



OFFICE
311 Grand Avenue, Suite 108
Bellingham, WA 98225

County Executive

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Tyler Schroeder, Deputy Executive

RE: Opportunity Council
Laurel and Forest Project – Low Income Housing – ARPA funds

DATE: December 6, 2021

Attached is a funding agreement between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**

The insufficient supply of affordable housing in Whatcom County has created housing instability for low-income households. Opportunity Council is the developer of the Laurel and Forest St Project, which will construct a building to provide 56 one-bedroom apartments. These affordable housing units will be offered to low-income individuals and families living in Whatcom County. These low-income housing units are located in a Qualified Census Tract in accordance with the American Rescue Plan Act. This Agreement provides funding for the project.

- **Funding Amount and Source**

Funding for this Agreement may not exceed \$3,000,000 and is provided by the American Rescue Plan Act. With the adoption of Ordinance 2021-069, these funds are now included in the 2021 budget.

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202111036

Originating Department:	Executive
Division/Program: (i.e. Dept. Division and Program)	Non Departmental
Contract or Grant Administrator:	T. Schroeder/T.Helms
Contractor's / Agency Name:	Opportunity Council

Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:	

Does contract require Council Approval?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC:
Already approved? Council Approved Date:	(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)		

Is this a grant agreement?	If yes, grantor agency contract number(s):	CFDA#:
Yes <input type="checkbox"/>		
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):	ARPA Funding
Yes <input checked="" type="checkbox"/>		

Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):	Contract	
Yes <input type="checkbox"/>		No <input checked="" type="checkbox"/>	Cost Center:

Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
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If YES, indicate exclusion(s) below:

<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input type="checkbox"/> Interlocal Agreement (between Governments).	

Contract Amount:(sum of original contract amount and any prior amendments):	<p>Council approval required for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:</p> <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
\$ 3,000,000	
This Amendment Amount:	
\$	
Total Amended Amount:	
\$	

Summary of Scope: This agreement provides funding for the development of affordable housing for low-income households in Whatcom County.

Term of Contract:	Expiration Date:	12/31/2023
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Contract Routing:	1. Prepared by:	T. Schroeder	Date:	10/25/21
	2. Attorney signoff:		Date:	
	3. AS Finance reviewed:		Date:	
	4. IT reviewed (if IT related):		Date:	
	5. Contractor approved:		Date:	
	6. Submitted to Exec.:		Date:	
	7. Council approved (if necessary):		Date:	
	8. Executive signed:		Date:	
	9. Original to Council:		Date:	

Subrecipient ARPA Funding Agreement
(Laurel and Forest Street Agreement
Qualified Census Tract Low-Income Housing)

I PARTIES

This Agreement is made by and between **Whatcom County** (hereinafter referred to as **the County**), and **the Opportunity Council** (hereinafter referred to as **Subrecipient**).

II TERM

This Agreement takes effect on date of agreement, December, _____, 2021 and shall continue in full force and effect until, December 31, 2023, unless extended by mutual written agreement of both Parties or terminated in accordance with Section IX of this Agreement.

III PURPOSE

The purpose of this Agreement is to provide funding support for the Laurel and Forest Street Redevelopment Project, Affordable Housing (hereinafter referred to as **the Project**) using American Rescue Plan Act funds designated for such infrastructure development in Qualified Census Tracts. These funds will be used to complete the Project which will provide newly-constructed apartments for low-income households in Whatcom County.

IV PROJECT DESCRIPTION

The insufficient supply of affordable housing in Whatcom County has created housing instability for low-income households. Subrecipient will develop the site as a mixed use, mixed income, project in a Qualified Census Tract. Component I of the project will be to construct 56 one-bedroom apartments which will be offered to low-income individuals and families living in Whatcom County. These low-income housing units are located in a Qualified Census Tract in accordance with the American Rescue Plan Act. This Agreement provides funding for the completion of the project. This Agreement is for the residential portion which includes the construction of 56 one-bedroom apartments.

V RECITALS

The Parties make this Agreement based on and in recognition of certain relevant facts and circumstances including:

A. The County has received American Rescue Plan Act (ARPA) funding. One of the goals of the ARPA is to serve the hardest-hit communities and families. One of the vehicles to do so is to invest in housing and neighborhoods through affordable housing development in Qualified Census Tracts (low-income areas as designated by the Department of Housing and Urban Development).

B. **Subrecipient's** Laurel and Forest Street Project is located in a Qualified Census Tract (QCT) within the city limits of Bellingham and will provide 56 units of low-income housing upon completion.

