertainties and effects of COVID-19 on trends with supply and demand
- b. **Land use.** Using spatial data developed by the City (e.g. parcel-based current land use per Assessor code, and zoning and future land use, buildable lands data developed for county-city report), BERK will summarize current and planned land use patterns. BERK will also summarize applicable regional, county, and local policies for the study area related to these patterns.
- c. **Aesthetics/urban design.** Makers will characterize urban design conditions and audit existing development code and design guidelines, focusing on housing and mixed-use development types. (City staff compiles comments on code's performance/usability.)
- d. **Transportation.** Transpo will update the context of the existing transportation system and future planned improvements based on the City's 2015 Comprehensive Plan, other more recent transportation impact studies completed for Downtown projects and adopted transportation plans/programs for Marysville, Community Transit, WSDOT, and Snohomish County. These recent studies along with a site visit (virtually or in-person) will be used as the basis for vehicle, transit, pedestrian, and bicycle existing conditions within the Downtown. The parking inventory will be updated based on input from City staff as well as a desktop review of on-street parking supply. No new transportation data collection is assumed as part of this task.
- e. **Surface water/water resources.** Perteeet will review previous existing conditions reports relative to surface water (stormwater) and water resources (natural resources) in the subarea and coordinate with PW staff to identify new improvements or pending plans. We assume all documentation will be provided by the City. This work includes email and telephone communication with PW staff. No formal meetings are planned for.

- f. **Public services.** Using existing City plans and City-provided spatial data, BERK will summarize existing facilities and operations for parks, schools, police, and fire services, and provide a description of levels of service relevant for policy development.
- g. **Utilities.** Pertect will review existing utility plans (sewer, power, gas) and assess improvements or new studies that have occurred since plans were published. We assume all documentation will be provided by the City. This work includes email and telephone communication with PW staff. No formal meetings are planned for.

Timeframe

Late June 2020

Products

Draft existing conditions report (to be updated once when incorporated in subarea plan and/or EIS document), including:

- Environmental issues and opportunities summary
- Initial modelling of transportation conditions and existing proposals
- Initial analysis of surface water, water resources, utilities, and street design standards.
- Economic analysis

- 6. **Draft subarea plan outline.** Following early public engagement and existing conditions analysis, and to streamline the team’s work, identify changes to the 2009 DMP’s outline (e.g., add a Housing section). City staff and MAKERS identify portions of the 2009 DMP that are still relevant and should remain in the new subarea plan.

Timeframe

Late June 2020

Products

Draft subarea plan outline

B. Develop alternatives (Commerce Step 1.2)

- 1. **Meet with staff to sketch alternatives.** We will meet with staff to review existing conditions, early engagement results, and sketch out alternatives. Only two alternatives—No Action and Action—will be analyzed in the EIS process, so this early meeting should direct the team’s work toward a single alternative with a few questions to be answered. If meeting virtually, we will share a whiteboard on a video conference call for simultaneous digital sketching/editing over City staff-produced base maps. The alternative will explore redevelopment options and capital investments (transportation, utilities, street improvements, parks, and trails) to achieve objectives identified in early public engagement. This will likely be a 2-part meeting; for example, 1.5 hours in the morning discussing challenges, opportunities, and objectives; break for lunch; and then 2 hours in the afternoon developing alternatives.
- 2. **Develop alternatives.** The team will then flesh out the No Action and Action alternatives sketched with staff. To streamline the process, we will describe the alternatives and organize the topics according to the draft subarea plan outline (likely a similar outline as the 2009 DMP).

