

Whatcom County
Economic Development
Investments Program

Application for Funding



Satpal Sidhu, Whatcom County Executive

Whatcom County Economic Development Investment (EDI) Program
Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

Preliminary Information and Application

Note: The intent of this Program is to be consistent with State law, RCW 82.14.370

- 1. Who is eligible to apply:** Local general or special-purpose governments and higher education.
- 2. What projects are covered:** Construction of publicly owned infrastructure, facilities, and related improvements, which enable or encourage the creation or retention of private sector businesses and jobs in Whatcom County consistent with EDI Program Policy Objectives.
- 3. What activities are fundable:** New construction, refurbishment, replacement, rehabilitation, renovation or repair. Demolition is allowable if tied to construction. Soft costs allowed within scope of construction budget. No land acquisition except right-of-way included in a construction project.
- 4. What can you use the funds for:** Transportation (roads, bridges, rail), utility services (water, sewer, storm, energy, telecom) and public buildings or structures.
- 5. Other Limitations:** Planning/feasibility only projects are not eligible. Minimum local match is 10% of EDI request. EDI Board will make recommendations to the County Council which makes the final decision.

Preferential Project Types

First Preference – “JOBS IN HAND PROJECTS” – These types of projects will allow for the immediate creation and/or retention of jobs by providing public infrastructure that directly supports jobs. A perfect example would be a private business that will build or move into a facility and hire employees if a road is built or if water/sewer lines are extended to the site. These types of proposals would include a commitment by the private sector employer to create jobs and provide private investment.

Second Preference – “BUILD IT AND JOBS WILL COME PROJECTS” – These types of projects will construct public infrastructure but are not associated with a specific commitment from a private business to locate and/or create jobs. A perfect example would be the construction of roads and utility infrastructure to serve a new business park that would benefit multiple businesses.

Third Preference – COMMUNITY ENHANCEMENT PROJECTS” – These types of projects generally improve the physical appearance or create community assets to enhance the business climate. Examples would be boardwalk, streetscaping, downtown structures, and other publicly-owned facilities that make a community or region more attractive to existing or future businesses.

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Preferential Project Terms

First Preference – EDI LOAN – Due to the preferred revolving nature of EDI funds, proposals that are loan only will receive higher scoring. Loan terms and interest rate structure matches the Public Works Trust Fund program. The county will maintain discretion to modify such as including a deferral period.

Second Preference – LOAN/GRANT COMBINATION – The preferred combination of grant funds and loan funds is 1/3 grant, 2/3 loan.

Third Preference – EDI GRANT – Due to the “one-shot” nature of grants, projects of equal scoring requesting a grant only will be scored lower than another similar project requesting a loan/grant mix.

Preferential* Project Amounts (Guidelines)

JOBS IN HAND PROJECTS - \$1,000,000 limit if grant only. \$2,000,000 limit if combination of grant and loan. \$3,000,000 limit if loan only.

BUILD IT AND JOBS WILL COME PROJECTS - \$500,000 limit if grant only. \$1,000,000 limit if combination of grant and loan. \$1,500,000 limit if loan only.

COMMUNITY ENHANCEMENT PROJECTS - \$250,000 limit if grant only. \$500,000 limit if combination of grant and loan. \$750,000 limit if loan only.

**Based on compelling reasons, the EDI Board and County Council may consider exceptions.*

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FILLABLE FORM BEGINS HERE

Past Performance

Have you received EDI Program funding in the past? Yes; No

If yes, provide project name and EDI grant/loan awarded:

Project Name	Year	EDI – Grant/Loan	Amount	Year
W Bakerview Overpass	2012	Loan	\$350,000	2012
W Bakerview Overpass	2013	Grant	\$300,000	2013
Regional Stormwater Facility	2015	Loan	\$1,675,000	2015
Regional Stormwater Facility	2015	Grant	\$825,000	2015
Waterfront Project	2018	Grant	\$1,100,000	2018
Meridian Birchwood PH1	2023	Grant	\$2,625,000	2023

If yes, EDI Program staff and/or the EDI Board may conduct an audit to review performance measures against projected outcomes, such as job creation projections.

Has your jurisdiction received any audit findings from the Washington State Auditor in the past 10 years?

Yes; No.

If yes, provide details:

The City received the following findings from the Washington State Auditor's Office:

2015: The City's internal controls over financial statement preparation were found to be inadequate to ensure accurate reporting, affecting the City's ability to produce reliable financial statements which resulted in several misstatements.

***Response:** The City acknowledged the misstatements and updated and corrected the financial statements accordingly. The City also implemented additional internal controls and procedures to better address the areas of concern.*

2021: The City did not have adequate internal controls for ensuring it included all subaward information in five new subrecipient contracts for the Home Investment Partnerships (HOME) Program.

***Response:** The City concurred with the finding and took steps to ensure all future subrecipient agreements would include the required general descriptive details as outlined in the Uniform Guidance.*

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THRESHOLD PROJECT CRITERIA

Evidence of Planning

YES	NO
<u>X</u>	_____
<u>X</u>	_____
<u>X</u>	_____

Project included on an adopted regional economic strategy (“CEDS” list).
 Project included in the applicant’s Comprehensive Plan.
 Project included in the applicant’s Capital Expenditure Plan or adopted budget.

COMMENTS

- The Old Town Urban Village Infrastructure Improvement Project is included in the Updated CEDS 2022 Project List, to “Construct critical street and utility infrastructure to support redevelopment (affordable housing, market rate housing, homeless housing and commercial and retail) of approximately eight city blocks in Old Town.”
- The Infrastructure Improvement Project is included in the 2016 Bellingham Comprehensive Plan Economic Development Chapter, as Policy ED-44: “Provide infrastructure and public amenities to support the redevelopment of the Downtown, Old Town and Waterfront Districts consistent with the adopted subarea plans.”
- The Infrastructure Improvement Project is included in the City’s adopted budget for \$3,050,000 in REET.
- On July 10th, 2023 the Bellingham City Council authorized Mayor Fleetwood to enter into a development agreement with Old Town Village, LLC and Capron LLC and directed staff to apply for an EDI grant. See *EXHIBIT 1: Resolution Authorizing EDI Application*

THRESHOLD PROJECT SCORING

POINTS

Preferential Project Type

17

<u>X</u> Jobs In Hand	10 points
<u>X</u> Build It And Jobs Will Come	5 points
<u>X</u> Community Enhancement	2 points

5

Preferential Project Terms

_____ Loan Only	10 points
<u>X</u> Loan/Grant	5 points
_____ Grant Only	2 points

0

Preferential Project Amounts

_____ Within Dollar Limits	5 points
<u>X</u> Outside Preferred Dollar Limits	0 points

22

TOTAL POINTS

To proceed to other parts of the application and to receive EDI Board review, a proposed project must score 10 or more points on the above section.

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PROJECT APPLICANT

Applicant Name: City of Bellingham

Applicant Address: 210 Lottie Street, Bellingham, WA 98225

Applicant Contact Person: Tara Sundin, Community and Economic Development Manager

Applicant Email and Phone Number: tsundin@cob.org, 360-778-8392

PROJECT TITLE

Old Town Urban Village Infrastructure Improvement Project

PROJECT AMOUNT REQUESTED

\$3,000,000 EDI TOTAL - (Loan \$1,500,000 ; Grant \$1,500,000)

\$2,350,000 Local Match (10% of EDI request minimum)

PROJECT TYPE

Jobs In Hand Build It and Jobs Will Come Community Enhancement

PROJECT TERMS

Loan Only Grant/Loan Grant Only If a loan, term requested: _____ (years)

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PROJECT LOCATION

The Old Town Urban Village Infrastructure Improvement Project is located in the Old Town District, one of three urban village districts in Bellingham's City Center (Waterfront and Downtown being the other two).

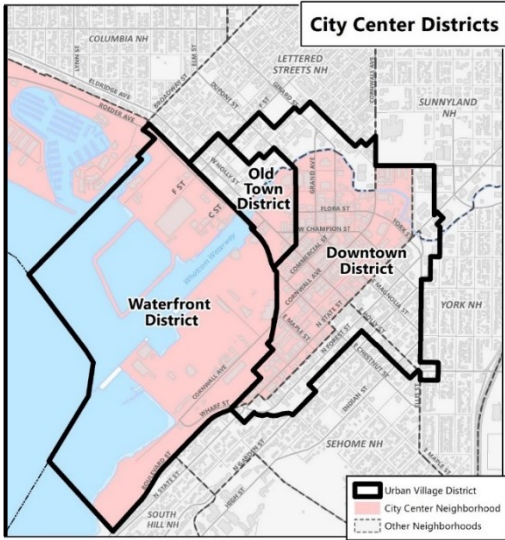


Figure 1. The Old Town District, along with the Downtown and Waterfront Districts, comprise Bellingham's City Center.

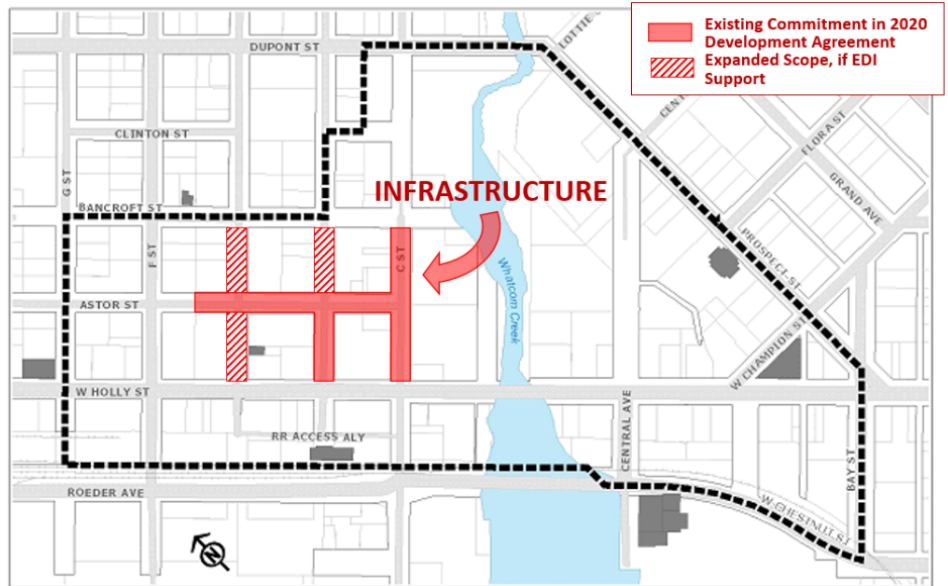


Figure 2. Map showing the Old Town Urban Village Infrastructure Improvement Project area and EDI Expanded Scope area. If the City receives EDI funds, the scope of the project will include the expanded area as illustrated.

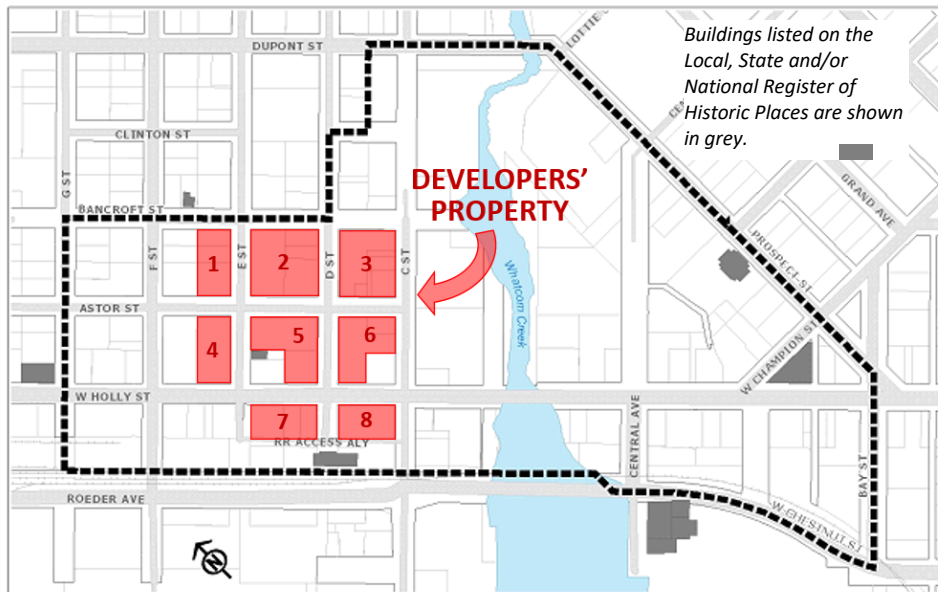


Figure 3. Map showing the parcels, in red, that will be developed over a 10-year period by the Developers. The first project will renovate existing buildings on Parcel 8; Parcel 6 will be the next development project; and Parcel 4 is planned to be developed as affordable housing.

