

**ADD-ON**

**EDASC Agreement –  
CARES Funding, Grant  
Program**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
TOWN OF CONCRETE, WASHINGTON  
AND THE ECONOMIC DEVELOPMENT ALLIANCE OF SKAGIT  
COUNTY**

**THIS AGREEMENT** (“Agreement”) is made and entered into by and between the Town of Concrete, Washington, a Washington State municipal corporation (“Town”), and the Economic Development Alliance of Skagit County (“EDASC” hereafter “consultant”).

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants and performances contained herein, the parties hereto agree as follows:

**ARTICLE 00000001. PURPOSE**

The purpose of this Agreement is to provide the Town of Concrete with administrative and logistical support for the Town’s Small Business Relief Grant Program as described in Article II. The general terms and conditions of the relationship between the Town and the Consultant are specified in this Agreement.

**ARTICLE 2. SCOPE OF SERVICES**

The Scope of Services is attached hereto as **Exhibit “A”** and incorporated herein by this reference (“Scope of Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.

**ARTICLE 3. OBLIGATIONS OF THE CONSULTANT**

**3.0 MINOR CHANGES IN SCOPE.** The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the Town when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

**Extra Work.** The Town may desire to have the Consultant perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the Town. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

**3.0 WORK PRODUCT AND DOCUMENTS.** The Scope of Work deliverables, and all other documents produced under this Agreement shall be furnished by the Consultant to the Town, and upon completion of the work shall become the property of the Town. Provided however, the Consultant may retain one copy of the work product and documents for its records. Provided further, all Images and rights relating to the deliverables referenced in the exhibit

The Consultant will be responsible for the accuracy of the work, even though the work has been accepted by the Town.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the Town. Upon request, the Consultant shall tender the work product and summary to the Town. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the Town.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

3.0 **TERM.** The term of this Agreement shall commence on the 31<sup>st</sup> day of July, 2020, and shall terminate at midnight on September 30, 2020. The parties may extend the term of this Agreement by written mutual agreement.

3.0 **NONASSIGNABLE.** The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the Town.

3.0 **EMPLOYMENT.**

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

b. 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 Town, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.

c. Consultant represents, unless otherwise indicated below, that all employees of Consultant that will provide any of the work under this Agreement have not ever been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please indicate No or Yes below)*

\_\_\_\_\_ No employees supplying work have ever been retired from a Washington state retirement system.

\_\_\_\_\_ Yes employees supplying work have been retired from a Washington state retirement system.

In the event the Consultant indicates “no”, but an employee in fact was a retiree of a Washington

State retirement system, and because of the misrepresentation the Town is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, Consultant hereby agrees to save, indemnify, defend and hold Town harmless from and against all expenses and costs, including reasonable attorney's fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event Consultant affirms that an employee providing work has ever retired from a Washington State retirement system, said employee shall be identified by Consultant, and such retirees shall provide Town with all information required by Town to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

### 3.0 INDEMNITY.

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

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

c. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

d. **Public Records Requests.**  
In addition to Paragraph IV.3 b, when the Town provides the Consultant with notice of a public records request per Paragraph IV. 3 b, Consultant agrees to save, hold harmless, indemnify and defend the Town its officers, agents, employees and elected officials from and against all claims, lawsuits, fees, penalties and costs resulting from the consultants violation of the Public Records Act RCW 42.56, or consultant's failure to produce public records as required under the Public Records Act.

e. The provisions of this section III.6 shall survive the expiration or termination of this agreement.

### 3.00 INSURANCE.

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

employees.

**b. No Limitation**

Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

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

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

**d. The minimum insurance limits shall be as follows:**

Consultant shall maintain the following insurance limits:

- (0) Commercial General Liability. Insurance shall be written with limits no less than \$1,000,000 per occurrence; and \$2,000,000 general aggregate.
- (0) Automobile Liability. Insurance with a minimum \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (0) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.
- (0) Professional Liability/Consultant's Errors and Omissions Liability. Insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

**e.0 Notice of Cancellation.** In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the Town.

f. **Acceptability of Insurers.** Insurance to be provided by Consultant shall be with insurers with a current A.M.Best rating of no less than A:VII, or if not rated by Best, with minimum surpluses the equivalent of Best VII rating.

g. **Verification of Coverage.** In signing this agreement, the Consultant is acknowledging and representing that required insurance is active and current. Consultant shall furnish the Town with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. Further, throughout the term of this Agreement, the Consultant shall provide the Town with proof of insurance upon request by the Town.

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

i. **Claims-made Basis.** Unless approved by the Town all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The Town may require an extended reporting endorsement on any approved "Claims-made" policy.

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

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

**3.00 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION.** The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the Town, and further

that the Consultant will be barred from performing any services for the Town now or in the future, unless a showing is made satisfactory to the Town that discriminatory practices have been terminated and that recurrence of such action is unlikely.

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

**3.10 LEGAL RELATIONS.** The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any Town project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified-and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Sedro-Woolley County Superior Court.

**3.11 INDEPENDENT CONTRACTOR.**

a. The Consultant and the Town understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of Town employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

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

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

d. Prior to commencement of work, the Consultant shall obtain a business license from the State.

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

**3.13 TOWN CONFIDENCES.** The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent

from the Town in each instance, the confidences of the Town or any information regarding the Town or services provided to the Town.

**3.14 SUBCONTRACTORS/SUBCONSULTANTS.**

a. The Consultant shall not subcontract any of the work or services to be performed pursuant to this agreement.