- a. **Land use.** MAKERS and BERK will lead the land use element with an emphasis on housing opportunities and business viability. A focus will be to identify development typologies and locations of likely change. MAKERS and BERK will guide City staff in the development of spatial information to prepare alternative growth estimates for study in the SEIS and traffic model.
- b. **Housing and pro forma analysis.** Using concepts developed by MAKERS, BERK will develop pro forma models for desired housing types and for horizontal mixed-use projects. Up to three general proforma models will be developed and used for evaluation of policies. These will also support discussion about the potential for different new housing types in the community, as well as potential concerns related to displacement.
- c. **Urban design.** MAKERS will illustrate the guiding framework for each alternative, including alternative “districts,” conceptual zoning and design standards to achieve a range of housing types, and capital improvements to achieve the plan’s objectives.
- d. **Transportation.** Transpo will explore the transportation implications of each alternative providing input on a relative comparison based on existing conditions, an understanding of the potential land use density and types as well as the analysis conducted for the 2009 Downtown Master Plan. This exercise will not include a detailed evaluation of traffic operations but will leverage previous work completed for Downtown. MAKERS, Perteet, and Transpo will refine the roadway characteristics of each. Perteet will prepare concept street design for alternatives (assume 3 types).
- e. **Surface water/water resources.** Perteet will assess stormwater and surface impacts and ‘build’ requirements to accommodate projected growth demand under each alternative. We will provide concept cost information for anticipated improvements.
- f. **Public services.** BERK will identify planned investments in recreation, schools, or emergency services in the study area based on adopted plans. Alternative approaches to services that function as amenities will be highlighted as part of this work in coordination with Urban Design elements above.
- g. **Utilities** Perteet will evaluate utility improvements to accommodate growth projections under each alternative. We will provide concept level cost information for desired improvements.

Timeframe

By Late July 2020

Products:

- Sketch alternatives exploring a range of options for housing types and locations, other land uses, capital investments, and urban design character
- Refined and illustrated alternatives

C. Analyze alternatives

1. Analyze alternatives for SEPA and public decision-making (Commerce Steps 2.1 & 2.2).

Within the framework of the SEPA evaluation, we will, with staff, explore different boundaries and development configurations. The evaluation will include items noted in task B.2 above and C.2 below. We will translate the salient products into public information and engagement materials for the general public. The EIS will be areawide and comparative in nature but will identify enough information to consider appropriate mitigation measures for the Planned Action. The impact analysis will include quantitative and qualitative approaches such as models (e.g. transportation) or adopted standards (e.g. stormwater LID practices, public service levels of service, etc.) to determine the effect of the alternatives. One action alternative is anticipated in addition to the no action alternative given the likely preparation of a Supplemental EIS.

Given the strength of existing codes and plans, and the potential changes in the study area, likely EIS elements are anticipated to include the following sections:

- a. **Land Use (BERK):** Consider the effects of differing intensities and distributions of housing, employment, services, and transportation facilities on the land use pattern and shoreline use. Consider adopted and pending plans and policies (e.g. Comprehensive Plan, Shoreline Master Program, Countywide Planning Policies, VISION 2050, etc.).
- b. **Aesthetics/urban design (MAKERS).** Identify changes in heights and character relying on subarea plan vision, policies, and urban design elements.
- c. **Transportation (Transpo).** The transportation analysis will consider up to two (2) Alternatives including No Action and one new land use scenarios. It is assumed that the No Action is consistent with travel demand modelling that has already been completed for the 2015 Comprehensive Plan with no new forecasts required for the No Action Alternative. Transpo will prepare travel demand forecasts for the Action Alternative. Traffic operations analysis will be conducted at up to 12 study intersections. Access and circulation will be evaluated for vehicles, pedestrians, and bicycles with a focus on connectivity for pedestrians and bikes. Transpo will also consider how improvements to the transit system may influence transportation in the Downtown area as well as changes in parking relative to land use and roadway improvements. Based on the potential impacts, Transpo will identify mitigation measures and significant unavoidable adverse impacts.
- d. **Surface water/water resources (Perteet).** Perteet will analyze impacts and mitigation requirements for surface water and water resource improvements under each alternative.
- e. **Public Services - Fire, Schools, and Parks (BERK).** Using City levels of service standards and information from adopted service and capital facility plans we will identify the relative difference in demand and potential mitigation measures identified in City codes and by service providers.
- f. **Utilities:** Perteet will analyze each alternative for impacts, mitigation requirements, and public-private funding options for utility improvements for each alternative. We will

consider anticipated or needed improvements to accommodate growth and development projections.

