

**AGREEMENT BETWEEN CITY OF BELLINGHAM
AND GREENBRIAR NORTHWEST ASSOCIATES
FOR REIMBURSEMENT OF COSTS AND FEES**

1. INTRODUCTION

1.1 This agreement for reimbursement of costs and fees ("Agreement") is entered into this 13 day of Sept, 2007, between **CITY OF BELLINGHAM** ("City") and **GREENBRIAR NORTHWEST ASSOCIATES** ("Proponent").

2. RECITALS

2.1 Proponent has submitted application materials for a Planned Development, Preliminary Plat, and Subdivision Variance. Proponent and the City have agreed to the preparation of an Environmental Impact Statement. The project is proposed for 85 acres of land generally located between Chuckanut Drive, Interurban Trail, Old Fairhaven Parkway, and Old Samish Highway. This Agreement addresses all City permitting activity associated with the project.

2.2 Processing the development permits and EIS will require technical and legal services not available from current City staffing.

2.3 Applicants are billed for all City costs of environment impact statement preparation (BMC 16.20.140). Review costs include staff costs, and fees from consultants hired by the City to evaluate the project and advise the City, including legal services ("Costs"). Costs expended prior to execution of the Agreement are covered by the Agreement.

2.4 Costs for the City's administration of the EIS are estimated at roughly \$10,000. Additional costs will be associated with completing the City review process. Administrative and/or judicial appeals of City permit decisions may also result in additional costs.

3. AGREEMENT

3.1 Proponent agrees to make an initial, advance payment of \$25,000 to the City as a deposit to be drawn upon for payment of monthly invoices per paragraphs 3.2 and 3.3. The City will place the funds in an interest bearing account. Interest will be returned to Proponent as provided in paragraph 3.5.

3.2 The City will invoice Proponent, monthly, for services. The City will draw from the deposit to pay for costs. Once the balance falls below \$10,000, the Proponent will

deposit an additional \$25,000. Deposits by the Proponent will not exceed \$75,000. If project costs are less than the \$75,000 maximum, the remainder will be refunded to the Proponent.

3.3 The costs incurred by the City shall include long distance telephone charges, copying, postage, draft expenses, public notices, renting a hearing room if one is not otherwise available, and other extraordinary expenses incurred by the city in reviewing and administering the Proponent's EIS plus the rate of \$100/hour for the services of City staff in processing the EIS (which include services needed to respond to any appeals filed). City staff includes the Planning Director, Planner, City Attorney, and Administrative and Clerical Staff.

City cost shall not exceed \$25,000. In the event it appears that the actual and reasonable costs of the City will exceed \$25,000 in order to complete the SEPA process, the City will immediately notify the Applicant of any projected, additional expense and confer with the applicant before incurring said expense. If the Applicant objects, the Applicant may meet with the City and discuss the projected expense and any alternatives to said expenditure. If the parties do not reach agreement, the Applicant shall have the right to seek mediation or other informal alternative dispute resolution in resolving any disagreement. If any such effort does not lead to mutually satisfactory resolution, the Applicant must elect to proceed with the SEPA process or terminate the process.

Costs for services from consultants other than City staff and other professional services may be required for administering the EIS (includes services required to respond to any appeals that are filed). Such professionals will bill at their usual rates. The City will invoice Proponent monthly for these costs with details showing the services performed, the hours worked, and other chargeable expenses as defined above. Services from engineering or scientific consultants will be performed by consultants operating on a for-profit basis.

The parties have agreed that ESA Adolfson will be the consultant preparing the Environmental Impact Statement. The City and ESA Adolfson have entered into a professional Services Agreement which provides that the consultant costs will be paid from funds deposited by the Proponent, Greenbriar Northwest Associates. This agreement is attached as Exhibit "A" and incorporated herein by this reference. The City will invoice Proponent for funds paid to the consultant in order to replenish the deposit as described in paragraph 3.2.

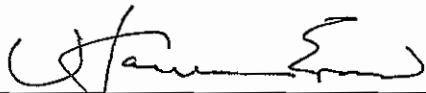
3.4 If costs are not paid by Proponent within 30 days of billing, the City may halt project review, including EIS drafting. Review will recommence when costs are paid by Proponent.