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PROJECT DESCRIPTION
(one page limit)

The City of Bellingham is partnering with Old Town Village, LLC and Capron, LLC (the Developers) on their Old Town Village Project (OTV Project) which will create approximately eight blocks of commercial, residential and mixed-use development in the Old Town District (see Map, Figure 3).

The City has dedicated \$2,350,000 in REET (Real Estate Excise Tax) funding to pay for infrastructure improvements for five and one-half blocks within in the OTV Project area. To create a more finished and attractive area, the City is requesting a \$1,500,000 EDI loan and a \$1,500,000 EDI grant to pay for the three remaining blocks of street improvements and the undergrounding of utilities throughout the area, and the addition of intersection street lighting. More detail about the infrastructure improvements is included in *Attachment B: Proposed Improvements*. As parcels are developed over a 10-year period, the Developers will pay for curb-to-building improvements including sidewalks, street trees, pedestrian lighting and other amenities.

The Developers' OTV Project will create 500 housing units, bringing much-needed workforce housing to the City Center, with the first phase of construction creating studio and one-bedroom 350 – 400 square foot apartments. The Developers are in discussion with an undisclosed affordable housing developer to build housing on Parcel 4 at W. Holly and E Streets (see Map, Figure 3).

Renovation of the existing buildings on Parcel 8 will begin in late 2023, with new construction scheduled to begin on Parcel 6 in 2024 - 25. Several destination businesses have reached out to the Developers and are in discussions regarding development on other parcels in the OTV Project area.

The Developers are committed to spending \$150 – 200m over the 10 year build out period. The City's \$2,350,000 and County's \$3,000,000 EDI loan/grant will help leverage this project and create an urban village with housing, commerce and new life.



Figure 4. Developer's Old Town Village Project conceptual 10-year build out scenario.



Figure 5. View looking westerly down D Street with the historic BNRR Depot at the terminus. EDI funding would remove utility poles and overhead wires.

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BASIC PROJECT INFORMATION

1. Complete the public project budget and status of funds below. If EDI funds are approved is funding 100% complete? Yes No

Please explain:

The Bellingham City Council has authorized \$3,050,000 in REET funding in the 2022 budget.

<u>Funding Source</u>	<u>Amount</u>	<u>Planned/Applied For</u>			<u>Secured</u>	
Federal Dollars	\$ _____	Yes	No	Yes	No	
State Dollars	\$ _____	Yes	No	Yes	No	
Local Dollars	\$2,350,000	Yes	No	Yes	x	No
EDI Funding	\$ _____	Yes	No	Yes	No	
TOTAL	<u>\$2,350,000</u>					

2. Describe the amount of outside (private) funding committed to the project (eg. Plant and equipment).

The Developers will commit approximately \$150-200 million to the Old Town Village Project over a 10-year period.

3. Describe the public infrastructure being proposed. Include engineering estimates and a site map detailing the proposed improvements as *Attachments A and B*)

City funds will pay to upgrade the existing inadequate storm main on Astor Street, and will add conduit for future street light crossings in addition to new curb and gutter and street repaving. The public infrastructure proposed for EDI grant funds would expand this work area to include D Street from Astor Street to Bancroft Street, and E Street from Holly to Bancroft Street. This would include back-of-curb to back-of-curb construction of new curb and gutter, repaving, stormwater improvements, intersection street lighting and undergrounding of overhead utilities throughout the OTV Project area (see *Map, Figure 2*). For infrastructure improvement details and costs refer to *Attachment A: Engineering Estimates* and *Attachment B: Proposed Improvements*.

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4. Describe how these improvements will enhance or encourage community vitality and stimulate other private development in the area.

The expansion of the project scope using EDI grant funds in combination with the City's investment in infrastructure improvements will be instrumental in enhancing the Old Town area and ensuring the success of the OTV Project. These enhancements will lead to increased community vitality and stimulate additional private development in the following ways:

- **Attracts Development:** High-quality infrastructure improvements are a magnet for developers and businesses seeking promising areas for investment. The undergrounding of utilities within the OTV Project area will eliminate the visual clutter caused by overhead wires and poles and send a positive signal to potential business owners and investors, attracting additional residential, commercial, and mixed-use developments.
- **Enhances Historic Identity:** The removal of distracting overhead wires not only improves aesthetics but also contributes to enhancing the area's historical identity. The remaining historic landmarks in Old Town stand as testament to the earliest beginnings of Bellingham. By enhancing the streetscape's ambiance, the infrastructure improvements will add to the sense of history and place, aligning with the community's commitment to historic preservation.
- **Creates Pedestrian-Friendly Environment:** The introduction of intersection street lighting and a pleasant environment has multiple benefits. As pedestrian safety improves more people will explore the area on foot. This heightened walkability translates to increased foot traffic for local businesses and restaurants, cultivating a dynamic street scene. The well-lit and uncluttered streetscape will foster a welcoming atmosphere that appeals to residents, visitors, and potential investors.
- **Increases Property Values:** Enhanced infrastructure often correlates with rising property values over time. By investing City and County resources to create high-quality infrastructure, an environment of progress is cultivated, prompting other property owners to follow suit and invest in their properties. This collective effort further bolsters the district's overall vitality and economic prospects.

In summary, the combined City and County investment in infrastructure improvements in the OTV Project area will significantly augment its allure and help fuel private development.

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9. What other revenue sources are available for this project and have they been considered. This includes forming a Local Improvement District (LID or ULID), issuing Councilmatic Bonds, Revenue Bonds, or other source(s).

The City of Bellingham has set aside \$2,350,000 in REET to pay for five and one-half blocks of infrastructure improvements. Future revenues will be used for the maintenance of streets and utilities. Forming a LID is not being pursued in the Old Town Village Project area due to the nature of inherent risks (*see #11 for more detail*).

10. Describe the private development project that will be supported by this public facility project. If there is a committed private sector partner include Contingency Agreement (Attachment C).

The Old Town Urban Village Infrastructure Improvement Project will support the OTV Project, which will create 500 new housing units and bring much needed workforce housing to the City Center. The first phase of construction will create studio and one-bedroom 350 – 400 square foot apartments. The Developers are in discussion with an undisclosed affordable housing developer to build housing on Parcel 4 at W. Holly and E Streets (*see Map, Figure 2*), conveniently located near high-frequency transit on Dupont Street. The Developers and the City have entered into a Development Agreement which provides details and milestones regarding commitments on both parts (*see Attachment C: Development Agreement*).

11. Explain why the private development requires the proposed public improvement(s).

The City of Bellingham is partnering with the Developers to alleviate the elevated risks inherent in developing and investing in the core of the Old Town District. The area poses increased risk to developers and investors due to a number of factors, including:

- Its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which adds to development costs;
- The adjacency of a 300-bed homeless shelter currently under construction;
- The scale of the envisioned development, which necessitates an extended horizon with attendant unknown future risks;
- The proximity of passive railroad crossings and the attendant loud noise from train horns;
- The complete transformation of an industrial to a commercial and residential use area; and
- The high cost of financing due to increasing interest rates.

The combined City and County investment in high-quality infrastructure improvements will help attract private investment to this difficult to develop area.

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12. What is the status of the associated private development review and permits. List all permits required and give the current status (applied for, being reviewed, issued).

	In Process	Date completed
Environmental Review:	<u>N/A</u>	<u> </u>
Construction Permits:	<u>ready to be issued</u>	<u> </u>
Environmental Permits:	<u>N/A</u>	<u> </u>

The Developers' first project will be the renovation of the existing building at 701 W. Holly Street on Parcel 8. Project permits are ready to be issued and the project is anticipated to begin before year end 2023. Renovation will involve making building facade improvements -- storefront window replacement within existing framing, redefinition of parapet roofline, utility clean-up and new paint.

This initial project is referenced in the *Development Agreement* as Milestone 3, to "submit a complete building permit for the renovation of 701 W. Holly St. (Parcel 8) no later than February 21, 2024" and is ahead of schedule (*see #18 for additional Milestones.*)

13. Describe the type of industry or economic activity the public development will attract. What is the strategy to attract industry to the project site?

The City is attracting an estimated \$150-\$200 million over the next 10 years in Old Town by entering into a Development Agreement with the Developers. This *Development Agreement* memorializes the City's commitment to invest in infrastructure and to seek partnership from the County by way of this EDI application. In addition, the Development Agreement creates predictability and, in some cases, flexibility for development.

This public-private partnership will enable the construction of much needed workforce and affordable housing. The mixed-use zoning allows for a variety of economic activity and business types, including a range of eateries, cafes, and restaurants; health and wellness businesses such as yoga studios, gyms, and recreation-based enterprises; retail shops, boutique stores, art galleries, and specialty shops; creative spaces for artists' studios, workshops, and galleries; tech-related businesses, startups, and co-working spaces; and hotels or other short-term rental accommodations catering to tourists and visitors.

The Developers are held to specific milestones in the *Development Agreement* to ensure continued progress in redeveloping the OTV area.

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14. List the number of projected jobs, by type, to be retained and/or created by the private entity.

❖ *See NOTE, below*

Occupation	Current Jobs Retained* * (In FTEs)	# Of Jobs Created Year 1 (In FTEs)	# Of Jobs Created by Year 10 (In FTEs)***	Hourly Wage of current or new position	Local Occupational Hourly Wages***
Mgmt./Admin*					N/A
Technical/Prof					
Office/Clerical					
Production					
Sales					
Skilled Crafts					
Others					
Totals				N/A	N/A

* *Indicate Management positions in annual salary.*

** *Retained jobs are defined as jobs that would otherwise be lost from the county without this project.*

*** *This column will be populated with data from the state before application is distributed and revised annually.*

a. Projected annual gross payroll for all job classifications.

b. Describe fringe benefits the company offers to regular full-time employees.

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- ❖ **NOTE:** In place of completing the above chart, a new chart has been created with supportive narrative describing the additional jobs and investments that will be created by the OTV Project over the next 10 years:

Wages, Jobs and Housing created by the Old Town Village Project Over the 10-year Development Period					
\$ Spent on Construction	# of Jobs and \$ in Wages related to Construction	# of Housing Units Created	# of People Housed	Types of Jobs Created	# Of Jobs Created
\$137m over 10-year period invested by Developers	250 – 375 construction-related jobs created @ \$50 +/- per hour \$48m in wages over 10-year period	500	850	Property Management & Maintenance	9
				Health & Fitness	20
				Food-related	40

The creation of housing is the primary economic driver of the OTV Project, and the consequent redevelopment of Old Town will create an urban village –a dense residential area with complimentary businesses such as food and beverage, office and health & wellness.

Jobs related to construction will be created, followed by wages earned managing and maintaining housing, and providing management and service of commercial and retail establishments. Estimates of these earnings and the Developers’ expenditures over the 10-year period are provided by Dawson Construction (one of the Developers):

- The Developers anticipate 500 housing units will be constructed within 10 years – homes for at least 850 people. At \$275,000 per unit (Dawson Construction estimates between \$250-\$300k per unit), \$137 million (plus commercial) will be spent on construction.
- Dawson Construction estimates 35% of total construction costs are associated with labor, or \$48 million in wages, over the 10-year period. Using 2000 hours per year, between **250 and 375 high-paying jobs (\$50+/- hourly) will be supported by construction.**
- In addition, Developers estimate **9 property management/maintenance jobs** will be created to support the residential development. Developers are in discussions with Health & Fitness and Food & Beverage businesses – an early estimate would be another **20 jobs associated with Health and 40 associated with Food.**

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15. How does this project support the economy of Whatcom County and how does it fit into a county-wide economic development strategy?

In August, 2023, Whatcom County Council passed a resolution affirming that affordable housing and homelessness are a public health crisis. The OTV Project directly addresses this issue and will create 500 units of much needed housing. Specifically, the OTV Project addresses the following the county-wide economic development strategies, as identified in the 2022-2026 Whatcom County CEDS:

Goal 1 / Sub-goal 8: Promote and support immediate solutions to the housing crisis.

- Support and promote the urgent need for affordable housing for workers, in areas near services, throughout Whatcom County.
- Support and promote a diverse array of housing solutions, housing choice, and affordable housing types that address the housing crisis.
- Support increased mixed-use zoning in order to encourage different housing choices and creating different yet sustainable and innovative live-work spaces.

Goal 1 / Sub-goal 12: Support partner activities to develop local markets.

- Support and partner with organizations that prioritize strategic city centers, downtowns, and front-facing businesses throughout Whatcom County.