Timeframe

By end of July 2020

Products

Analysis for the EIS consisting of technical memoranda for each study area.

2. Prepare Supplemental DEIS and identify planned action measures (Commerce Steps 2.2 & 2.3). The Draft EIS will contain the following elements required in WAC 197-11:

- Appendices Cover Letter
- Fact Sheet
- Table of Contents
- Chapter 1–Environmental Summary
- Chapter 2–Proposal and Alternatives
- Chapter 3–Affected Environment, Significant Impacts, and Mitigation Measures
- Chapter 4–References
- Chapter 5–Distribution List

We will prepare a preliminary draft EIS for City review and comment. Based on one round of consolidated City comments on the Preliminary Draft EIS, we will prepare a print-check document and a Draft EIS for posting and public review. We will prepare the notice of availability for City publication. The City will publish the Draft EIS.

Timeframe

By end of September 2020

Products

DEIS (**Commerce Deliverable 3**) and public engagement materials

3. Conduct public engagement to evaluate alternatives. MAKERS will host the project-specific online engagement described below. City staff will advertise broad engagement activities through social media and other outlets (e.g., City listservs and local ethnic media) and help schedule activities.

- a. Developers forum.** Hold a virtual or in-person “developers forum” in which a panel of invited experts in real estate, development, and business investments review the alternatives and provide their perspectives on the relative feasibility of each and the project in general.
- b. Individual or group interviews with targeted stakeholders.** We will interview up to 3 individuals or groups who are not involved in the developers forum, likely following up with the same or “snowball” interviewees identified in the early engagement interviews.
- c. Communitywide engagement.** MAKERS will administer an online survey with targeted questions about the alternatives’ trade-offs and offer an online forum for community

discussion. We may host a webinar-style meeting that participants can watch on their own time and provide feedback through the survey and forum. During the live webinar, we may use Poll Everywhere for participants to identify the preferred elements of each alternative.

Timeframe

By end of July 2020 so that results can be integrated into the preferred alternative

Products

Results of stakeholder and public input plus direction for drafting the subarea plan

D. Draft and final subarea plan

- 1. Sketch preferred concept (Commerce Step 1.3).** The team will review the public engagement results (alternatives evaluation) in a virtual or in-person meeting with staff and sketch out a preferred concept that updates the existing DMP with a focus on housing types, boundary update, and associated implications (e.g., displacement, circulation). It will be organized by the draft subarea plan outline.

Timeframe

September 2020

Product

Sketch preferred concept (likely a concept graphic and narrative with an annotated subarea plan outline)

- 2. Draft the subarea plan (Commerce Step 1.2).** The team will refine the concept, detailing the specific plan's regulatory and capital improvement policies and recommendations. During this step, the team will meet with staff to ensure that the recommendations fit with current plans and programs. The team will also propose form-based regulatory measures, preliminary public realm designs and incentives to spur desired development which will, if approved, serve as the basis for the regulatory and capital investment work in subsequent steps. As much as possible, MAKERS will utilize pre-existing graphics from the 2009 DMP and update as necessary. Staff and MAKERS will identify new graphics needed, and MAKERS will develop them to the level of effort identified in the project budget.