3.5 Any deposited funds (including interest) not expended by the City following final City decisions and appeal resolution will be refunded to Proponent.

3.6 Proponent's obligation to reimburse the City shall terminate upon the earlier of: (1) notice by Proponent asking the City to cease further consideration of its applications because it is no longer pursuing the project; or (2) all City permits required for the project have been issued, and appeal periods have run (the "Completion Date"). Proponent shall remain obligated to reimburse the City for Reimbursable Expenses incurred up to the Completion Date.

3.7 This Agreement shall bind all successors and assigns to Proponent.

EXECUTED, this 13 day of September, 2007, for **GREENBRIAR NORTHWEST ASSOCIATES:**



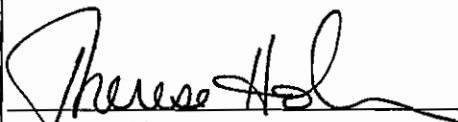
Greenbriar Northwest Associates
PARTNER

EXECUTED, this 17th day of October, 2007, for the **CITY OF BELLINGHAM:**



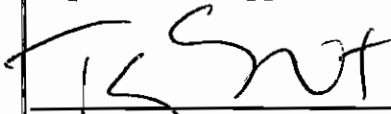
Mayor

Attest:



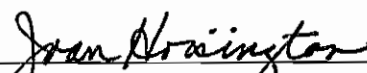
Finance Director

Departmental Approval:



Department Head KSF

Approved as to form:



Office of the City Attorney

Agreement between City of Bellingham
and Greenbriar Northwest Associates for
Reimbursement of Cost and Fees - 3

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

EXHIBIT "A"

(Contract #2007-0541)

**AGREEMENT FOR CONSULTANT SERVICES
CITY OF BELLINGHAM – ESA ADOLFSON
FAIRHAVEN HIGHLANDS EIS**

The **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington, located at City Hall, 210 Lottie Street, Bellingham, Washington, 98225 (hereinafter the "City"), and **ESA ADOLFSON, INC.**, a Washington corporation with offices located at 5309 Shilshole Avenue NW, Suite 200, Seattle, WA 98107 (hereinafter the "Consultant"), in consideration of the mutual covenants herein, agree as follows:

I. OBJECTIVE. The objective of this Agreement is preparation of an environmental impact statement for the Fairhaven Highlands Project (hereinafter the "Project" as further set forth in Article III. below).

II. RESPONSIBLE OFFICERS.

A. The City designates Tim Stewart, Planning and Community Development Director as its Project Manager for the Project. The Project Manager is the City's liaison officer to the Consultant for all purposes in carrying out the Project.

B. The Consultant designates Mark Johnson, Project Manager as its Representative for the Project. The Consultant's Representative is its liaison officer to the City for all purposes in carrying out the Project. The Consultant designates the following persons as those assigned to this Project; changes may only be made with the City's written acquiescence:

Ikuno Masterson, Principal in Charge, Mark Johnson, Project Manager; Ilon Logan, PWS; Alex Cohen and Sharese Thompson, Planning Support; Staff for technical support, graphics, editing, and project administration consistent with project needs and the authorized scope of services may be engaged in the project without prior written consent.

III. SCOPE OF WORK UNDERTAKEN BY CONSULTANT AND PROJECT SCHEDULE. Consultant agrees to carry out the following work ("the Project") to the satisfaction of the Project Manager:

See Exhibit "B": Scope of Work attached and incorporated herein by this reference. The standard of care applicable to the Consultant services shall be the degree of skill and diligence normally employed by professional consultants performing the same or similar services.

IV. PAYMENT.

A. The maximum payable to Consultant under this Agreement is \$50,000, which amount shall be inclusive of any State sales tax payable by Consultant.

B. Consultant acknowledges that, although it is entering into this Agreement with the City and the City will be Consultant's point of contact and coordinating counterpart in the performance of all terms and conditions hereunder, Greenbriar Northwest Associates ("Greenbriar") is be responsible for payment of all Consultant costs for EIS preparation pursuant to that certain agreement dated 13 SEPT, 2007 (Agreement between City of Bellingham and Greenbriar Northwest Associates for Reimbursement of Costs and Fees) executed between the City and Greenbriar.