Goal 5 / Sub-goal 2: Work to integrate diversity, equity, and inclusion goals and objectives into Goals 1-4 and 6.

- Support and promote the development of accessible, affordable housing choices and childcare options across the income spectrum in Whatcom County.

In addition to furthering the above goals and providing the much-needed development of 500 housing units, the OTV Project also contributes to improving infrastructure (Goal #2) and increasing resiliency by developing local markets (Goal #6).

Several City-wide strategies are also addressed by OTV Project and the Old Town Urban Village Infrastructure Improvement Project. The City of Bellingham 2016 Comprehensive Plan Economic Development Chapter emphasizes the following goals for the Old Town District, and the need for improved infrastructure:

- **Policy ED-44:** Provide infrastructure and public amenities to support the redevelopment of the Downtown, Old Town and Waterfront Districts consistent with the adopted subarea plans
- **GOAL ED-1:** Build and maintain a positive and competitive business-friendly climate that will retain, grow and attract high-quality businesses.
- **GOAL ED-2:** Accommodate a broad mix of employment opportunities, while actively seeking a greater proportion of living wage jobs that will benefit a broad cross-section of Bellingham residents.
- **GOAL ED-3:** Maintain an adequate supply of developable employment lands and supporting infrastructure to accommodate forecasted growth and accomplish the City's economic development goals.
- **GOAL ED-4:** Foster vibrant urban villages.
- **GOAL ED-5:** Continue to invest in the quality-of-life attributes that provide the City with a competitive advantage in terms of economic development.

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16. What will the effect of this project be on the natural environment – does the project address any issues related to public health, pollution, or quality of life?

In support of each other, the OTV Project and Infrastructure Improvement Project will have a positive effect on the natural environment, public health and quality of life in the Old Town District. Since the mid-1990s, the City has comprehensively addressed the clean-up of the area, has created incentives for developers, and built amenities to support the community. These actions occurred in several phases:

- **Environmental Cleanup:** In the 1990s the City initiated a Cleanup Action Plan to address contamination issues in the Old Town area, particularly related to the historic landfill. A Consent Decree was established to incentivize development on contaminated fill properties, addressing environmental concerns.
- **Estuary Restoration:** Efforts were made to restore the Whatcom Creek estuary and clean up the Holly Street Landfill, which resulted in mitigating the negative impacts of the landfill. This environmental cleanup removed barriers to redevelopment and expanded the estuary area and improved the streamside habitat.
- **Quality of Life Enhancements:** Once environmental issues were addressed, the City shifted its focus to improving the quality of life in the Old Town District. This included the creation of public amenities such as Maritime Heritage Park and enhanced streetscapes along Central and W. Holly Streets.
- **Urban Village Planning:** In 2008, the City began planning for an urban village in Old Town, establishing the Old Town Sub-Area Plan and associated development regulations. This plan aimed to encourage diverse residential and commercial uses, prioritize pedestrian-friendly environments, respect view corridors and landmark buildings, provide predictability for stakeholders, and promote redevelopment within Old Town.

Over the past decades, the City has proactively addressed environmental concerns, enhanced the quality of life for residents and visitors, and set the stage for the OTV Project to bring new development to Old Town and continue to make improvements over the next 10 years in line with the City's vision and guiding principles.

17. Does this project address any existing issues related to public safety and/or does it increase public safety in the future or address a potential future public safety issue?

The OTV Project and Infrastructure Improvement Project comprehensively address both existing and potential future public safety issues through various commitments between the City and the Developers, as outlined in the *Development Agreement*. These measures include:

- **Increased Activity and Surveillance:** The new OTV Project development will introduce more people to the area, creating a safer environment by increasing “eyes on the street.” This enhanced activity from residents, workers, and recreational users will act as a deterrent to criminal activity.
- **Enhanced Street Lighting and Landscaping:** Intersection lighting and the future addition of pedestrian streetlights and street trees as the area is developed will not only improve aesthetics but also contribute to public safety. Well-lit streets and greenery deter criminal behavior and create an active and secure community.

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- **Curb-to-Curb Infrastructure:** The City's commitment to providing comprehensive infrastructure improvements will enhance pedestrian and traffic safety, and the addition of EDI grant-funded intersection street lighting will augment these conditions, not only attracting businesses and pedestrian activity but also aligning with Crime Prevention Through Environmental Design (CPTED) principles.
 - **Mitigation of Homeless Shelter Impacts:** As part of the *Development Agreement*, to address potential impacts from the Lighthouse Mission's new homeless shelter, the City will enhance security patrols and neighborhood cleanup, ensuring the safety of shelter residents and the surrounding community.
 - **Waterfront Quiet Zone:** The *Development Agreement* commits the City to establishing a Waterfront Quiet Zone by improving railroad crossings and mitigating noise from train horns. This action will enhance pedestrian safety by reducing noise-related distractions and disruptions.
 - **Affordable Housing Incentives:** The City is encouraging public-private partnerships to create below-market-rate housing by offering an Alternative Floor Area Bonus. The addition of affordable housing contributes to community stability and positively impacts neighborhood safety and well-being.
-

18. Describe specific quantifiable measures of the outcomes, other than purely jobs, that will demonstrate project success. Describe how you will measure this and explain what you expect to show as progress toward the outcome.

In addition to the creation of jobs, the success of the OTV Project can be measured in housing units built and will also be measured by the quantifiable milestones agreed to by the Developers in *Attachment C: Development Agreement*. The following are milestones set forth for the first few years by the *Agreement*:

- Milestone 1** Developers will submit a Vision Plan for properties purchased or planned to be purchased at a future date, no later than December 31, 2023.
- Milestone 2** Developers will purchase a sixth Parberry-owned property, no later than December 31, 2023.
- Milestone 3** Developers will submit a complete building permit for the renovation of 701 W. Holly St. (Parcel 8) no later than February 21, 2024.
- Milestone 4** Developers will submit a complete building permit application before December 31, 2024 for a new multi-family development that will be 50 units or more.
- Milestone 5** Developers will submit a complete building permit application before December 31, 2026 for a development valued at a minimum of \$10,000,000.

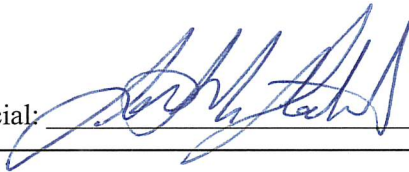
The Milestones are based on the Developers' and the City's best estimate of a redevelopment schedule for the Developers property based on current market conditions. If any delay is anticipated the Developers may request an extension as long as diligent progress has been made in achieving the applicable Milestone. Additional details regarding the Developers' obligations are provided in *Attachment C*.

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Application for Funding – Certification

I HEREBY CERTIFY THAT THE INFORMATION GIVEN IN THIS APPLICATION TO WHATCOM COUNTY FOR INVESTMENTS IN ECONOMIC DEVELOPMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of Responsible Public Official: _____



Date 9/14/23

Attachment A: Engineering Estimates

CITY OF BELLINGHAM - OLD TOWN REDEVELOPMENT

9/6/2023

Construction Cost Estimate			Redevelopment Agreement	Expanded Scope	Unit Cost	Redevelopment Agreement	Expanded Scope
Item No	Description	Unit	Quantity	Quantity	Unit Cost	Extension	Extension
1	Mobilization (10%)	LS	0.59	0.41	\$ 369,278.60	\$ 217,874.37	\$ 151,404.23
2	Construction Staking	LS	0.50	0.50	\$ 40,000.00	\$ 20,000.00	\$ 20,000.00
3	Project Temporary Traffic Control	LS	0.50	0.50	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00
4	Traffic Control Supervisor	LS	0.62	0.38	\$ 52,500.00	\$ 32,550.00	\$ 19,950.00
5	Flaggers	HR	3,650	1,000	\$ 60.00	\$ 219,000.00	\$ 60,000.00
6	Removal of Structures and Obstructions	LS	0.86	0.14	\$ 289,500.00	\$ 248,970.00	\$ 40,530.00
7	Sawcutting	LF	1,200	1,667	\$ 6.00	\$ 7,200.00	\$ 10,002.00
8	Roadway Excavation incl. Haul	CY	3,000	1,400	\$ 15.00	\$ 45,000.00	\$ 21,000.00
9	Unsuitable Foundation Excavation incl. Haul	CY	1,000	350	\$ 50.00	\$ 50,000.00	\$ 17,500.00
10	Shoring and Extra Excavation Class B	LS	1	0	\$ 10,000.00	\$ 10,000.00	\$ -
11	Storage, Handling, and Separation of Unsuitable Materials	LS	0.77	0.23	\$ 65,000.00	\$ 50,050.00	\$ 14,950.00
12	Contaminated Unsuitable Material Handling & Disposal	TN	200	100	\$ 100.00	\$ 20,000.00	\$ 10,000.00
13	Construction Geotextile for Soil Stabilization	SY	7,180	0	\$ 3.00	\$ 21,540.00	\$ -
14	Gravel Base	TON	6,080	1,200	\$ 35.00	\$ 212,800.00	\$ 42,000.00
15	Crushed Surfacing Top Course	TON	1,350	325	\$ 30.00	\$ 40,500.00	\$ 9,750.00
16	HMA Class 1/2" PG 64-22	TON	1,600	800	\$ 175.00	\$ 280,000.00	\$ 140,000.00
17	Storm Sewer Pipe Bursting	LF	670	0	\$ 275.00	\$ 184,250.00	\$ -
18	Corrugated Polyethylene Storm Sewer Pipe, 8-in Diam	LF	360	120	\$ 40.00	\$ 14,400.00	\$ 4,800.00
19	Storm Drain Service	LF	400	0	\$ 35.00	\$ 14,000.00	\$ -
20	Catch Basin Type 1	EA	9	4	\$ 2,500.00	\$ 22,500.00	\$ 10,000.00
21	Catch Basin Type 2, 48-In Diam.	EA	1	0	\$ 4,000.00	\$ 4,000.00	\$ -
22	Connection to Drainage Structure	EA	6	4	\$ 500.00	\$ 3,000.00	\$ 2,000.00
23	Modular Wetland Treatment Structure 4X4	EA	4	0	\$ 45,000.00	\$ 180,000.00	\$ -
24	Modular Wetland Treatment Structure 4X6	EA	2	1	\$ 55,000.00	\$ 110,000.00	\$ 55,000.00
25	Adjust Manhole	EA	8	2	\$ 1,000.00	\$ 8,000.00	\$ 2,000.00
26	Adjust Catch Basin	EA	25	0	\$ 500.00	\$ 12,500.00	\$ -
27	Bank Run Gravel for Trench Backfill	CY	100	50	\$ 30.00	\$ 3,000.00	\$ 1,500.00
28	Removal & Replacement of Unsuitable Trench Material	CY	100	0	\$ 50.00	\$ 5,000.00	\$ -
29	Water Service	LF	400	160	\$ 40.00	\$ 16,000.00	\$ 6,400.00
30	Adjust Water Valve	EA	18	2	\$ 500.00	\$ 9,000.00	\$ 1,000.00
31	Moving Existing Hydrant	EA	3	2	\$ 1,000.00	\$ 3,000.00	\$ 2,000.00
32	Sewer Service	LF	400	160	\$ 30.00	\$ 12,000.00	\$ 4,800.00
33	De-Watering	LS	1	0	\$ 50,000.00	\$ 50,000.00	\$ -
34	Temporary Storm Sewer Bypass	LS	1	0	\$ 10,000.00	\$ 10,000.00	\$ -
35	SWPP Plan Preparation	LS	1	0	\$ 5,000.00	\$ 5,000.00	\$ -
36	Erosion Control and Water Pollution Prevention	LS	0.80	0.20	\$ 12,500.00	\$ 10,000.00	\$ 2,500.00
37	ESC Lead	DAY	60	60	\$ 100.00	\$ 6,000.00	\$ 6,000.00
38	Inlet Protection	EA	0	10	\$ 100.00	\$ -	\$ 1,000.00
39	Silt Fence	LF	400	400	\$ 6.00	\$ 2,400.00	\$ 2,400.00
40	Straw Wattle	LF	200	200	\$ 5.00	\$ 1,000.00	\$ 1,000.00
41	Topsoil Type B	CY	50	0	\$ 75.00	\$ 3,750.00	\$ -
42	Bark or Wood Chip Mulch	CY	15	0	\$ 175.00	\$ 2,625.00	\$ -
43	Street Trees 2.5-IN Caliper	EA	5	0	\$ 1,200.00	\$ 6,000.00	\$ -
44	Cement Concrete Curb & Gutter	LF	3,100	2,400	\$ 35.00	\$ 108,500.00	\$ 84,000.00
45	Cement Concrete Curb & Gutter - Driveway Drop	LF	225	0	\$ 35.00	\$ 7,875.00	\$ -
46	Monument Case and Cover	EA	6	0	\$ 500.00	\$ 3,000.00	\$ -
47	Cement Conc. Sidewalk	SY	290	170	\$ 75.00	\$ 21,750.00	\$ 12,750.00
48	Cement Concrete Curb Ramp	EA	16	8	\$ 2,000.00	\$ 32,000.00	\$ 16,000.00
49	Illumination System	LS	0.20	0.80	\$ 75,000.00	\$ 15,000.00	\$ 60,000.00
50	Conduit Pipe 2-IN Diam	LF	1,930	1,000	\$ 40.00	\$ 77,200.00	\$ 40,000.00
51	Plastic Crosswalk Line	SF	300	0	\$ 12.00	\$ 3,600.00	\$ -
52	Plastic Stop Line	LF	25	60	\$ 25.00	\$ 625.00	\$ 1,500.00
53	Raised Pavement Marker Type 1	HUND	0	0	\$ 550.00	\$ 231.00	\$ -
54	Raised Pavement Marker Type 2	HUND	0	0	\$ 2,000.00	\$ 40.00	\$ -
55	Permanent Signing	LS	1	0	\$ 14,300.00	\$ 14,300.00	\$ -
56	Traffic Signal System	LS	0	0	\$ -	\$ -	\$ -
57	Conduit Pipe 3-IN Diam	LF	160	0	\$ 50.00	\$ 8,000.00	\$ -
58	Type 1 Junction Box	EA	27	10	\$ 900.00	\$ 24,300.00	\$ 9,000.00
59	Minor Changes	FA	1	1	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
60	Potholing	LS	10	4	\$ 500.00	\$ 5,000.00	\$ 2,000.00
61	SPCC Plan Preparation	LS	0.50	0.50	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
62	Undergrounding of Overhead Utility Lines	LS	0	1	\$ 560,000.00	\$ -	\$ 560,000.00
Subtotal						\$ 2,559,330.37	\$ 1,509,736.23
20% Contingency						\$ 511,866.07	\$ 301,947.25
Design Costs						\$ 250,000	\$ 150,000
Total Subtotal Cost (NIC sales tax)						\$ 3,321,196.45	\$ 1,961,683.47
Total Subtotal Cost (Rounded)						\$ 3,350,000.00	\$ 2,000,000.00
Total Combined Construction Cost (Rounded)						\$ -	\$ 5,350,000.00

