

**Agreement for the First Phase of Development
of a Mixed-Use Low Income Housing Project**

This Agreement is made and entered into this 24th day of May, 2023 by and between the City of Kelso, a municipal corporation of the State of Washington, hereinafter called "City" and the Lower Columbia Community Action Program, a community service organization, hereinafter called "LCCAP."

WHEREAS, upon receipt of a grant from The Department of Commerce (Commerce Grant), the City conducted a feasibility study and performed other predevelopment activities for a mixed-use low-income housing project on a piece of City-owned property in West Kelso bordered by Catlin and 2nd Avenue South, that would combine a public library and additional community space on the ground floor with upper floor low-income housing ("Catlin Mixed Use Project" or "Project"); and

WHEREAS, potential Project funding is anticipated to be a mix of low-income housing tax credits and other state and local funding whereby a private sponsor would develop the Project and would own and manage the property.

WHEREAS, LCCAP is a nonprofit organization serving Cowlitz County whose purpose is to provide services and resources, including housing, to low income and vulnerable people; and

WHEREAS, LCCAP is a recognized community partner and has worked successfully with the City on other projects to provide services and facilities to those in need and has the financial, organizational, and operational capacity to act as the primary sponsor and seeks to partner with the City as a sponsor for this Project; and

WHEREAS, on February 7th, 2023, the City Council selected a preferred alternative for the Project as a three-story, mixed-use building with 40-units of housing and 12,000 square feet of community space as presented at the conclusion of the feasibility study brought to City Council on January 17, 2023; the city wishes to work with a primary sponsor to assist on the first phase of the Project to conduct certain predevelopment activity; and development to prepare plans and a funding strategy for the Project; and

WHEREAS, on February 7th, 2023, the City Council selected LCCAP as the primary project sponsor for the Project to assist in further predevelopment activity to include preparation of preliminary design plans for the City's adopted preferred alternative, and the exploration of funding alternatives and ownership and operation options related to this preferred alternative; and

WHEREAS, the City and LCCAP wish to enter into an agreement to govern the responsibilities of each party in the use of these Commerce Grant funds to further develop the Project, which they have identified as the First Phase of the development of the Project; and

WHEREAS, the parties anticipate that, as the Project proceeds, additional phases of the development will be identified, and additional responsibilities of the parties will be determined and agreed through additional agreements;

NOW THEREFORE, in consideration of the mutual covenants and promises herein, the parties agree as follows:

1. **Recitals.** The recitals above are hereby incorporated into this Agreement.

2. **Primary Sponsor Identified.**

a. The City agrees that LCCAP is identified as the primary sponsor for the Catlin Mixed-Use Project, consistent with Resolution No. 23-1279 and is expected to be the owner and operator of the low-income housing units developed if any as a part of potential future phases of this Project.

b. LCCAP agrees to be the primary sponsor of the Project, and the Subrecipient under the terms of the Commerce Grant and to work with the City in good faith to accomplish the identified predevelopment tasks as identified by the Parties consistent with the funding obligations of the Commerce Grant and the preferred alternative adopted by the City Council.

3. **Term and Termination.** The Term of this Agreement shall commence upon execution and shall terminate on December 31, 2024, provided however that the Agreement may be renewed for additional periods and extended for additional predevelopment tasks identified by the Parties upon the mutual written agreement. Either Party may terminate this Agreement with 60 days written notice to the other Party; provided however, that any work performed by LCCAP consistent with the Commerce Grant up to the date of termination will be reimbursed by the City and any grant obligations of the City that are the responsibility of LCCAP under this Agreement shall survive the Agreement.

4. **First Phase Work.** The Parties agree to perform certain predevelopment activity work identified here for the future development of the Project as a Subrecipient. LCCAP understands that the City intends to reimburse it for such work to the extent that the work is reimbursable of under the terms of the Commerce Grant.

a. LCCAP will complete the following applications for project funding, as necessary. All funding applications are expected to be complete by November, 2023, with decisions in December, 2023:

- i. Federal Home Loan Bank AHP program: 5/31/23
- ii. Balance of State CDBG program: 6/14/23
- iii. State of Washington Housing Trust Fund: 9/15/23
- iv. Washington State Housing Finance Commission Low-Income Housing Tax Credits: 11/15/23
- v. Other local funders, including Longview/Kelso HOME Consortium and Cowlitz County Document Recording Fee: Summer 2023

b. As required by funding applications, LCCAP will conduct various due diligence tasks at the project site as required by funders for application submittal. Upon reasonable notice, the City agrees to provide access to the site(s) for any subcontractors performing due diligence tasks. Due diligence asks include but are not limited to:

- i. Phase I Environmental Study
- ii. Phase II Environmental Study (if required by Phase I)
- iii. Limited survey for wetlands
- iv. Tax Credit Market Study
- v. ALTA Survey

vi. Property Appraisal

c. As part of funding applications, LCCAP will select a project architect to produce preliminary drawings and outline specifications. Preliminary drawings include elevations, floor plans, sections, site plans, roof plans, and plans of offsite improvements. The plans produced will be at a schematic level of design, and all plans will be subject to change.

d. As part of funding applications, LCCAP may select a general contractor to provide detailed cost estimates based on the architect's schematic drawings. It is expected that the contractor selected to provide cost estimates will be the general contractor selected to oversee construction.

e. As part of funding applications, LCCAP will work to secure support from community partners, including housing authorities, service providers, and elected officials. If any funding sources for housing and community projects come available from the City's partners, either for development or operations, the City agrees to inform LCCAP of the source's availability and application deadline.

f. Acquiring control of the site(s) will be crucial to the project's success. The City will select any additional site(s), negotiate terms, and purchase option agreements for additional site(s) as necessary for the project. It being understood that donated land is a critical points driver for the funding applications, the City will draft an agreement providing for a transfer of the land for nominal cost to LCCAP or the entity owning the project, contingent upon successful funding application, completion of any required environmental reviews, and final City Council approval. The land transfer can take the form of either a sale or a 99-year lease.

g. In the performance of this work LCCAP agrees to meet regularly with the City as may be requested and to work in good faith to solicit and incorporate any City comment and feedback into the design, engineering, and planning work.

h. For any design, engineering, architectural, cost estimating and construction management work, LCCAP agrees to select a contractor from the City of Kelso's Consultant Roster list and to ensure that the contractor agrees to indemnify the City and add the City as an additional insured on the applicable insurance policies.

i. LCCAP agrees to secure the City's rights to the use of designs and plans produced under this Agreement for the Project.