C. Subrecipient, through Laurel Forest Housing, LLC (the **Owner**), of which Subrecipient controls the managing member, Laurel and Forest Manager, LLC (the **Managing Member**), will construct the Project. The Project will be partially funded by a **\$3,000,000. grant to Subrecipient from the County's ARPA Fund**. Subrecipient will assign the ARPA grant to the Owner, subject to the terms and conditions of this Agreement and all applicable federal, state and local law and regulations. The Project improvements, when complete, will be owned and maintained by the Owner.

D. RCW 82.14.540 and RCW 84.14.010 together define "affordable housing" to include dwelling units that cost no more than 30% of gross household income for households earning no more than 60% of the area median income.

E. The Whatcom County Council reviewed the intent of the Project to provide affordable housing with a QCT and approved a grant to **Subrecipient** from the ARPA Fund in the amount of \$3,000,000.

VI MUTUAL CONSIDERATION

The parties do not intend to create any new or separate legal or administrative entity by this Agreement but intend for this mutual Agreement to govern the County's financial support for the Project. The terms and conditions contained herein reflect the voluntary participation of the parties.

A. SUBRECIPIENT RESPONSIBILITIES: Subrecipient hereby agrees as follows:

- (i) If after the award of the construction contract, the scope of the Project or the Project budget has materially changed, the **Subrecipient** shall provide the County the following updated documents: 1) a detailed description of the Project; 2) a Project budget itemizing major improvements together with the estimated cost of the improvements; and 3) a schedule showing sources and uses of funding for the Project, if any of the aforementioned documents materially varies from those that were submitted with the **Subrecipient's** application for funding.
- (ii) The **Subrecipient** shall be responsible for all aspects of the design and construction of the Project.
- (iii) ARPA ELIGIBLE EXPENSES – The **Subrecipient** agrees to cause the

- Owner to use the County-granted ARPA funds for only those eligible expenses, as provided for in Exhibit A.
- (iv) The **SUBRECIPIENT** through the Owner shall be responsible for all aspects of construction contract administration, which shall include, but not be limited to, advertising, bidding, and awarding the contract. The **SUBRECIPIENT** will cause the Owner to comply with all applicable federal, state and local laws, rules and regulations expressly including, but not limited to, Project bidding and applicable prevailing wage laws. The County shall have no responsibility for the Project other than the funding set forth herein.
 - (v) The **SUBRECIPIENT** shall provide the County with a final report showing the actual cost of the Project and the actual sources and uses of funding for the Project.
 - (vi) The **SUBRECIPIENT** shall comply with all terms and conditions of the American Rescue Plan Act and other applicable federal, state and local law and regulations related to ARPA funds.
 - (vii) The **SUBRECIPIENT** shall cause the Owner to record an Affordable Housing covenant consistent with the covenant as presented in Exhibit B, unless modified by mutual agreement between the Parties.
 - (viii) **The SUBRECIPIENT** shall comply with all terms, conditions, and restrictions outlined in Exhibit C.

B. WHATCOM COUNTY'S RESPONSIBILITIES: The County hereby agrees as follows:

- (i) COUNTY GRANT—The County shall issue a grant to SUBRECIPIENT for up to Three Million Dollars and Zero Cents (\$3,000,000) for the Project described herein. This grant shall be reimbursed by County warrant drawn on the American Rescue Plan Act Fund and payable to the **SUBRECIPIENT** upon approval of this agreement by the Whatcom County Council and the **SUBRECIPIENT**, and pursuant to the terms contained in (ii), Payout of Grant Funding, below.
- (ii) PAYOUT OF GRANT FUNDING—The County shall pay out the grant funding to the **SUBRECIPIENT** up to a maximum of Three Million Dollars and Zero Cents (\$3,000,000) of the total ARPA eligible Project costs including, but not limited to, construction costs and architecture and engineering costs. This amount shall be paid in accordance with Exhibit A. Disbursements of grant funding shall be made contingent upon and subject to the continued commitment of the other Project funding sources, which may be subject to the adjustment at the approval of the County, such approval to not be unreasonably withheld.
- (iii) Unless the parties to this agreement mutually agree in writing to modify the consideration, the funding identified herein is all the County is obligated to pay towards this Project from this funding source.

VII RECORDS, REPORTS AND AUDITS

The **Subrecipient** agrees to maintain such records, make such reports and follow such procedures pertaining to this Agreement as may be reasonably required by the County and as are typically maintained and made by the **Subrecipient** in the undertaking of a project of this nature. All **Subrecipient** records pertaining to this Agreement and the Project work shall be retained by the **Subrecipient** for a period of five (5) years after final audit unless a longer period is required to resolve audit findings or litigation. The County and other authorized representatives of the State government shall have access to any books, documents, papers, and records of the **Subrecipient** which pertain to this Agreement or the Project work for the purpose of making audit, examination, excerpts, and transcriptions.