ATTACHMENT B – PROPOSED IMPROVEMENTS

Whatcom County Economic Development Investment (EDI) Program

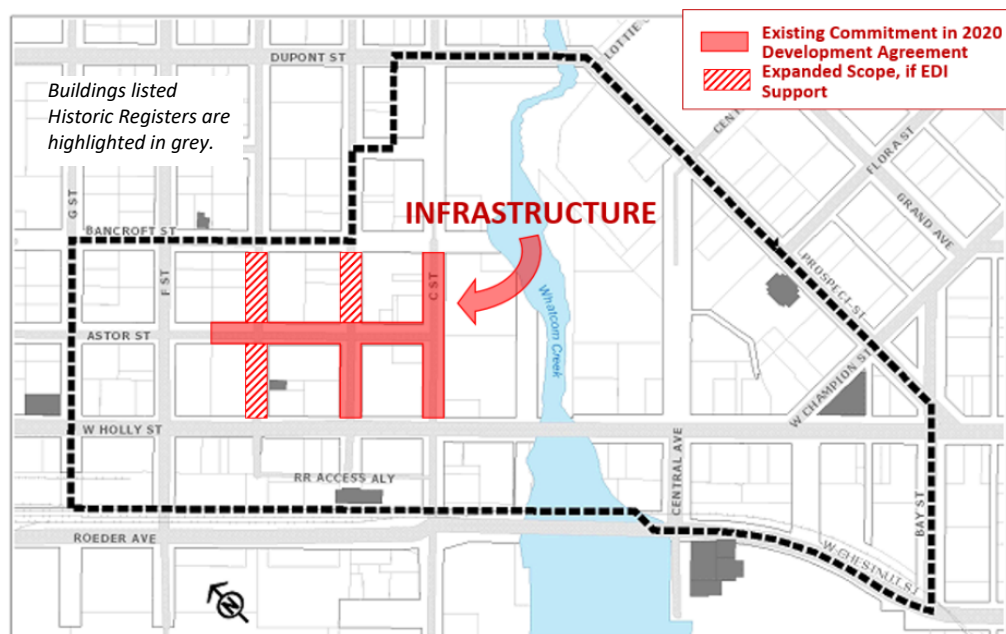
Old Town Urban Village Infrastructure Improvement Project

The infrastructure improvements proposed for EDI grant funds would augment the work the City has planned for Old Town in support of the Old Town Village Project. The City has dedicated \$2,350,000 for improvements to five and one-half blocks within in the OTV Project area and is requesting \$3 million in EDI funds (\$1,500,000 loan / \$1,500,000 grant) to pay for the three remaining blocks of street improvements, the addition of intersection street lighting and the undergrounding of utilities.

The City would make back-of-curb to back-of-curb street improvements on C Street, from Holly to the street’s northern terminus at the Maritime Heritage Center, on D Street from Holly to Astor Street, and on Astor Street from F to C Street. The City’s work would include stormwater improvements, upgrading an existing storm main on Astor Street, and adding conduit for future street crossings in addition to new curb and gutter and repaving. All work from curb to building would be completed by the Developers as construction occurred over the 10-year period.

One half of the block on Astor Street from F Street to mid-block was to be completed by the Lighthouse Mission (construction currently approved). As an incentive to move the new Mission building forward, the City agreed to reconstruct all of Astor Street from E to F Streets. As an incentive to redevelop the first block in this parcel (adjacent to the Mission building), this block is also proposed for undergrounding overhead electrical lines.

As the original scope of work was largely restricted to Astor and C Streets and a single block of D Street, the City of Bellingham is applying for EDI grant funds to expand this work area to include D Street from Astor to Bancroft Street, and E Street from Holly to Bancroft Street. This expanded scope would include back-of-curb to back-of-curb construction of new curb and gutter, repaving, stormwater improvements and undergrounding of overhead utilities throughout the project area. As the large Mission building is being built in the area, streetlights would be added at all intersections in the project area to accommodate the anticipated number of pedestrians.



Map showing streets to be improved. If the City receives EDI funds, the scope of the project will be expanded.

ATTACHMENT B – PROPOSED IMPROVEMENTS
Whatcom County Economic Development Investment (EDI) Program
Old Town Urban Village Infrastructure Improvement Project



C Street looking westerly. The City will complete sewer and street infrastructure C Street from Bancroft to Holly Street. EDI funds would pay to underground overhead wires and add intersection streetlights.



Astor Street looking toward Downtown. The City will complete sewer and street infrastructure along Astor from C to F Street. EDI funds would pay to underground overhead wires, greatly improving the view to the historic Old City Hall / Whatcom Museum in the distance.



D Street looking westerly. The City will pay for improvements from Holly to Astor Streets – EDI funds would complete the block from Astor to Bancroft, underground overhead wires and add intersection lighting. The removal of distracting overhead wires would enhance the view to the historic BNRR Passenger Station at the D Street terminus.



E Street looking westerly. The EDI grant would fund improvements on E Street from Bancroft to Holly Street, underground overhead wires and add intersection lighting.

**ATTACHMENT C: DEVELOPMENT AGREEMENT
Old Town Urban Village Infrastructure Improvement
Project**

When Recorded, Return to:

City of Bellingham
Amy Kraham
Office of the City Attorney
210 Lottie Street
Bellingham, WA 98225

DEVELOPMENT AGREEMENT BETWEEN OLD TOWN VILLAGE,

Grantor:		OLD TOWN VILLAGE, LLC and CAPRON, LLC	
Grantee:		City of Bellingham	
Legal Description (abbreviated):	LOTS _____ PLAT OF THE TOWN OF NEW WHATCOM SUPPLEMENTAL AS THE SAME IS SHOWN AT PAGE 42, BOOK 1 OF PLATS, OFFICIAL RECORDS OF WHATCOM COUNTY AUDITOR Additional legal description for this parcel and full legal descriptions for additional parcels in Exhibit 1 attached hereto		
Assessor's Tax Parcel ID #:	additional Tax Parcel ID numbers in Exhibit 1 attached hereto		
Reference Nos. of Documents Released or Assigned:			

This DEVELOPMENT AGREEMENT (“Agreement”) between OLD TOWN VILLAGE, LLC., a Washington business entity, CAPRON, LLC (collectively, “Developers”) and the CITY OF BELLINGHAM (the “City”), a municipal corporation, is entered into as of the last date of signature below, and effective upon the date of execution by the City of Bellingham (the “Agreement”).

RECITALS

A. Developers have purchased or have contracts to purchase several parcels of real property within an area of Bellingham designated as the “Old Town Subarea” by the Bellingham Comprehensive Plan. Property within the Old Town Subarea owned by Developers is referenced herein as the “Developers’ Property,” and more particularly described in **Exhibit 1** attached and incorporated herein by this reference and illustrated in **Exhibit 2** attached. Developers purchased blocks 1, 3, 4, 7 and 8 from the Parberry family entities between January 2023 and April 1, 2023, and have block 5 is under contract and Developers are negotiating to purchase block 2 and 6. Should purchases occur by Developers, they shall also benefit from this Agreement.

B. Historically, the Developers' Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices owned and operated by several entities comprised of the Parberry family.

C. The City adopted an amendment (Ordinance No. 2008-03-022) to its Comprehensive Plan for the Old Town Subarea Plan (also known as the Old Town Plan") and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the "Old Town Overlay District"). The Old Town Subarea is now designated and zoned as Commercial. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

D. Redevelopment of the Developers' Property into a mixed-use urban village is appropriate and consistent with the Old Town Plan. Future development in the Old Town Subarea must comply with the Old Town Subarea Plan and other applicable City regulations.

E. The elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea.

F. The City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of incomes levels. Developers and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

G. This Agreement implements part of the Old Town Plan by kick starting development in a significant portion of the Old Town Subarea.

H. The redevelopment of the Old Town Subarea poses increased risk to developers and investors due to: (1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which restricts property use and construction methods; (2) the adjacency of a 300-bed homeless shelter currently under construction; (3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; (4) the proximity of passive railroad crossings and the attendant loud noise from train horns; (5) the location of a portion of the property on former tidelands and landfill material which adds to development costs; (6) the complete transformation of an industrial use area to a commercial and residential one; and (7) the high cost of financing due to increasing interest rates.

I. In addition to this Agreement, Developers are the successor in interest to that certain Amended and Restated Development Agreement entered into by and among Northwest Recycling Limited Partnership, Parberry's Inc. and Parberry Family Limited Partnership) City contract number C2000929 Whatcom County Recording Number 2021-0102090 (the "Parberry Development Agreement"). Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement. The terms herein are in addition to the those contained in the Parberry Development Agreement.

J. This Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on June 26, 2023 and a resolution approving the Agreement was adopted on July 10, 2023.

AGREEMENT

1. **Developers Obligations to Meet Milestones**

Developers hereby agrees to attain the following Milestones, which may be extended by six months with written mutual consent of the Project Managers, so long as the term of this Agreement is not extended:

- Milestone 1** Developers shall submit a Vision Plan for properties purchased or planned to be purchased at a future date, no later than December 31, 2023.
- Milestone 2** Developers shall purchase a sixth Parberry-owned property, no later than December 31, 2023.
- Milestone 3** Developers shall satisfy Milestone #6 of the Parberry Development Agreement, which is to submit a complete building permit for the renovation of 701 W. Holly St., or block 8, as depicted on Exhibit 3, no later than February 21, 2024 (“Project #1).
- Milestone 4** Developers shall submit a complete building permit application before the end of December 31, 2024 for a new multi-family development that shall be fifty (50) units or more (“Project #2).
- Milestone 5** Developers shall submit a complete building permit application before December 31, 2026 for a development valued at a minimum of Ten Million Dollars (\$10,000,000) (“Project #3).