C. Consultant shall invoice the City on a monthly basis and City shall pay Consultant from funds deposited by Greenbriar in an account established for this purpose. If Greenbriar is in default on its agreement to fund said account, City shall immediately notify Consultant in writing.

D. Payments to the Consultant will be made monthly for work done during the previous month, based on invoices submitted to the Project Manager. A short narrative progress report shall accompany each invoice, which report shall discuss any problems or potential causes for delay, with the status of the Project, amount of work completed, and other relevant information.

E. The cost records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City or any other governmental agency with jurisdiction for a period of three (3) years after final payment.

F. The basis for payment hereunder is: See Exhibit "C": Payment Rates attached and incorporated herein by this reference.

V. **CHANGES AND ADDITIONAL WORK.**

A. Upon request of the City, the Consultant shall make such revisions in work done under this Agreement as are necessary to correct errors or omissions appearing therein and make such other minor revisions as are reasonably requested, without additional compensation therefore.

B. The City may, at any time, by written order direct the Consultant to revise portions of the Project work previously completed in a satisfactory manner, delete portions of the Project, make other changes within the general scope of the services or work to be performed under this Agreement, or request other additional work not reasonably implied by the scope of work. If such changes cause an increase or decrease in the Consultant's cost of or time required for performance of any service under this Agreement, an equitable cost and/or completion time adjustment shall be made, and this Agreement shall be modified in writing accordingly. The Consultant must assert any claim for adjustment under this section in writing within thirty days from the date of receipt by the Consultant of the notification of change.

VI. INFORMATION AND WORK PROVIDED BY THE CITY. Such data as is possessed by the City and is useful or necessary to the Consultant in order to carry out the Project shall be turned over to the Consultant at a time and place mutually convenient. The Consultant is entitled to rely on the data provided. Except as specifically provided in this section, the City is not required to retain additional consultants, do research or obtain additional data for use by the Consultant at the City's expense.

Exceptions are as follows:

The following documents have been made available:

1996 Supplementary Materials

- Draft Environmental Impact Statement Chuckanut Ridge, Planned Development, March 1996
- Final (Draft) Environmental Impact Statement Chuckanut Ridge, Planned Development, October, 1997
- Technical Appendices, Chuckanut Ridge Planned Development, March, 1996

Reports completed by the Applicant

- Preliminary Wetland & Buffer Impact Assessment and Mitigation Plan for the Fairhaven Highlands, November 2005, prepared by Northwest Ecological Services, LLC.
- Wetland Delineation for the Fairhaven Highlands Bellingham, WA, October 2005, prepared by Northwest Ecological Services, LLC

The following reports are being completed by the Applicant and will be made available:

- Flora & Fauna Assessment for the Fairhaven Highlands (being prepared by Northwest Ecological Services, LLC)
- Transportation Impact Analysis Fairhaven Highlands (being prepared by The Transpo Group)
- Geotechnical Data Report (being prepared by GeoEngineers, Inc.)
- Geotechnical Report with Recommendations and Conclusions (being prepared by GeoEngineers, Inc.)
- Stormwater Report (being prepared by Ron Jepson and Associates)
- Critical Areas Mitigation Plan (being prepared by Northwest Ecological Services, LLC)

VII. CONSULTANT'S STUDIES, REPORTS AND WORK PRODUCT.

A. The Consultant shall prepare such information and studies as may be pertinent and necessary, or as may be requested by the City, in order that the City may pass critical judgment on the features of the work. Compliance with the foregoing provision shall not constitute additional work as described in this Agreement.

B. All documents, maps, and other materials of whatever kind prepared by the Consultant pursuant to this Agreement shall be deemed property of the City upon

completion of the Project or termination of this Agreement. The Consultant may keep file copies of its work product, but shall retain no other rights of ownership therein.

VIII. TIME OF BEGINNING AND COMPLETION.

A. The Consultant shall not begin work under the terms of this Agreement until authorized in writing by the City's Project Manager. The completion time for all work under this Agreement shall be the Project schedule contained in the Scope of Work.