VIII RELATIONSHIP OF PARTIES AND AGENTS

Neither the **Subrecipient** nor the County shall have authority to execute contracts or to make commitments on behalf of the other, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the **Subrecipient**. This agreement does not create, either implicitly or explicitly, any right, duty or obligation that is not expressly provided for herein.

The **Subrecipient** represents that it has or will secure at its own expense all personnel and/or subcontractors required in order to perform the Project work. Such personnel shall not be employees of the County for purposes of the Project described herein. All such personnel and/or subcontractors shall be fully qualified (as determined by the **Subrecipient** in its sole discretion) and authorized/permitted under State and/or local law to perform such services.

IX TERMINATION

If the **Subrecipient** fails to comply with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including, but not limited to, the termination or closeout of this Agreement in the manner specified herein:

- A. TERMINATION FOR CAUSE— If the **Subrecipient** fails to comply with the terms and conditions of this Agreement, the County will give notice to the **Subrecipient** in writing of its failure to comply. The **Subrecipient** will be given thirty (30) days from date of notice to comply with the terms of the Agreement or submit a plan acceptable to the County to bring the **Subrecipient** into compliance with the Agreement within a time period reasonably acceptable to the County. Failure to comply with the terms and conditions of this Agreement by either party shall constitute an event of default. In the event of default by the **Subrecipient** and a failure by the **Subrecipient** to cure as provided for herein, the County may take such remedial actions under the law as are available to cure the default, including the imposition of the reasonable costs of collection. In the event of default by the County, the **Subrecipient** may take such remedial actions under the law as are available to cure the default, including specific

- performance.
- B. TERMINATION FOR OTHER GROUNDS—This Agreement may be terminated in whole or in part by mutual consent and written agreement between the parties, duly authorized and executed, setting forth the conditions of termination, including effective date and, in case of termination in part, that portion to be terminated.

X COMPLIANCE WITH LAWS

A. The Subrecipient and the County shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to United States Laws, Regulations and Circulars (Federal).

B. The Subrecipient shall comply with the American Rescue Plan Act of 2021, PL 117-2, Section 9901 regarding allowable expenditures. (The Subrecipient shall also comply with all federal guidance regarding the Coronavirus State and Local Fiscal Recovery funds, including the Interim Final Rule at 31 CFR Part 35 and U.S. Treasury FAQs.

C. The Subrecipient shall comply with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

D. Other federal regulations applicable to this award include:

(i) Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25 and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

(ii) Reporting Subaward and Executive Compensation Information, 2 C.F.R., Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

(iii) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 80 (including the requirement to include a term or condition in all lower tier covered transaction (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

(iv) Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

- Part 20. (v) Governmentwide Requirement for Drug-Free Workplace, 31 CFR
- (vi) New Restrictions on Lobbying, 31 CFR Part 21.
- (vii) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 USC §§ 4601-4655) and implementing regulations
- (viii) Generally applicable federal environmental laws and regulations.

E. The Subrecipient shall comply with Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39.

F. The Subrecipient shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of Services under this Agreement. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

- (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibits discrimination on the grounds of race, color, or national origin under program or activities receiving federal financial assistance.
- (ii) The Fair Housing Act, Title VII-IX of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, national origin, sex, familial status, or disability;
- (iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap under any program or activity receiving or benefitting from federal assistance;
- (iv) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis or age in programs or activities receiving federal financial assistance; and
- (v) The American with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- (vi) The Subrecipient shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a

program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made part of this Agreement.

G. Subrecipient must disclose in writing to Department of Treasury, or the County, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

H. Subrecipient is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

I. Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving.

J. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

- (i) A member of Congress or a representative of a committee of Congress;
- (ii) An Inspector General;
- (iii) The Government Accountability Office;
- (iv) A Treasury employee responsible for contract or grant oversight or management;
- (v) An authorized official of the Department of Justice or other law enforcement agency;
- (vi) A court or grand jury; or
- (vii) A management official or other employee of Subrecipient, contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

K. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federal assisted programs and activities for individuals who, because of national denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

L. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts program, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067.

M. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient, Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

N. Subrecipient acknowledges and agrees that it must require any contractors, subcontractors, successors, transferees, and assignees to comply with assurances contained in sections J, K, L and M herein-above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

XI Acknowledgement of Federal Funds.

Grant Funds paid out under this Agreement are made available and are subject to Section 603(b) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act of 2021. From and after the effective date of this Agreement, the

Subrecipient agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Subrecipient describing programs or projects funded in whole or in part with federal funds under this Agreement, shall contain the following statement(s):

This project was supported, in whole or in part, by American Rescue Plan Act funding awarded to Whatcom County by the U.S. Department of Treasury.

XII Repayment of Funds to County.