5. **Reimbursement of First Phase Expenses.** City agrees to reimburse LCCAP for eligible design, engineering, or architectural costs incurred by LCCAP for the work described in Paragraph 4 up to the amount remaining in the Department of Commerce Grant – Contract #20-96627-283. LCCAP will not seek reimbursement for cost incurred by LCCAP, as the Subrecipient in the administration of the design, engineering, architectural, or planning agreements related to this Agreement. LCCAP will pay design consultants directly then submit those invoices to the City for reimbursement. The City will reimburse LCCAP for qualifying consultant expenses. Then the City will seek reimbursement from the Department of Commerce.

6. **Other Obligations.**

a. **Maintenance of Records.** The City and LCCAP each agree to maintain accurate written records as may be required as the Recipient and Subrecipient, respectively,

under the Commerce grant, including invoices, receipts, proof of payment, and other data that documents the use of the Commerce Grant, expenditures of the LCCAP related to this Project and documents used for any reimbursements or other funds provided by the City under the Commerce Grant.

b. Compliance with Laws and Commerce Grant Conditions.

i. The City and LCCAP agree that they, and all of their employees, agents, consultants, and contractors, in carrying on and conducting the activities required by this Agreement, shall at all times comply with any and all applicable laws, ordinances, rules, and regulations, including those of the United States of America, the State of Washington, and the City regarding any work or activity carried on under or pursuant to this Agreement, including, but not limited to any requirements or obligations under the Commerce Grant agreement.

ii. The City shall have the right to the return of any portion of the Commerce Grant funds that are later determined to have been spent in violation of applicable laws or grant conditions. The City shall not exercise this right until it has given written notice of noncompliance to LCCAP and allowed LCCAP a period of ten (10) days from the date of the notice or such other reasonable time as may be determined by the City to cure the noncompliance. The right of recapture provided in this section is in addition to and not in lieu of any right which Washington law provides for breach of contract.

c. Nondiscrimination. During the performance of this Agreement, the City and LCCAP shall comply with all applicable nondiscrimination laws, including but not limited to, chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA). In the event of LCCAP's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part.

7. Insurance. LCCAP shall maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under this Agreement in the following amounts: Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence and \$1,000,000 general aggregate. The City shall be named as an additional insured under the policy with respect to the scope of work under this Agreement.

8. Indemnification. To the extent authorized by law, the City and LCCAP shall indemnify, defend, and hold harmless one another and their employees, officers, contractors and agents from all claims, demands, suits, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement, provided, that if such claims are caused by or result from the concurrent negligence of (a) the LCCAP and (b) the City, their respective employees, officers, contractors or agents, this indemnity provision shall be valid and enforceable only to the extent of the negligence of LCCAP or the City, and provided further, that nothing herein shall require LCCAP or the City to hold harmless or defend the other or its employees, officers, contractors or agents from any claims arising from that Party's sole negligence or that of its employees, officers, contractors or agents. The terms of this section shall survive the termination of this Agreement.

9. **Miscellaneous Provisions.**

a. **Independent contractor.** LCCAP shall be an independent contractor. LCCAP or its employees or agents performing under this Agreement are not employees or agents of the City. LCCAP will not hold himself or herself out as nor claim to be an officer or employee of the City or make any claim of right, privilege, or benefit which would accrue to an employee under law. The City shall neither be liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment.

b. **Governing Law and Venue.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Washington and the venue will be in Cowlitz County, Washington.

c. **Assignment of Contract.** Neither Party shall assign this Agreement without the prior written consent of the other Party.

d. **Entire Agreement.** The Parties agree that this Agreement, including referenced exhibits, is the complete expression of the terms agreed to by the Parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the Parties.

e. **Waiver.** Any waiver by LCCAP or the City of the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

f. **Amendments.** This Agreement may only be modified or amended by written agreement signed by both Parties.

g. **Notices.**

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





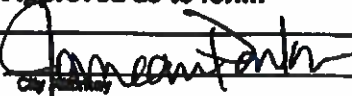
City of Kelso
Attn: Mike Murray
203 S. Pacific
PO Box 819
Kelso, WA 98626

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

Lower Columbia Community Action Program
c/o Ilona Kerby, Executive Director
1526 Commerce Avenue
Longview, WA 98632
ilonak@lowercolumbiacap.org

h. **Severability.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

In Witness Whereof: Each individual executing this Agreement on behalf of the City and LCCAP represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the LCCAP or the City.

CITY OF KELSO	LOWER COLUMBIA COMMUNITY ACTION PROGRAM
Signature 	Signature 
Printed Name Andrew Hamilton	Printed Name Irma A Kerby
Title City Manager	Title Executive Director
Date 5/27/23	Date 05/17/2023
Attest/Authentication: 	Approved as to form: 
City Clerk Brian Buttsfield	Attorney for LCCAP Name: Fred A. Johnson
Approved as to form: 	
City Attorney Janean Parker	