The Milestones set forth herein are based on Developers’ and the City’s best estimate of a redevelopment schedule for the Developers Property based on current market conditions. If any delay is anticipated by Developers, such anticipated delay shall be communicated to the City Project Manager in writing when known by Developers along with a request for an extension of the applicable Milestone which extension shall not be unreasonably denied so long as diligent progress has been made in achieving the applicable Milestone. The City’s Project Manager, after consultation with Developers’ Project Manager, may, in her sole discretion, extend the requirements of Section 1. An extension shall not unreasonably be denied by the City’s Project Manager so long as diligent progress has been made in achieving the applicable Milestone. The City represents and Developers acknowledge that timely redevelopment is a significant element Development Agreement – 07.10.23

Boat sales; as defined in BMC 20.35.065(B)(1), and

Boat repair and storage; complete minor boat and engine repair pursuant to BMC 20.35.065(B)(2); however, hull work is prohibited. Boats must be operational or being actively repaired as defined in BMC 20.35.065(B).

6. Transfer of Floor Area Tracking Method

The BMC has been amended, concurrently with the adoption of this Agreement, to allow for an alternative process for transferring floor area between sites as long as the process is memorialized in a Development Agreement. The submittal of designs for both the sending and receiving sites, as required by BMC 20.35.070(D)(3), shall not be required for the Developers' Property provided the transfer shall be commemorated in the form of a restrictive covenant on the sending site and recorded with Whatcom County Auditor's Office. The restrictive covenant on the sending site shall include the floor area square footage being sent and the site to which it is transferred. The Developers shall not be entitled to the transfer of floor area to the receiving site unless proof of the recorded document is provided.

7. Permitting

Given the risk associated with development in the Old Town Subarea, the City shall prioritize Developers' development permit applications, including but not limited to, land-use permits/design review, building permits and public facility permits. The City shall designate a development project manager to serve as the City's permitting representative ("Permitting Representative"). This representative will ensure Developers' permits are prioritized in the Planning and Community Development, Public Works, Fire and Parks departments. The Permitting Representative will report any delays in review to the City's Planning and Community Development Director for immediate attention.

8. Vesting

Developers shall vest to the following BMC provisions for the duration of this Agreement:

- a. 20.35.010 through 20.35.085, as amended concurrently with the adoption of this Agreement; and
- b. BMC 20.25; and
- c. BMC 17.82.

9. Quiet Railroad Crossings

The Old Town Subarea is included in the proposed Waterfront Quiet Zone that extends from the Pine/Wharf Street at-grade crossing to the F Street at-grade crossing. As of the date of

of the City's agreement to enter into this Agreement. Reasonable extensions due to the City's failure to provide timely the public infrastructure improvements identified in Section C of this Agreement shall be granted. Failure by Developers to complete the above Milestones, as may be extended from time-to-time, shall be considered a breach of this Agreement, and, if Developers fails to cure such breach within thirty days (30) of written notice from the City, the City shall be relieved of its obligation herein and this Agreement shall terminate. However, the City's right to exercise its option to purchase the Affordable Housing Parcel, defined in Section 12 hereof, survives for one year from the date of notice of breach.

2. Utility Capacity/Maintenance

For clarification purposes, the 2020 Parberry Development Agreement states that the City shall be responsible for providing City-owned sewer, water, and storm systems capable of supporting maximum development permitted in the Old Town Subarea. The City has determined that the existing water and sewer systems are capable of supporting the maximum development as allowed by BMC 20.35(Article II) and that it will maintain those systems. In addition, the City has determined that the existing stormwater conveyance system can accept treated storm water. Further, it is standard business for the City to maintain all public utility main lines (water/sewer/storm) in the right-of-way. The City maintains all water lines from the mainline to the meter. All existing water, sewer and storm systems owned by the City will continue to be maintained by the City as public infrastructure.

3. Infrastructure

- a.** In cooperation with Developers, the City will pursue applying for a Whatcom County Economic Development Investment ("EDI") grant leveraging the City's estimated \$2,800,000 investment in infrastructure commitments memorialized the Parberry Development Agreement in order to add curb-to-curb infrastructure to all street improvements listed on **Exhibit 3**.
- b.** The City shall commission a study to assess the feasibility of undergrounding utilities to enhance the tone and quality of the redevelopment.

4. Old Village Trail

The City shall include the Old Village Trail in the next update to the City's Capital Facilities Plan (2023) so that improvements to that trail are eligible to receive park impact fee credit. Developers may elect to construct the improvements themselves and receive park impact fee credit in lieu of paying park impact fees.

5. Interim Uses

Considering the short supply of industrial space in Bellingham and that it will take a number of years to redevelop Old Town, the following interim uses shall be allowed on Developers' properties for the Term of this Agreement:

this Agreement, the Laurel Street and C Street crossings have been improved to quiet zone standards and F Street is scheduled for construction to meet quiet zone standards in 2023. Central Avenue, Cornwall Avenue and Pine/Wharf Street crossings will need to be upgraded s before the quiet zone can be established. The City is committed to the establishment of the Waterfront Quiet Zone and funds the necessary improvements through the budget process as well as annually through the 6-year Transportation Improvement Program. Other than traffic impact fees collected from Developers as individual projects progress, the City shall not require any financial contribution from Developers for the design or construction of the future crossings.

10. Lighthouse Mission Ministries (“LMM”) Shelter and Shelter Protection Zone

LMM is constructing a facility in the Old Town Subarea in order to relocate the Low-Barrier Shelter currently located at 1530 Cornwall Avenue (“Base Camp”). The City Council created a Shelter Protection Zone for the Old Town Subarea, which covers all the properties Developers anticipate purchasing. Further, the Hearing Examiner issued a Conditional Use Permit – USE2021-0035, which includes, among other provisions, a focus on the enforcement of a Shelter Protection Zone. For the term of the this Agreement, the City agrees to the following measures to mitigate the impacts of a 300-bed shelter:

- a. The City agrees to keep the Shelter Protection Zone in place unless required to remove it pursuant to local, state or federal law;
- b. The City shall provide LMM \$50,000 per year for neighborhood cleanup. If LMM does not continue its neighborhood cleanup program and the City is unable to find another operator, the City shall contract with Developers for cleanup of publicly-owned properties (rights-of-way and parks) for no more than five thousand dollars (\$5,000) per month; and
- c. Unless the City discontinues its contract for private security in the downtown area, the existing contract shall be modified to include patrols around LMM’s shelter facilities, once relocated, supporting the enforcement of the Shelter Protection Zone.

11. Maritime Heritage Park Parking Lot

The City shall work with Developers to further refine the concept of leasing/selling the air-rights above the parking lot at the end of C Street adjacent to the Perry Center to Developers for purposes of constructing structured shared parking and/or residential use. Bellingham Technical College holds a land lease on the parking lot and the adjacent hatchery facility. It is contemplated that shared parking means the ground level be retained for City use and any parking created is for Developers. The City received a capital grant from the National Park Service through the State Recreation and Conservation Office (RCO) to construct Maritime Heritage Park. The City needs to determine whether it can sell or lease air rights over the parking lot and still be in compliance with that grant. The City agrees to explore the viability of obtaining the air rights if Developers wish to pursue this activity. If viable, the Parties agree to execute an

option agreement with a first right of refusal in favor of Developers for purchase/lease of air rights.

12. Affordable Housing Parcel

Developers agree to develop or sell a 20,000 square foot parcel, as described in **Exhibit 4**, to a developer of its choice that builds housing consistent with BMC 20.35.070(D)(4)(c)(ii) (“Affordable Housing”). Developers further agree to record a restrictive covenant substantially in the form of Exhibit 5 on such parcel within thirty days of the execution of this Agreement. Such covenant shall allow Developers to use the parcel for construction staging associated with any development project or Interim Use (pursuant to Section 5) within the Old Town Subarea during the term of this Agreement. The purchase price shall be the price for which the Developers purchased the property, plus holding costs, not to exceed four percent (4%) per year, so long as the total price is at or less than Fair Market Value at the time of purchase. Holding costs shall not accrue for any periods of time that the property is being used for any of the allowed uses stated above. It is the responsibility of the Developers to track and provide back-up documentation related to holding costs. If construction has not commenced on the property for purposes of Affordable Housing within the first nine (9) years of the Development Agreement term, or, if this Agreement has been terminated due to the Developers’ uncured breach of its obligations herein, the City, at its sole discretion, upon ninety (90) days written notice, may elect to purchase the property from the Developers for a future Affordable Housing development utilizing the same purchase price formula as outlined above. In the event of termination due to an uncured breach of this Agreement, the City’s right to exercise its option to purchase the Affordable Housing Parcel survives for one (1) year from the date of notice of breach. Nothing in this Agreement prohibits Developers from selling the property at less than Fair Market Value.

13. Alternative Floor Area Bonus for Land Area Dedicated for Affordable Housing

The BMC has been amended concurrently with the adoption of this Agreement to allow for an alternative process for establishing a floor area bonus for Affordable Housing. For each square foot of Developers’ Property land area certified by the director of Planning and Community Development as set aside by the Developers for permanently affordable housing pursuant to Section 12 herein, four (4) square feet of bonus floor area is earned which can be transferred to other properties that are subject to this Agreement. This is an additive bonus, the transfer of which does not diminish the base 3.5 floor area ratio (FAR) allowed on the affordable housing site, and development on the affordable housing site may use FAR bonus options as detailed in BMC 20.35.070(D). This additive bonus shall not be granted until a covenant, consistent with the provisions outlined in BMC 20.35.070(D)(4)(c)(ii), is recorded on the Developers’ Property and construction of an Affordable Housing development has been completed. Completion shall be defined as receiving final occupancy approval and be a minimum of 40 residential units. The Planning and Community Development Director shall provide the Developers with a letter including the total square footage available for transfer. The Developers may use that square footage provided building permits are submitted and deemed complete for the receiving Developers’ Property site(s) within the term of this Agreement.

14. Term

This Agreement commenced on the date of the Adoption of the Development Agreement Resolution, July 10, 2023 and shall remain in effect until ten years from this date (the "Term"). Any action permitted or required under this Agreement such as permit submittal, road construction, or project development must commence during the term of this Agreement even though additional time may be needed for completion of such actions.

The Term of this Agreement shall be automatically extended by one year, for up to an additional five (5) years if construction of the City/Burlington Northern improvements have not been completed as required to commence the Waterfront Quiet Zone, which extends from Wharf Street to the corner of F Street and Roeder Avenue.

15. Assignment

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns, and all other persons acquiring the Developers Property, or any portion thereof, or any interest therein.

16. Project Managers

For the City: Tara Sundin, Community and Economic Development Manager, 210 Lottie Street, Bellingham, WA 98225, (360) 778-8392.

For Developers: Curt O'Connor

17. General Provisions

a. Legal Fees. In the event any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court costs, reasonable attorneys' fees and expenses incurred by the prevailing Party.

b. Relationship of the Parties. The execution of this Agreement shall not create any agency, partnership, joint venture, association or any other relationship between the Parties other than as independent contracting parties. Neither Party shall act as an agent for the other party or shall have the authority to bind or make commitments on behalf of the other Party. This Agreement has been entered into solely for the benefit of the Parties hereto and does not create any interest in any third party.

c. Entire Waiver; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

Development Agreement – 07.10.23

d. Advice of Counsel. This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against either of the Parties because of the identity of the drafter.

e. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

f. Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

g. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

Exhibit List:

- Exhibit 1 – Legal Description of the Developers Property
- Exhibit 2 – Illustration of the Developers Property
- Exhibit 3 – Infrastructure
- Exhibit 4 - Affordable Housing Parcel
- Exhibit 5 – Restrictive Covenant

Executed this 17th day of August, 2023.

CAPRON, LLC

By: [Signature]
Name: Curtis O'Connor
Title: Manager / Member

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day personally appeared before me Curtis O'Connor, to me known to be the Manager / Member of CAPRON, LLC., the business entity that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such business entity, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

Given Under My Hand and Official Seal this 9 day of August, 2023.