B. Established completion time is a material part of this Agreement and shall not be extended because of any unwarranted delays attributable to the Consultant. However, it may be extended by the City in the event of a delay attributable to the City or because of unavoidable delays caused by an act of God or other conditions beyond the control of the Consultant.

IX. RELATIONSHIP OF THE PARTIES; SUBCONTRACTING.

A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or in its discretion to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, gift or contingent fee.

B. During the term of this Agreement, the Consultant shall not engage, on a full-time, part-time, or other basis, any professional or technical personnel who are, or have been at any time during the term of this Agreement, in the employ of the City (except regularly retired employees) without written consent of the City.

C. This Agreement is for the performance of professional services. The parties intend that the Consultant shall be an independent contractor in the performance of services rendered pursuant hereto. To this end, Consultant represents that it is customarily in the business of providing the services described in this Agreement, has its own place of business, is eligible for and does file with the Internal Revenue Service a schedule of business expenses, has established or will timely establish an account with the State Department of Revenue and has received a unified business identifier number, and maintains a separate set of books and records for such business.

D. Any and all employees of the Consultant while engaged in the performance of any work or services required by the Consultant under this Agreement shall be considered employees of the Consultant only and not of the City. Any and all claims that may or might arise under the Workers Compensation Act on behalf of said employees while so engaged on any of the work or services to be rendered herein shall be the sole obligation and responsibility of the Consultant.

E. None of the services covered by this Agreement shall be subcontracted by the Consultant without the prior written consent of the City, executed by its Project Manager. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. The Consultant shall insert in each subcontract appropriate provisions requiring compliance with the provisions of this Agreement, and subcontractors shall be deemed to be bound by all the terms hereof.

X. CONFLICT OF INTEREST.

A. Consultant covenants that it presently has no pecuniary or proprietary interest and shall not acquire any such interests, direct or indirect, which conflicts in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person or subcontractor having such interest shall be employed.

B. No members of the City government, and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the Project shall have any personal interest, direct or indirect, in this Agreement.

XI. DISPUTE RESOLUTION, ATTORNEYS' FEES, AND APPLICABLE LAW.

A. The City and the Consultant shall give each other prompt notice of any development either observes or becomes aware of which affects the scope or timing of the Project or involves any defect in the work of Consultant, or its contractors or subcontractors. In the event of material disagreements between the City's Project Manager and the Consultant's Representative arising out of this Agreement, the issue shall be addressed at meetings between the parties, which shall in such case also include at least the Project Manager and the Consultant's Representative (or equivalent), all of whom shall use their best efforts to timely resolve the dispute.

B. In the event of litigation to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

C. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of Whatcom County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement without recourse to any principle of Conflicts of Laws.

XII. TERMINATION.

A. In the event of the death of a member, partner, or officer of the Consultant, or any of its supervisory personnel assigned to the Project, the surviving members of the

Consultant hereby agree to complete the work under the terms of this Agreement if requested to do so by the City in its sole discretion.

B. In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to City budgetary constraints, and prior to its normal completion, the City may summarily terminate this Agreement as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination provision of this Agreement. Termination under this Section shall be effective upon receipt of written notice thereof. Nothing herein prevents Consultant from being paid sums, duly documented, for work performed prior to termination.

C. Should either party hereto believe that the other has failed to substantially perform all or a material part of its obligations under the Agreement, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this Agreement may be terminated upon seven (7) days written notice (delivered by certified mail). In the event of termination under this subparagraph, the Consultant shall be paid an amount, in the discretion of the Project Manager, which takes into account actual costs incurred by the Consultant in performing the Project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, the cost to the City of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, along with any other factors which affect the value to the City of the Project work which has been performed to the date of termination. In no event shall the Consultant receive an amount based on anticipated profit on unperformed services or other work.

D. Upon receipt of a termination notice, the Consultant shall promptly discontinue all services affected unless the notice directs otherwise, and shall promptly deliver or otherwise make available to the City all data, drawings, specifications, calculations, reports, estimates, summaries, and such other information and materials as the Consultant or its sub-consultants may have accumulated in performing this Agreement, whether completed or in progress, and shall also make available all equipment and/or materials purchased specifically for the Project where the City has reimbursed the Consultant therefore. The City may thereafter, at its sole option, take over the work and prosecute the same to completion by whatever means it chooses. Consultant shall have the right, during the termination notice period, to complete such analyses and records as necessary to place its files in order and, when necessary for protection of its professional reputation, to produce a report of services completed to the date of termination.