**ARTICLE 40. OBLIGATIONS OF THE TOWN**

**4.0 PAYMENTS.**

a. The Consultant shall be paid by the Town for services rendered under this Agreement as described in the Scope of Services and as provided in this section. The compensation paid to Consultant under this Agreement shall be a fixed fee of two thousand five hundred dollars (\$2,500.00). Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the Town elects to expand the scope of services from that set forth in Exhibit A, the Town shall pay Consultant a mutually agreed amount.

b. The Consultant shall submit an invoice to the Town for services performed at completion of the project in a format acceptable to the Town. The Consultant shall maintain time and expense records and provide them to the Town upon request. The final invoice under this contract shall be submitted no later than October 10, 2020.

c. The Town will pay timely submitted and approved invoices received before the 10th of each month within thirty (30) days of receipt.

d. Funding for this contract is provided by section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) via the Washington State Department of Commerce Contract #20-6541C-148, which is incorporated herein by reference. The CFDA number is 21.019.

**4.00 TOWN APPROVAL.** Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the Town, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and Town requirements.

**4.3 MAINTENANCE/INSPECTION OF RECORDS.**

a. The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the Town and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the Town and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any



audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the Town with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

**b. Public Records**

The parties agree that this Agreement and records related to the performance of the Agreement are with limited exception, public records subject to disclosure under the Public Records Act RCW 42.56. Further, in the event of a Public Records Request to the Town, the Town may provide the Consultant with a copy of the Records Request and the Consultant shall provide copies of any Town records in Consultant's possession, necessary to fulfill that Public Records Request. If the Public Records Request is large the Consultant will provide the Town with an estimate of reasonable time needed to fulfill the records request.

**ARTICLE 50. GENERAL**

5.0 **NOTICES.** Notices to the Town shall be sent to the following address:

Jason Miller  
Mayor  
Town of Concrete  
P.O. Box 38  
Concrete, WA 98237

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

John Sternlicht,  
Chief Executive Officer  
Economic Development Alliance of Skagit County  
PO BOX 40  
204 W. Montgomery St.  
Mount Vernon, WA 98273

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

5.0 **TERMINATION.** Any party may terminate this Agreement by giving 30 days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph.

If this Agreement is terminated in its entirety by the Town for its convenience, the Town shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section IV.1.

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

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

5.5 **SEVERABILITY**

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

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

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

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

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

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

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

TOWN OF CONCRETE

ECONOMIC DEVELOPMENT ALLIANCE OF SKAGIT COUNTY

By \_\_\_\_\_  
Jason Miller, Mayor

By \_\_\_\_\_  
John Sternlicht, CEO

Approved as to form:

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Andrea Fichter, Town Clerk

**Exhibit “A”**  
**Scope of Services**

Utilizing its expertise in small business development, finances, and sustainability, the Contractor will assist in administering the selection process for Town’s Small Business Assistance grant program. To accomplish this goal, the Contractor will perform the following tasks:

Grant Selection

1. Work with Town to develop eligibility and grant criteria. All criteria shall be approved in writing by Town.
2. Develop and administer an application and scoring process to select small businesses for grant assistance. Ensure application provides for inclusion of any documentation needed to utilize CARES funding for grants, in coordination with Town. Develop a question & answer process for applicants that promotes fairness.
3. Recommend rubrics and other criteria for determining eligibility of Town businesses. Criteria will be approved by the Town.
4. Convene an advisory committee to review applications. Document decision-making process and provide to Town.
5. Recommend to the Town a listing of businesses meeting funding criteria.
6. For each funded business, determine how the business will use the grant funds, confirming:
  - a. That all planned expenditures are eligible under the Town reimbursement criteria, as provided in writing by Town.
  - b. The business has not received a COVID-19 grant (other than a Paycheck Protection Program loan) from another local government entity.
7. Provide adequate documentation to the Town regarding selected businesses, including applications and documentation of selection criteria and process.
8. Retain all documentation related to Small Business Relief Grant Program in accordance with public records laws.
9. Coordinate with Town to communicate award decisions to applicants and the public.
10. The Town will make the final determination regarding the final recipients and the dollar amount of the awards to be granted.

Communications

1. Provide communications to advertise and provide outreach for the program, with an emphasis on outreach to minority-owned businesses. All communication must be coordinated in advance with the Town.
2. Provide communications to announce awardees. All communication must be coordinated in advance with the Town.
3. The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issues analyses, issued by the Contractor describing programs or projects pursuant to this contract shall include the following statements: “This project was supported by a grant award by the U.S. Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce.”

### Funding Round

The Contractor will administer one funding round as described below. The Town will continually evaluate its ability to receive and fund applications and may cancel funding rounds at its discretion. By mutual agreement of the Contractor and the Town in writing, these timelines may be modified as needed.

The total amount of awards through this program will not exceed \$25,000 in grant funds to eligible small businesses. If a business has already received funding from one of the above programs – or another state/local grant program – that award will be deducted from its maximum eligible amount.

- Aug 3 – Application to the Town for review
- Aug 10 – Town Council to approve application
- Aug 12 – Announcement of Town of Concrete application
- Aug 21 – Applicant submissions
- Aug 26 – Application Processing
- Aug 29 – External Review
- Aug 31 – Calculate scores, submit recommendations to Town. Applicants shall not be notified until approved by the Town Council.
- Aug 31 – Sep 3 – Tentative notification of awards by Town/EDASC. All awards are pending approval until a contract is executed between the Town and the business.

### **Exhibit “B”**

**Department of Commerce Contract #20-6541C-148**