Dated: August 9, 2023

Signed Name: [Signature]
Printed Name: Kristen Murdock
NOTARY PUBLIC in and for the State of
Washington, residing at Bellingham, WA
My commission expires: July 20, 2027



EXHIBIT 1
LEGAL DESCRIPTION OF DEVELOPERS' PROPERTY

1401, 1411, AND 1413 E STREET – BLOCK 1

PARCEL A:

LOT 1, BLOCK 11, SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

LOT 2, BLOCK 11, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL C:

LOTS 3 AND 4, BLOCK 11, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

900 W HOLLY – BLOCK 4

LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 12, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

801 W HOLLY – BLOCK 7

PARCEL A:

LOTS 13 THROUGH 16, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THE SOUTHEASTERLY 20 FEET OF E STREET ABUTTING SAID LOTS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 8900.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

THE NORTHWESTERLY HALF OF LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL C:

THE SOUTHEASTERLY HALF OF LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

701/703/705 W HOLLY; 1280 D STREET – BLOCK 8

LOTS 1 THROUGH 4, INCLUSIVE, AND LOTS 13 THROUGH 16, INCLUSIVE, ALL IN BLOCK 31, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

1419 C STREET – BLOCK 3

PARCEL A:

ALL OF LOTS 1, 2, 3, 5 AND 6, AND LOTS 13 THROUGH 20, INCLUSIVE, AND THE NORTHWESTERLY TWO-THIRDS OF LOTS 11 AND 12, ALL IN BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

LOT 4, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL C:

LOTS 7 THROUGH 10, INCLUSIVE, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 33, AND CITY OF BELLINGHAM ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL D:

THE NORTHWESTERLY 8 FEET OF THE SOUTHEASTERLY HALF OF DIVISION STREET ABUTTING LOTS 7 THROUGH 10, INCLUSIVE, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON, AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 9083.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

1419 C STREET – BLOCK 3 (CONTINUED)

PARCEL E:

THE SOUTHEASTERLY ONE-THIRD OF LOTS 11 AND 12, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 33, AND CITY OF BELLINGHAM ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

1315 D STREET; 800 W HOLLY – BLOCK 5

PARCEL A:

LOTS 1 THROUGH 4, INCLUSIVE, AND LOTS 13 THROUGH 16, INCLUSIVE, ALL IN BLOCK 5, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF CENTER STREET AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 7280 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

LOTS 5 THROUGH 8, INCLUSIVE, BLOCK 5, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF CENTER STREET AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 7280 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT 2
DEVELOPERS' PROPERTY

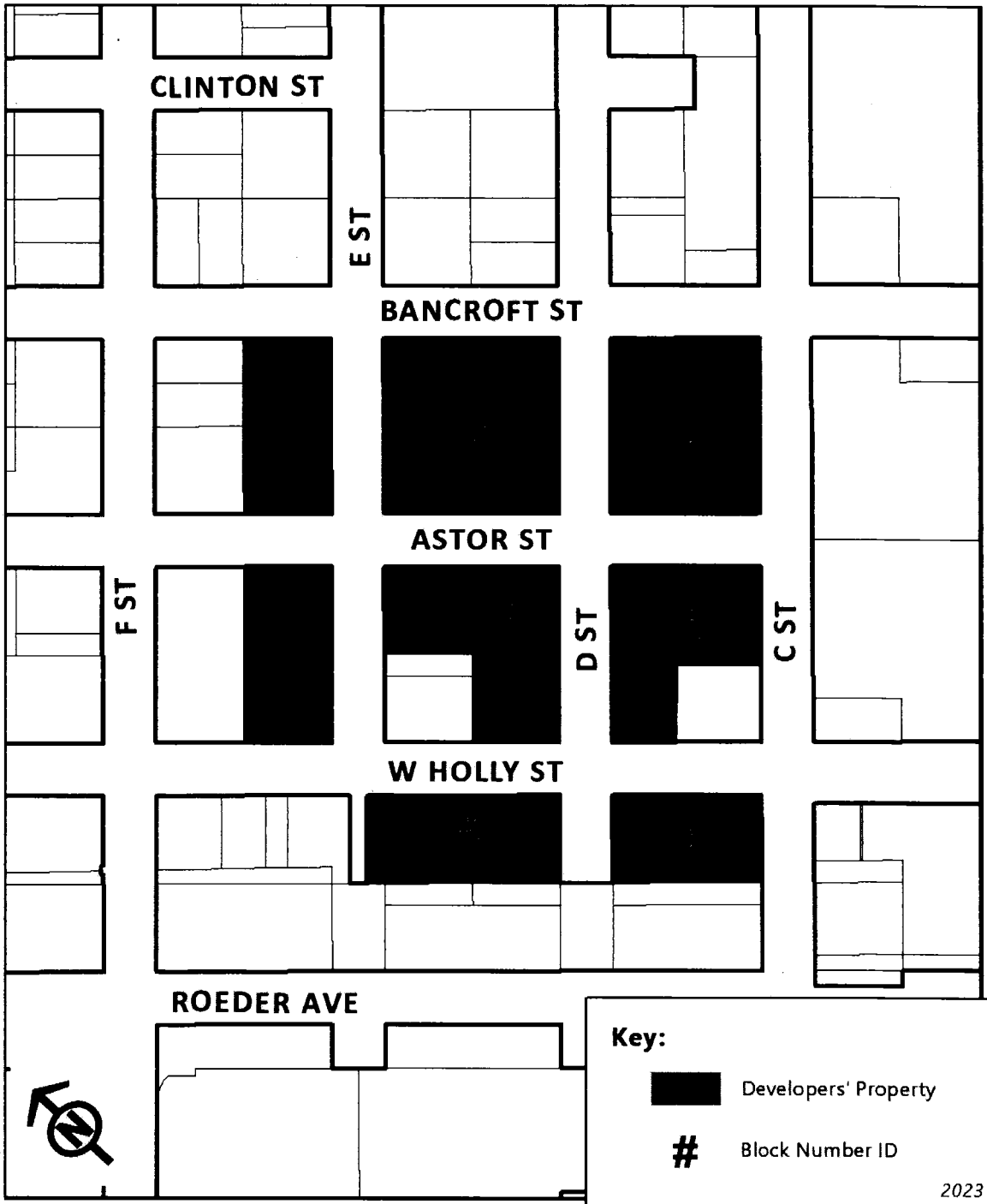


EXHIBIT 3
INFRASTRUCTURE

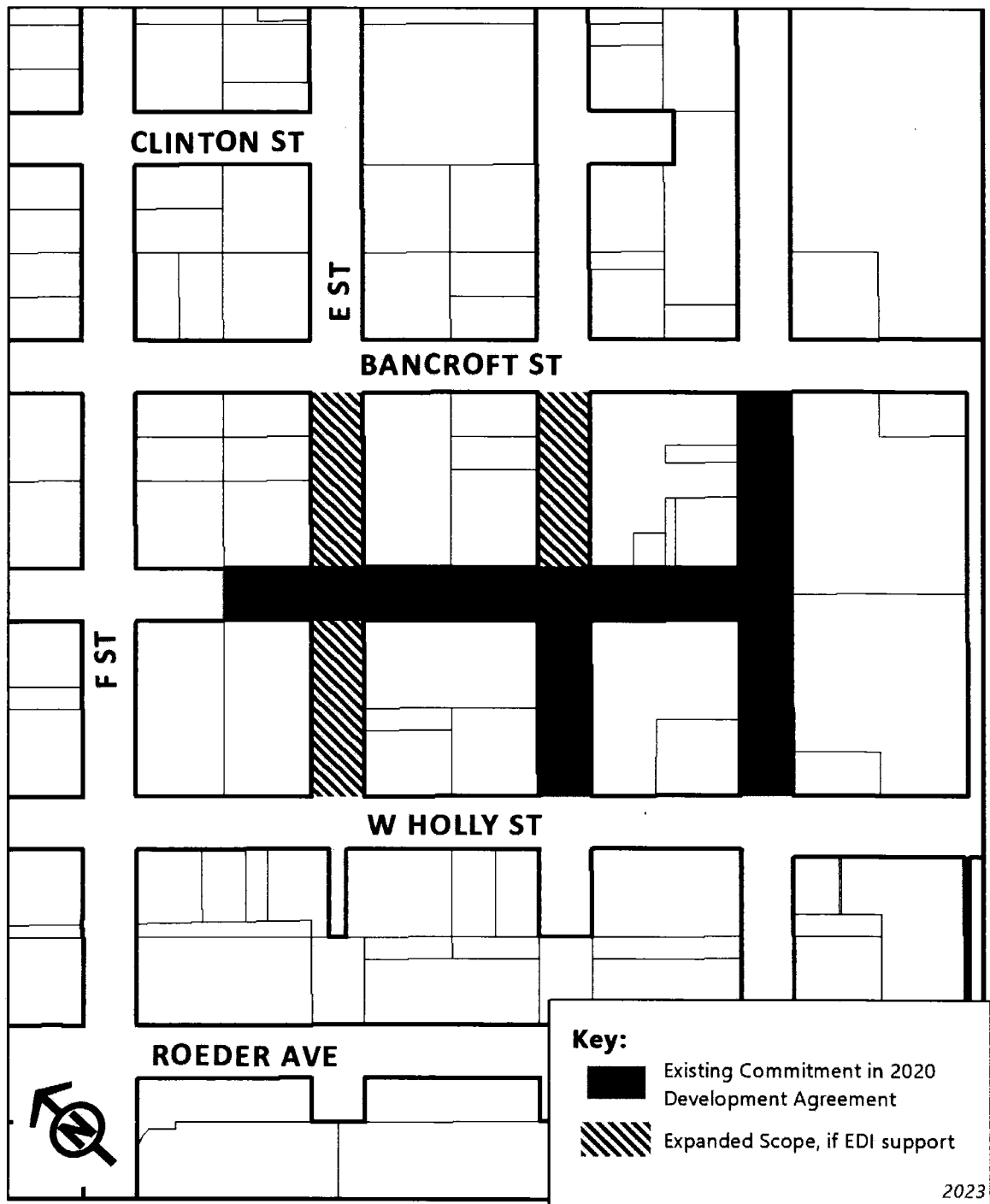


EXHIBIT 4
AFFORDABLE HOUSING PARCEL

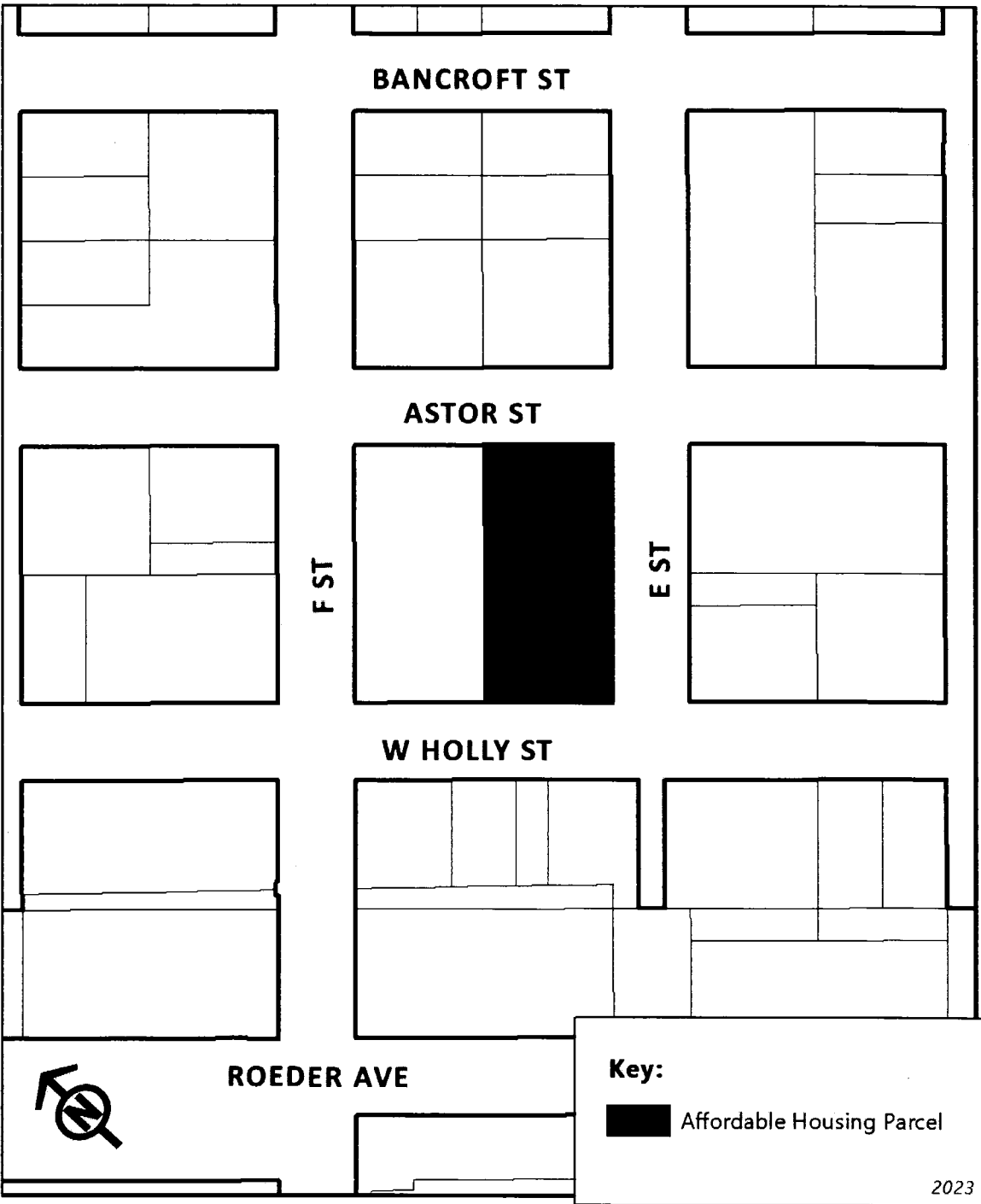


EXHIBIT 5

RESTRICTIVE COVENANT

When Recorded Return to:

City of Bellingham – Planning & Community Development
210 Lottie Street
Bellingham, WA 98225

Attention: Samya Lutz

↑ *Reserved for Recording Purposes Only* ↑

AFFORDABLE HOUSING COVENANT

Grantor(s): Old Town Village, LLC and Capron, LLC
Grantee(s): Beneficiary-City of Bellingham; Trustee-Whatcom Land Title Insurance Company
Abbreviated Legal: LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 12
Assessor's Tax Parcel Number(s): 3802255533590000

This Affordable Housing Covenant ("Covenant") is made by Old Town Village, LLC and Capron, LLC, Washington corporations ("Grantors") and is part of the consideration for the promises made and obligations undertaken by the City of Bellingham ("City") in favor of Grantor pursuant to a Development Agreement of even date herewith (the "Development Agreement") for the development of real property in the Old Town Subarea, including the property legally described as follows:

LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 12, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

(the "Property").