E. Termination of this Agreement shall not prevent the City from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

XIII. LEGAL RELATIONS AND INSURANCE.

A. The Consultant shall comply, and shall ensure its sub-consultants comply, with all City ordinances and resolutions, and federal and state grant agreements and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.

B. The Consultant shall defend, indemnify and hold harmless the City, its officers, employees, principals and agents from any and all injury or damage to the City or its property, and also from all claims, demands, causes of action, or suits of any kind that arise directly or indirectly out of, incident to, or due to any actual or alleged negligence, intentional act, or breach of duty by the Consultant, its agents, employees, representatives or subcontractors in performing work and services under this Agreement. In the event of any claim against the City or against both the City and the Consultant involving an allegation of negligence, intentional act, or breach of duty on the part of the Consultant, the Consultant shall be responsible for promptly providing a defense to the City. In the event of an ultimate finding of sole negligence by the City, its officers, employees, principals, or agents, the City shall reimburse the Consultant for its defense costs and shall satisfy any judgment against it. In the event of an ultimate finding of concurrent negligence by the Consultant and the City, the Consultant's and the City's responsibility for defense costs and for satisfying any judgment shall be proportionate to the percentage of each party's negligence or that of its agents, employees, representatives and subcontractors. In the event of an ultimate finding of no negligence by the City, the Consultant shall have total responsibility for defense costs and for satisfying any judgment.

C. The Consultant specifically agrees to defend and indemnify the City from claims or suits brought by Consultant's own employees against the City. For this purpose, Consultant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts. This waiver has been mutually negotiated by the parties.

D. The City's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

E. Prior to execution of the Agreement, the Consultant shall file with the City appropriate evidence of insurance from insurer(s) certifying to the coverage of all insurance required herein and which will be subject to approval by the City. In the event that the Consultant is unable, through no fault or neglect, to maintain such insurance, the City shall have the right to terminate the Agreement pursuant to paragraph XII after giving the Consultant a reasonable opportunity to find alternate

insurance coverage acceptable to the City. All insurance policies shall be endorsed to require the insurer to provide thirty days' notice of cancellation.

F. The Consultant shall require that all subcontractors obtain and maintain comprehensive general liability, professional liability and workers compensation insurance appropriate and applicable to the scope of work and services to be performed by such sub-consultants. It shall be the responsibility of the Consultant to initially determine the appropriate and applicable insurance coverage, which will be submitted to the City for approval. The Consultant shall furnish to the City insurance certificates for all subcontractors.

G. The Consultant shall obtain and maintain the minimum limits of liability insurance set forth below. By requiring such minimum limits, the City shall not be deemed to have assessed the risks which may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems it appropriate and prudent, maintain greater limits. The insurance of the Consultant shall be the primary insurance with respect to those matters indemnified pursuant to paragraphs B and C above. The City and its officials and employees shall be named as additional insured on all liability insurance policies (together with the required endorsement), except professional liability insurance. Said insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Such policies shall provide the coverage required as follows for any and all occurrences arising out of the Consultant's performance under this Agreement:

1. Workers Compensation coverage as required by the laws of the State of Washington. The insurer shall waive all rights of subrogation against the City of its agents for losses arising from work performed by the Consultant.
2. Broad form Commercial General Liability, affording limits of liability of \$1,000,000.00 as a combined single limit per occurrence for bodily injury, personal injury, and property damage.
3. Automobile liability affording limits of liability of \$1,000,000.00 as a combined single limit per accident for bodily injury and property damage.
4. Professional liability insurance, affording limits of liability of \$1,000,000.00 in the aggregate covering all professional activities performed under this Agreement. If the insurance maintained by the Consultant is maintained on a "claims made" basis rather than an occurrence basis, said insurance shall be continued by the Consultant until at least five years after the date of the completion of the Project.