Timeframe

By end of September 2020

Products

Preliminary draft Subarea Plan describing principal recommendations (**Commerce Deliverable 1**)

- 3. Support staff in presenting the Draft Plan to Planning Commission (Commerce Step 1.5) and City Council (Commerce Step 1.7).**

Timeframe

By middle of November 2020

Products

Graphics/bullet points for presentation

- 4. Complete the Subarea Plan (Commerce Step 1.4).** Based on Commission, Council, and staff direction, we will complete the subarea plan, flesh out the required elements, and refine the recommendations. Because this will be accomplished while the implementation elements are being developed, there will be substantial coordination. The team will also complete identified SEPA requirements at this time (see Task E below).

Timeframe

By late November 2020

Products

Final subarea plan (**Commerce Deliverable 2**)

E. FEIS and Planned Action Ordinance

- 1. Support City in preparing FEIS and Planned Action Ordinance.** BERK will provide a template and direction to City staff to prepare the final EIS including a factsheet, table of contents, draft EIS analysis corrections as needed, description of the preferred alternative, and responses to comments. Team members will assist City staff in addressing comments to sections they authored. BERK will review the City's draft FEIS. City staff will prepare the notice of availability for City publication.

BERK will provide direction and peer review for the Planned Action Ordinance. City staff will collaborate with the City Attorney and prepare the ordinance that designates the Planned Action including mitigation measures from the EIS. The ordinance will address all legal requirements as outlined in WAC 197-11-168.

Timeframe

By February 2021

Products

Templates and peer review of Final Planned Action EIS and Planned Action Ordinance (**Commerce Deliverable 4**)

- 2. Assist with review and adoption process (Commerce Steps 1.5 & 1.7).** BERK will answer questions as needed to assist staff with review and adoption activities.

Timeframe

February-April 2021

Products

Information and materials as needed (appropriate to level of effort indicated in budget)

F. Form-based code

- 1. Preliminary draft zoning regulations and design standards (Commerce Step 3.1).** Staff and MAKERS will identify desired code format. MAKERS will draft form-based code provisions/design standards for new development to the level suitable for staff review and comment. MAKERS' effort will focus on housing types.

Time Frame
March 2021

Products

Preliminary draft zoning regulation amendments and design standards in a format suitable for inserting into the municipal code

- 2. Review with staff and draft full form-based code (Commerce Steps 3.1 and 3.2).** After review and direction from staff, MAKERS will complete the draft form-based code/design standards. MAKERS and staff will identify needed new illustrations to be developed commensurate with the level of effort noted in the project budget. As much as possible, MAKERS will utilize previously produced graphics with minimal updates.

Timeframe
By late March 2021

Products

Full draft form-based code (in a format suitable for inserting into the municipal code)

- 3. Conduct public review of proposed code changes (Commerce Steps 3.3 and 3.4).** MAKERS will facilitate up to two targeted virtual or in-person events, one with potential code users and another with those potentially impacted by the code. Staff will identify members (likely the same people interviewed during the subarea plan process), schedule the events, and take care of any logistics for in-person events (e.g., securing venue, wayfinding signs, food, childcare).

Timeframe
April 2021

Products
Public comments

- 4. Make final code revisions (Commerce Step 3.4).** City staff will provide consolidated comments from Planning Commission/City Council for MAKERS to incorporate into the final code.

Timeframe
By late April 2021

Products
Form-based code adoption draft (**Commerce Deliverable 6**)

G. Project management

- 1. Management.** Prepare monthly invoices; prepare for, conduct, and summarize up to monthly (as needed) team progress phone calls; and track scope, budget, and schedule.
- 2. Schedule.** Update the project work plan and schedule as needed throughout the project.

- 3. Coordination.** Ongoing coordination with team, including information requests and team progress calls.

EXHIBIT B

Subcontractors/Subconsultants

Below is a list of approved subcontractors/subconsultants. If left blank, there are no approved subcontractors or subconsultants.

**Berk Consulting
2200 Sixth Avenue – 10th Floor
Seattle, WA 98121**

**Perteet
2707 Colby Avenue, Suite 900
Everett, WA 98201**

**Transpo Group
12131 113th Avenue NE #203
Kirkland, WA 98034**