This Covenant will be filed and recorded in the official public land records of Whatcom County, Washington and shall constitute a restriction upon the use of the property described herein, subject to and in accordance with the terms of this Covenant.

The covenants contained herein are to be taken and construed as covenants running with the land and shall pass to and be binding upon the Grantor, its successors and assigns, heirs, grantees, or lessees of the Property. Each and every contract, deed or other instrument covering or conveying

the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, or other instruments.

NOW, THEREFORE, it is hereby covenanted:

1. Affordable Housing. Grantor covenants as follows: The Property shall be used exclusively for affordable housing consistent with BMC 20.35.070(D)(4)(c)(ii) ("Affordable Housing"), which states: All purchasers or tenants shall be from a household whose annual income, at the household's initial occupancy of the single-family residence, is 80 percent or less of the median income (determined by Housing and Urban Development) as adjusted by family size of the Bellingham Standard Metropolitan Statistical Area (SMSA), specifically defined as Whatcom County; The monthly expenditure by a purchaser, as described in subsection (D)(4)(c)(ii)(A) of this section, for housing including rent or mortgage repayment, insurance, taxes and utilities (water and sewer) shall not exceed 38 percent of the gross household income at the time of purchase and the amount for rent or mortgage repayment shall not exceed 30 percent of gross household income. All other variable living expenses associated with the resident's occupancy shall not be a factor in the calculation of affordability.
2. Construction Staging. Notwithstanding Section 1 above, Grantor may use the Property construction staging associated with any development project or Interim Use (pursuant to Section 5 of the Development Agreement) on property covered by the Development Agreement during the term of the Development Agreement.
3. Records. The Grantor will keep any records and make any reports relating to compliance with this covenant that Grantee may reasonably require.
4. Default: In the event that Grantor, or Grantor's successor-in-interest, violates Section 1 above, such failure shall constitute an Event of Default hereunder and under the terms of the Development Agreement. In the event legal action is required to enforce the foregoing condition, the prevailing party shall be entitled to an award of reasonable attorney's fees and all the cost of any legal action and title searches.
5. Term: This Covenant terminates on July 31, 2033.

This covenant touches and concerns the Property and shall run with the land and is for the benefit of the general public and shall be binding upon the Grantor's heirs, devisees, executors, administrators, successors and assigns. It may not be revoked without the prior written consent of Grantee.

[Signature pages follow]

IN WITNESS HEREOF, Old Town Village, LLC and Capron, LLC, Washington corporations, have executed this Covenant on the 9th day of August, 2023.

GRANTOR

Old Town Village, LLC

By: 


Print Name: Pete Dawson

Its: Member / Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Peter C. Dawson is the person who appeared before me, and said person acknowledged s/he signed this instrument on oath stated s/he was authorized to execute the instrument and acknowledged it as the Member / Manager of Old Town Village, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

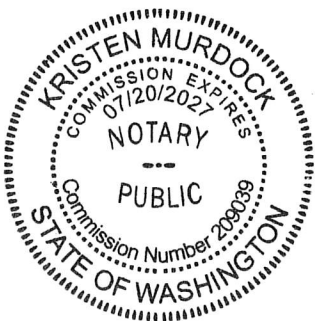
Dated: August 9, 2023

Signed Name: 

Printed Name: Kristen Murdock

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham, WA

My commission expires: July 20, 2027



GRANTOR

Capron, LLC

By: Curtis O'Connor

Print Name: Curtis O'Connor

Its: Manager / Member

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Curtis O'Connor is the person who appeared before me, and said person acknowledged s/he signed this instrument on oath stated s/he was authorized to execute the instrument and acknowledged it as the Manager / Member of Capron, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: August 9, 2023

Signed Name: Kristen Murdock
Printed Name: Kristen Murdock
NOTARY PUBLIC in and for the State of
Washington, residing at Bellingham, WA
My commission expires: July 20, 2027



**EXHIBIT I:
RESOLUTION**

Old Town Urban Village Infrastructure Improvement Project
(see highlighted section on page 4 of Development Agreement)

RESOLUTION NO. 2023-16

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO DEVELOPMENT AGREEMENT WITH OLD TOWN VILLAGE, LLC AND CAPRON, LLC REGARDING THE REDEVELOPMENT OF PROPERTY LOCATED IN THE OLD TOWN SUBAREA, CONSISTENT WITH THE OLD TOWN URBAN VILLAGE PLAN.

WHEREAS, Developers have purchased or have contracts to purchase several parcels of real property within an area of Bellingham designated as the "Old Town Subarea" by the Bellingham Comprehensive Plan.

WHEREAS, historically, the Developers' Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices owned and operated by several entities comprised of the Parberry family.

WHEREAS, the City adopted an amendment (Ordinance No. 2008-03-022) to its Comprehensive Plan for the Old Town Subarea Plan (also known as the Old Town Plan") and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the "Old Town Overlay District"). The Old Town Subarea is now designated and zoned as Commercial. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

WHEREAS, redevelopment of the Developers' Property into a mixed-use urban village is appropriate and consistent with the Old Town Plan. Future development in the Old Town Subarea must comply with the Old Town Subarea Plan and other applicable City regulations.

WHEREAS, the elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea.

WHEREAS, the City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of incomes levels. Developers and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

WHEREAS, this Agreement implements part of the Old Town Plan by kick starting development in a significant portion of the Old Town Subarea.

WHEREAS, the redevelopment of the Old Town Subarea poses increased risk to developers and investors due to: (1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which restricts property use and

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
(360) 778-8270

construction methods; (2) the adjacency of a 300-bed homeless shelter currently under construction; (3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; (4) the proximity of passive railroad crossings and the attendant loud noise from train horns; (5) the location of a portion of the property on former tidelands and landfill material which adds to development costs; (6) the complete transformation of an industrial use area to a commercial and residential one; and (7) the high cost of financing due to increasing interest rates.

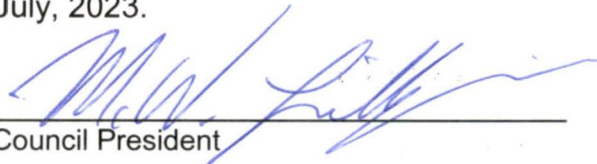
WHEREAS, in addition to this Agreement, Developers are the successor in interest to that certain Amended and Restated Development Agreement entered into by and among Northwest Recycling Limited Partnership, Parberry's Inc. and Parberry Family Limited Partnership) City contract number C2000929 Whatcom County Recording Number 2021-0102090 (the "Parberry Development Agreement"). Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement. The terms herein are in addition to the those contained in the Parberry Development Agreement.

WHEREAS, this Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on June 26, 2023.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM THAT:

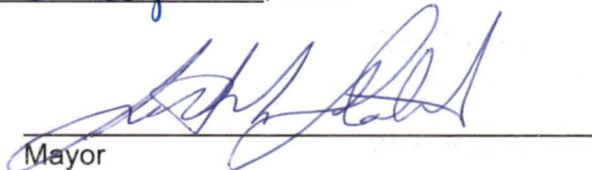
The Mayor of Bellingham is authorized to enter into a Development Agreement with Old Town Village, LLC and Capron, LLC in substantially the same form as **Exhibit A** attached hereto and incorporated herein by this reference.

PASSED by the Council this 10th day of July, 2023.



Council President

APPROVED by me this 26th day of July, 2023.



Mayor

ATTEST:

Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

When Recorded, Return to:

City of Bellingham
Amy Kraham
Office of the City Attorney
210 Lottie Street
Bellingham, WA 98225

**DEVELOPMENT AGREEMENT BETWEEN OLD TOWN VILLAGE,
LLC, CAPRON, LLC AND THE CITY OF BELLINGHAM**

Grantor:	OLD TOWN VILLAGE, LLC and CAPRON, LLC		
Grantee:	City of Bellingham		
Legal Description (abbreviated):	LOTS _____ PLAT OF THE TOWN OF NEW WHATCOM SUPPLEMENTAL AS THE SAME IS SHOWN AT PAGE 42, BOOK 1 OF PLATS, OFFICIAL RECORDS OF WHATCOM COUNTY AUDITOR Additional legal description for this parcel and full legal descriptions for additional parcels in Exhibit 1 attached hereto		
Assessor's Tax Parcel ID #:	_____		
	additional Tax Parcel ID numbers in Exhibit 1 attached hereto		
Reference Nos. of Documents Released or Assigned:			

This DEVELOPMENT AGREEMENT ("Agreement") between OLD TOWN VILLAGE, LLC., a Washington business entity, CAPRON, LLC (collectively, "Developers") and the CITY OF BELLINGHAM (the "City"), a municipal corporation, is entered into as of the last date of signature below, and effective upon the date of execution by the City of Bellingham (the "Agreement").

RECITALS

A. Developers have purchased or have contracts to purchase several parcels of real property within an area of Bellingham designated as the "Old Town Subarea" by the Bellingham Comprehensive Plan. Property within the Old Town Subarea owned by Developers is referenced herein as the "Developers' Property," and more particularly described in **Exhibit 1** attached and incorporated herein by this reference and illustrated in **Exhibit 2** attached. Developers purchased blocks 1, 3, 4, 7 and 8 from the Parberry family entities between January 2023 and April 1, 2023, and have block 5 is under contract and Developers are negotiating to purchase block 2 and 6. Should purchases occur by Developers, they shall also benefit from this Agreement.

B. Historically, the Developers' Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices owned and operated by several entities comprised of the Parberry family.

C. The City adopted an amendment (Ordinance No. 2008-03-022) to its Comprehensive Plan for the Old Town Subarea Plan (also known as the Old Town Plan") and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the "Old Town Overlay District"). The Old Town Subarea is now designated and zoned as Commercial. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

D. Redevelopment of the Developers' Property into a mixed-use urban village is appropriate and consistent with the Old Town Plan. Future development in the Old Town Subarea must comply with the Old Town Subarea Plan and other applicable City regulations.

E. The elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea.

F. The City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of incomes levels. Developers and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

G. This Agreement implements part of the Old Town Plan by kick starting development in a significant portion of the Old Town Subarea.

H. The redevelopment of the Old Town Subarea poses increased risk to developers and investors due to: (1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which restricts property use and construction methods; (2) the adjacency of a 300-bed homeless shelter currently under construction; (3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; (4) the proximity of passive railroad crossings and the attendant loud noise from train horns; (5) the location of a portion of the property on former tidelands and landfill material which adds to development costs; (6) the complete transformation of an industrial use area to a commercial and residential one; and (7) the high cost of financing due to increasing interest rates.

I. In addition to this Agreement, Developers are the successor in interest to that certain Amended and Restated Development Agreement entered into by and among Northwest Recycling Limited Partnership, Parberry's Inc. and Parberry Family Limited Partnership) City contract number C2000929 Whatcom County Recording Number 2021-0102090 (the "Parberry Development Agreement"). Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement. The terms herein are in addition to the those contained in the Parberry Development Agreement.

J. This Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on June 26, 2023 and a resolution approving the Agreement was adopted on July 10, 2023.