XIV. ASSIGNMENT. The Consultant shall not sublet or assign any of the work covered by this Agreement without the prior, express written consent of the City.

XV. ENDORSEMENT ON PLANS. If this Agreement involves design for a construction

project, the Consultant shall place the endorsement of a licensed engineer or architect on all plans, specifications, estimates or any other design data Consultant furnishes. In any event, all materials prepared by the Consultant hereunder are property of the City, and Consultant retains no right of ownership or copyright therein.

XVI. EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES: The Consultant agrees that it will comply with all State and local non-discrimination laws and regulations in effect at the time this Agreement is executed. The Consultant shall comply with all Federal non-discrimination laws and regulations if any of this Agreement is financed with Federal funds.

XVII. COMPLIANCE WITH LOCAL LAWS: The Consultant shall be duly licensed (including Business Registration with the City of Bellingham) and shall comply with all applicable laws, ordinances, and codes of the State and local governments.

XVIII. EFFECT OF ACCEPTANCE OF THE WORK. Approval of plans, specifications or other documents shall not constitute nor be deemed a release of the responsibility of the Consultant, its employees, subcontractors, or agents for the accuracy and competency of their work, nor shall such approval be deemed to be an assumption of such responsibility by the City for any defect in the work prepared by the Consultant, its employees, subcontractors, or agents.

XIX. ACCOUNTING AND AUDIT: The Consultant agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles. The financial records shall be made available to representatives of the City or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the City shall designate.

XX. NOTICE. Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth herein below:

City: City of Bellingham
210 Lottie Street
Bellingham, WA 98225

Attn: Tim Stewart
Planning & Community Development Director

Consultant: ESA Adolfson
5309 Shilshoe Avenue NW, Suite 200
Seattle, WA 98107

Attn: Mark Johnson, Project Manager

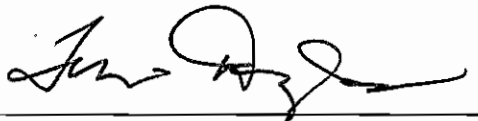
XXI. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties hereto and supersedes all other prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed document in writing pursuant to this Agreement.

EXECUTED, this 4th day of October, 2007, for the Consultant.



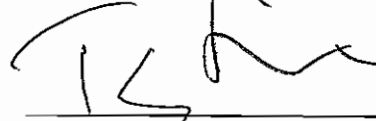
Lloyd Skinner, Vice president

EXECUTED, this 17th day of October, 2007, for the **CITY OF BELLINGHAM:**



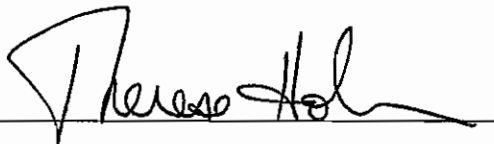
Mayor

Departmental Approval:



Department Head

Attest:



Finance Director

Approved as to Form:



Office of the City Attorney

EXHIBIT "B"

Scope of Work

Fairhaven Highlands Environmental Impact Statement

The City of Bellingham (City) has requested ESA Adolfson (Consultant) to provide consultant services to complete the Scoping and develop a Draft and Final Environmental Impact Statement (EIS) for the Fairhaven Highlands development.

PROJECT OVERVIEW

Fairhaven Highlands is a planned, multiple housing type development proposed by Greenbriar Northwest Associates, LLC (Project Applicant) on property located within Bellingham city limits between Fairhaven Park and Chuckanut Drive. The development plan submitted to the City for review by Project Applicant proposes to build 739 housing units on approximately 85 acres of land.

SCOPE OF WORK

Consultant will provide services according to the following scope of work:

Assumptions

- The City will provide:
 - Printing and distribution of the Draft and Final EIS documents
 - Access to technical staff documents and maps currently available (particularly from the Public Works, Parks and Recreation, and Planning Departments)
 - Access to file materials and submissions in any project files.
- The Project Applicant will provide:
 - All relevant studies prepared for the project, in hard copy and, when available, in electronic form
 - Access to the project site
 - Access to consultants who have prepared technical studies for the project.
- Consultant will make one site visit to review and verify conditions described in technical studies. Consultant will perform no wetland or stream delineation or other field survey work.
- If technical studies are found to be lacking in required information, Consultant will inform City and City will require Project Applicant to provide the information needed.
- Consultant's project manager will attend up five (5) to meetings in Bellingham including scoping meeting; one meeting on alternatives to be considered and final scoping report; one meeting to review City comments on preliminary Draft EIS and plan publication and public comment meeting; public comment meeting on Draft EIS; and one meeting to review City comments on preliminary Final EIS.
- This scope does not include peer review of the transportation analysis. If the City decides that peer review is appropriate, the contract can be revised to add a sub-consultant to be selected by the City after consultation with the Consultant.

TASK 1: Literature Review and Scoping

- 1. Literature Review:** The Project Applicant and the City will provide the Consultant with access to previous studies completed for a larger project on essentially the same site regarding hydrogeology, wetlands, storm water, traffic, utilities, and flora and fauna, as well as a variety of City studies and previously issued Draft and Final EIS.
- 2. Scoping:** The Consultant will assist the City in the Scoping of the EIS. The City may require additional information be provided by the Project Applicant, upon the Consultant's recommendation, to assure that the Draft and Final EIS adequately analyze impacts.

Beginning immediately from Notice to Proceed, Consultant will review the technical reports and project application materials provided by the Applicant and any relevant City documents, plans or reports, for accuracy and adequacy for the EIS. Consultant's scientific and planning staff with appropriate expertise will review each document and determine whether or not it is appropriate to use the information in the Fairhaven Highlands EIS. As part of this effort the Consultant will also make a site visit. Consultant assumes that revisions or supplements to these reports would not be extensive, and the Applicant would provide any required technical information on the proposal. Consultant will coordinate with City staff in various departments, including Planning and Community Development, Public Works (transportation and utilities), and Parks Departments. The literature review will result in a memorandum listing references reviewed and outlining any issues or concerns with each document. Consultant will complete this review within approximately 30 days of Notice to Proceed.

Scoping will include determining the range of impacts to be covered in the EIS and establishing the alternatives to be evaluated. Scoping is expected to include one public meeting, and up to two meetings with City staff. City staff will determine the appropriate stages for input from the applicant.

Consultant will facilitate the public scoping meeting, collect comments, and prepare a draft Scoping Report summarizing the comments received. This draft will be circulated to City staff for review and comment. Consultant will meet with City staff to finalize comments on the scope and will prepare a final Scoping Report for inclusion in the EIS as an appendix. Scoping is expected to take approximately 30 days from Notice to Proceed to completion of the final Scoping Report.

TASK 2: Complete the Draft and Final EIS

Subtask 2-1 Prepare Draft EIS

Consultant will prepare a Draft EIS disclosing the potential impacts of the proposal on the natural and built environments (to include the following specific elements, as determined relevant to the project):

1. Natural Environment:

- a. Earth, geology; soils; topography; unique physical features; erosion of land area
- b. Air: air quality, odor, climate
- c. Water: surface water; water movement/quantity/quality; runoff/absorption; floods, ground water movement/quantity/quality, public water supplies
- d. Plants and animals: habitat for and diversity of species of plants, fish, or other wildlife; unique species, fish or wildlife migration routes
- e. Energy and Natural Resources: amount required/rate of use/efficiency; source/availability; nonrenewable resources; conservation and renewable resources; scenic resources

2. Built Environment:

- a. **Environmental Health:** Noise, Risk of explosion, Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
- b. **Land Use and Shoreline use:** Relationship to existing land use plans and to estimated population; housing; light and glare; aesthetics; recreation; historic and cultural preservation, agricultural crops
- c. **Transportation:** Transportation systems including vehicular, bus, and pedestrian traffic; traffic hazards; parking; movement/circulation of people or goods
- d. **Public Services and Utilities:** Fire; police; schools; parks or other recreational facilities; maintenance; communications; water/storm water; sewer/solid waste; other governmental services or utilities

Consultant will prepare an outline for the Draft EIS for review and approval by City staff. In order to facilitate final review of the Draft EIS, Consultant will provide the fact sheet and description of alternatives for preliminary City review approximately two weeks after the scoping period is completed. A preliminary Draft EIS will be provided to the City for review approximately eight weeks after completion of the scoping report. Consultant assumes that City review would take approximately two weeks, and an additional three weeks would be needed for Consultant to address City comments. A camera-ready copy will be provided for final City approval. The Draft EIS will be provided in an indexed PDF format that will facilitate posting to the City's website, as well as in hard copy.