AGREEMENT

1. Developers Obligations to Meet Milestones

Developers hereby agrees to attain the following Milestones, which may be extended by six months with written mutual consent of the Project Managers, so long as the term of this Agreement is not extended:

- Milestone 1** Developers shall submit a Vision Plan for properties purchased or planned to be purchased at a future date, no later than December 31, 2023.
- Milestone 2** Developers shall purchase a sixth Parberry-owned property, no later than December 31, 2023.
- Milestone 3** Developers shall satisfy Milestone #6 of the Parberry Development Agreement, which is to submit a complete building permit for the renovation of 701 W. Holly St., or block 8, as depicted on Exhibit 3, no later than February 21, 2024 (“Project #1).
- Milestone 4** Developers shall submit a complete building permit application before the end of December 31, 2024 for a new multi-family development that shall be fifty (50) units or more (“Project #2).
- Milestone 5** Developers shall submit a complete building permit application before December 31, 2026 for a development valued at a minimum of Ten Million Dollars (\$10,000,000) (“Project #3).

The Milestones set forth herein are based on Developers’ and the City’s best estimate of a redevelopment schedule for the Developers Property based on current market conditions. If any delay is anticipated by Developers, such anticipated delay shall be communicated to the City Project Manager in writing when known by Developers along with a request for an extension of the applicable Milestone which extension shall not be unreasonably denied so long as diligent progress has been made in achieving the applicable Milestone. The City’s Project Manager, after consultation with Developers’ Project Manager, may, in her sole discretion, extend the requirements of Section 1. An extension shall not unreasonably be denied by the City’s Project Manager so long as diligent progress has been made in achieving the applicable Milestone. The City represents and Developers acknowledge that timely redevelopment is a significant element of the City’s agreement to enter into this Agreement. Reasonable extensions due to the City’s failure to provide timely the public infrastructure improvements identified in Section C of this Agreement shall be granted. Failure by Developers to complete the above Milestones, as may be

extended from time-to-time, shall be considered a breach of this Agreement, and, if Developers fails to cure such breach within thirty days (30) of written notice from the City, the City shall be relieved of its obligation herein and this Agreement shall terminate. However, the City's right to exercise its option to purchase the Affordable Housing Parcel, defined in Section 12 hereof, survives for one year from the date of notice of breach.

2. **Utility Capacity/Maintenance**

For clarification purposes, the 2020 Parberry Development Agreement states that the City shall be responsible for providing City-owned sewer, water, and storm systems capable of supporting maximum development permitted in the Old Town Subarea. The City has determined that the existing water and sewer systems are capable of supporting the maximum development as allowed by BMC 20.35(Article II) and that it will maintain those systems. In addition, the City has determined that the existing stormwater conveyance system can accept treated storm water. Further, it is standard business for the City to maintain all public utility main lines (water/sewer/storm) in the right-of-way. The City maintains all water lines from the mainline to the meter. All existing water, sewer and storm systems owned by the City will continue to be maintained by the City as public infrastructure.

3. **Infrastructure**

- a. In cooperation with Developers, the City will pursue applying for a Whatcom County Economic Development Investment ("EDI") grant leveraging the City's estimated \$2,800,000 investment in infrastructure commitments memorialized the Parberry Development Agreement in order to add curb-to-curb infrastructure to all street improvements listed on **Exhibit 3**.
- b. The City shall commission a study to assess the feasibility of undergrounding utilities to enhance the tone and quality of the redevelopment.

4. **Old Village Trail**

The City shall include the Old Village Trail in the next update to the City's Capital Facilities Plan (2023) so that improvements to that trail are eligible to receive park impact fee credit. Developers may elect to construct the improvements themselves and receive park impact fee credit in lieu of paying park impact fees.

5. **Interim Uses**

Considering the short supply of industrial space in Bellingham and that it will take a number of years to redevelop Old Town, the following interim uses shall be allowed on Developers' properties for the Term of this Agreement:

Boat sales; as defined in BMC 20.35.065(B)(1), and

Boat repair and storage; complete minor boat and engine repair pursuant to BMC 20.35.065(B)(2); however, hull work is prohibited. Boats must be operational or being actively repaired as defined in BMC 20.35.065(B).

6. Transfer of Floor Area Tracking Method

The BMC has been amended, concurrently with the adoption of this Agreement, to allow for an alternative process for transferring floor area between sites as long as the process is memorialized in a Development Agreement. The submittal of designs for both the sending and receiving sites, as required by BMC 20.35.070(D)(3), shall not be required for the Developers' Property provided the transfer shall be commemorated in the form of a restrictive covenant on the sending site and recorded with Whatcom County Auditor's Office. The restrictive covenant on the sending site shall include the floor area square footage being sent and the site to which it is transferred. The Developers shall not be entitled to the transfer of floor area to the receiving site unless proof of the recorded document is provided.

7. Permitting

Given the risk associated with development in the Old Town Subarea, the City shall prioritize Developers' development permit applications, including but not limited to, land-use permits/design review, building permits and public facility permits. The City shall designate a development project manager to serve as the City's permitting representative ("Permitting Representative"). This representative will ensure Developers' permits are prioritized in the Planning and Community Development, Public Works, Fire and Parks departments. The Permitting Representative will report any delays in review to the City's Planning and Community Development Director for immediate attention.

8. Vesting

Developers shall vest to the following BMC provisions for the duration of this Agreement:

- a. 20.35.010 through 20.35.085, as amended concurrently with the adoption of this Agreement; and
- b. BMC 20.25; and
- c. BMC 17.82.

9. Quiet Railroad Crossings

The Old Town Subarea is included in the proposed Waterfront Quiet Zone that extends from the Pine/Wharf Street at-grade crossing to the F Street at-grade crossing. As of the date of this Agreement, the Laurel Street and C Street crossings have been improved to quiet zone standards and F Street is scheduled for construction to meet quiet zone standards in 2023. Central Avenue, Cornwall Avenue and Pine/Wharf Street crossings

will need to be upgraded s before the quiet zone can be established. The City is committed to the establishment of the Waterfront Quiet Zone and funds the necessary improvements through the budget process as well as annually through the 6-year Transportation Improvement Program. Other than traffic impact fees collected from Developers as individual projects progress, the City shall not require any financial contribution from Developers for the design or construction of the future crossings.

10. Lighthouse Mission Ministries (“LMM”) Shelter and Shelter Protection Zone

LMM is constructing a facility in the Old Town Subarea in order to relocate the Low-Barrier Shelter currently located at 1530 Cornwall Avenue (“Base Camp”). The City Council created a Shelter Protection Zone for the Old Town Subarea, which covers all the properties Developers anticipate purchasing. Further, the Hearing Examiner issued a Conditional Use Permit – USE2021-0035, which includes, among other provisions, a focus on the enforcement of a Shelter Protection Zone. For the term of the this Agreement, the City agrees to the following measures to mitigate the impacts of a 300-bed shelter:

- a. The City agrees to keep the Shelter Protection Zone in place unless required to remove it pursuant to local, state or federal law;
- b. The City shall provide LMM \$50,000 per year for neighborhood cleanup. If LMM does not continue its neighborhood cleanup program and the City is unable to find another operator, the City shall contract with Developers for cleanup of publicly-owned properties (rights-of-way and parks) for no more than five thousand dollars (\$5,000) per month; and
- c. Unless the City discontinues its contract for private security in the downtown area, the existing contract shall be modified to include patrols around LMM’s shelter facilities, once relocated, supporting the enforcement of the Shelter Protection Zone.

11. Maritime Heritage Park Parking Lot

The City shall work with Developers to further refine the concept of leasing/selling the air-rights above the parking lot at the end of C Street adjacent to the Perry Center to Developers for purposes of constructing structured shared parking and/or residential use. Bellingham Technical College holds a land lease on the parking lot and the adjacent hatchery facility. It is contemplated that shared parking means the ground level be retained for City use and any parking created is for Developers. The City received a capital grant from the National Park Service through the State Recreation and Conservation Office (RCO) to construct Maritime Heritage Park. The City needs to determine whether it can sell or lease air rights over the parking lot and still be in compliance with that grant. The City agrees to explore the viability of obtaining the air rights if Developers wish to pursue this activity. If viable, the Parties agree to execute an option agreement with a first right of refusal in favor of Developers for purchase/lease of air rights.

12. Affordable Housing Parcel

Developers agree to develop or sell a 20,000 square foot parcel, as described in **Exhibit 4**, to a developer of its choice that builds housing consistent with BMC 20.35.070(D)(4)(c)(ii) (“Affordable Housing”). Developers further agree to record a restrictive covenant substantially in the form of Exhibit 5 on such parcel within thirty days of the execution of this Agreement. Such covenant shall allow Developers to use the parcel for construction staging associated with any development project or Interim Use (pursuant to Section 5) within the Old Town Subarea during the term of this Agreement. The purchase price shall be the price for which the Developers purchased the property, plus holding costs, not to exceed four percent (4%) per year, so long as the total price is at or less than Fair Market Value at the time of purchase. Holding costs shall not accrue for any periods of time that the property is being used for any of the allowed uses stated above. It is the responsibility of the Developers to track and provide back-up documentation related to holding costs. If construction has not commenced on the property for purposes of Affordable Housing within the first nine (9) years of the Development Agreement term, or, if this Agreement has been terminated due to the Developers’ uncured breach of its obligations herein, the City, at its sole discretion, upon ninety (90) days written notice, may elect to purchase the property from the Developers for a future Affordable Housing development utilizing the same purchase price formula as outlined above. In the event of termination due to an uncured breach of this Agreement, the City’s right to exercise its option to purchase the Affordable Housing Parcel survives for one (1) year from the date of notice of breach. Nothing in this Agreement prohibits Developers from selling the property at less than Fair Market Value.

13. Alternative Floor Area Bonus for Land Area Dedicated for Affordable Housing

The BMC has been amended concurrently with the adoption of this Agreement to allow for an alternative process for establishing a floor area bonus for Affordable Housing. For each square foot of Developers’ Property land area certified by the director of Planning and Community Development as set aside by the Developers for permanently affordable housing pursuant to Section 12 herein, four (4) square feet of bonus floor area is earned which can be transferred to other properties that are subject to this Agreement. This is an additive bonus, the transfer of which does not diminish the base 3.5 floor area ratio (FAR) allowed on the affordable housing site, and development on the affordable housing site may use FAR bonus options as detailed in BMC 20.35.070(D). This additive bonus shall not be granted until a covenant, consistent with the provisions outlined in BMC 20.35.070(D)(4)(c)(ii), is recorded on the Developers’ Property and construction of an Affordable Housing development has been completed. Completion shall be defined as receiving final occupancy approval and be a minimum of 40 residential units. The Planning and Community Development Director shall provide the Developers with a letter including the total square footage available for transfer. The Developers may use that square footage provided building permits are submitted and deemed complete for the receiving Developers’ Property site(s) within the term of this Agreement.

14. Term

This Agreement commenced on the date of the Adoption of the Development Agreement Resolution, July 10, 2023 and shall remain in effect until ten years from this date (the “Term”). Any action permitted or required under this Agreement such as permit submittal, road construction, or project development must commence during the term of this Agreement even though additional time may be needed for completion of such actions.

The Term of this Agreement shall be automatically extended by one year, for up to an additional five (5) years if construction of the City/Burlington Northern improvements have not been completed as required to commence the Waterfront Quiet Zone, which extends from Wharf Street to the corner of F Street and Roeder Avenue.

15. Assignment

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns, and all other persons acquiring the Developers Property, or any portion thereof, or any interest therein.

16. Project Managers

For the City: Tara Sundin, Community and Economic Development Manager, 210 Lottie Street, Bellingham, WA 98225, (360) 778-8392.

For Developers: Curt O’Connor

17. General Provisions

a. Legal Fees. In the event any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court costs, reasonable attorneys’ fees and expenses incurred by the prevailing Party.

b. Relationship of the Parties. The execution of this Agreement shall not create any agency, partnership, joint venture, association or any other relationship between the Parties other than as independent contracting parties. Neither Party shall act as an agent for the other party or shall have the authority to bind or make commitments on behalf of the other Party. This Agreement has been entered into solely for the benefit of the Parties hereto and does not create any interest in any third party.

c. Entire Waiver; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

d. Advice of Counsel. This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against either of the Parties because of the identity of the drafter.

e. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

f. Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

g. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

Exhibit List:

Exhibit 1 – Legal Description of the Developers Property

Exhibit 2 – Illustration of the Developers Property

Exhibit 3 – Infrastructure

Exhibit 4 - Affordable Housing Parcel

Exhibit 5 – Restrictive Covenant

Executed this _____ day of _____, 2023.