Deliverables:

- Outline for the Draft EIS in Microsoft Word format, with figures in PDF format

- Fact sheet and description of alternatives in Microsoft Word format, with figures in PDF format
- Preliminary Draft EIS in PDF format
- Camera-ready Draft EIS in indexed PDF format

Subtask 2-2: Comments on Draft EIS

Once published, the City, at its discretion, may hold a public comment meeting on the Draft EIS during the required 30-day comment period. If the meeting is held, Consultant will facilitate the meeting, and arrange for a court reporter to record oral comments at the meeting. Consultant will take notes at the meeting and will review the court reporter's transcript for accuracy. The City will likely also receive written comments, which will be provided to Consultant for preparation of the Final EIS.

Deliverables:

- Meeting facilitation
- Final record of oral comments from court reporter

Subtask 2-3: Prepare Final EIS

The Final EIS will consist of the fact sheet, summary, description of alternatives and responses to comments on the Draft EIS. If necessary, it will also include an "Additions, Corrections and Clarifications" section. Consultant assumes that it will not be necessary to reprint the impact analysis in its entirety in the Final EIS. Consultant will compile the written and oral comments, organize the letters and index the individual comments on each letter. Consultant will prepare a matrix with draft responses to each unique comment and provide this draft to the City for review. Once City staff has approved the comment responses, Consultant will format the responses for inclusion in the EIS.

Because it is difficult to predict the number of comments that will be received on the Final EIS, it is difficult to determine the level of effort involved in preparing the Final EIS. The level of effort has been estimated for the Final EIS is approximately one third of the cost of preparing the Draft EIS. This estimate should be reviewed once comments have been received.

The review process for the Final EIS would be the same as for the Draft EIS. The Final EIS will be provided in an indexed PDF format that will facilitate posting to the City's website.

Deliverables:

- Preliminary Final EIS in PDF format
- Camera-ready Final EIS in indexed PDF format

Task 3: Project Management

Consultant's Project Manager will coordinate with the City's Project Manager by phone or in person on at least a bi-weekly basis, and will provide written progress reports with each monthly invoice. The progress reports will outline activities completed, upcoming activities, and any issues that need to be addressed regarding scope, budget, or schedule. Consultant's Project Manager will also ensure that Consultant's editor, senior staff, and principal have reviewed each product delivered to the City for quality assurance and quality control.

Deliverables:

- Monthly progress reports with invoices

EXHIBIT "C"— PAYMENT RATES

Billing Rates by Category

Classification	Pay Range
Principal Scientist/Planner/Engineer	\$ 140.00 to \$ 233.50
Senior Project Manager	\$ 103.00 to \$ 171.00
Project Manager	\$ 87.50 to \$ 140.00
Senior Engineer	\$ 106.00 to \$ 162.00
Project Engineer	\$ 84.00 to \$ 124.50
Staff Engineer	\$ 65.50 to \$ 103.00
Landscape Architect	\$ 99.50 to \$ 131.00
Senior Scientist	\$ 84.00 to \$ 118.50
Project Scientist	\$ 59.50 to \$ 99.50
Staff Scientist	\$ 47.00 to \$ 75.00
Senior Planner	\$ 87.50 to \$ 127.50
Project Planner	\$ 65.50 to \$ 103.00
Staff Planner	\$ 50.00 to \$ 87.50
Technical Editor	\$ 68.50 to \$ 96.50
Senior Graphics/GIS Specialist	\$ 82.50 to \$ 134.00
Graphics/GIS Specialist	\$ 50.00 to \$ 109.00
Sr. Project Administrator	\$ 65.50 to \$ 99.50
Project Administrator	\$ 50.00 to \$ 78.00
Office/Project Asslstant	\$ 47.00 to \$ 65.50