A. The Subrecipient shall return Grant Funds disbursed to it by the County under this Agreement for return by the County to the U.S. Department of the Treasury, upon the occurrence of any of the following events: (a) if overpayments are made by the County; or (b) if an audit of the Services by the U.S. Department of the Treasury, the State, or the County determines that the funds have been expended for purposes not permitted by 42 USC § 803(c)(1), 31 CFR Part 35, U.S. Treasury FAQs, the U.S. Department of the Treasury, the County, state law, or this Agreement. In such a case, the County shall make a written demand upon the Subrecipient for repayment, and the Subrecipient shall be obligated to repay to the County the funds demanded within sixty (60) calendar days of the demand.

B. No exercise by the County of the right to demand repayment of funds from the Subrecipient shall foreclose the County from making an additional demand for repayment if a return of additional funds is required by the U.S. Department of the Treasury; the County's right to demand repayment from the Subrecipient may be exercised as often as necessary to recoup from the Subrecipient all funds required to be returned by the County to the U.S. Department of the Treasury.

C. The Subrecipient is solely responsible for seeking repayment from any subcontractor in conformance with its debt collection policy.

XIII NONDISCRIMINATION AND EQUAL OPPORTUNITY

A. GENERAL PROVISIONS

Subrecipient shall cause the Owner to make the Project facilities available to the public in a manner that assures fair, equal, and non-discriminatory treatment to all persons without regard to race, creed, color, national origin, sex, honorable discharged veteran or military status, sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability. No personnel shall be refused service, be given discriminatory treatment, be denied any privilege, use of facilities, or participation in activities on account of race, creed, color, national origin, sex, honorable discharged veteran or military status, sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability, nor shall any person be required to participate in any religious worship, exercise, or

instruction. The funds provided under this Agreement shall not be used to fund religious worship, exercise, or instruction.

B. EQUAL ACCESS TO HOUSING REGARDLESS OF SEXUAL ORIENTATION OR GENDER IDENTITY

Subrecipient shall abide by all provisions of the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identify, as set forth in 24 CFR, Parts 5 and 570. These provisions ensure that any qualified individual or family is not denied equal access to housing. In addition, the RECIPIENT shall not inquire about the sexual orientation or gender identity of an applicant for, or occupant of, housing assisted under this Agreement.

C. HOUSING PREFERENCES

Projects which have committed to limit eligibility or preference to a particular segment of the population may do so only if permitted by Fair Housing Act restrictions.

Any limitation or preference in housing must not violate nondiscrimination provisions in 24 CFR § 92.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.

If the Project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the Project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

- The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;
- Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and
- Such services cannot be provided in a non-segregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

D. TDD/TTY OR RELAY SERVICE REQUIRED

Subrecipient agrees to list a TDD/TTY or the Washington Relay telephone number on all of the written policies and documents that they make available to participants, beneficiaries, or employees, including their letterhead, materials used to market programs, and any other public document that lists a telephone number.

XIV INTEREST OF MEMBERS OF THE COUNTY AND THE SUBRECIPIENT

No member of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in this Agreement.

XV HOLD HARMLESS AND INDEMNITY

To the extent permitted by law and with the exception of events arising from the gross negligence or willful misconduct of the County, the **Subrecipient** shall indemnify and hold harmless the County, its officers, agents, and employees, from all liability, loss or damage, including costs of defense they may suffer as a result of third-party claims, demands, actions or judgments which result from the activities to be performed by the **Subrecipient**, its agents, employees, or subcontractors pursuant to this Agreement.

XVI ASSIGNABILITY

The **Subrecipient** shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the Subrecipient from the County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the Subrecipient.

XVII NON-WAIVER

The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

XVIII CONTRACT MODIFICATIONS

No modification or waiver of any clause or condition of this Agreement shall be binding upon either party unless such modification or waiver is in writing and duly authorized and executed by the County and the **Subrecipient**.

XIX SEVERABILITY

If any Portion of this Agreement is changed per mutual agreement or any Portion is held invalid, the remainder of this Agreement shall remain in full force and effect.

XX NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

TO SUBRECIPIENT:

Opportunity Council
Attn. Executive Director
1111 Cornwall Avenue
Bellingham, WA 98225

TO COUNTY: Tyler Schroeder, Deputy Executive
c/o Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

XXI INTEGRATION

This Agreement contains all terms and conditions to which the County and the Subrecipient agreed, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this grant transaction. There are no other oral or written agreements between the Subrecipient and County as to the grant terms contained herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, duly authorized and executed by both parties.

XXII GOVERNING LAW AND VENUE

All questions of the validity, construction, and application of this Agreement shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Agreement shall be the Superior Court of the State of Washington in and for Whatcom County, Washington.

IN WITNESS WHEREOF, the County and the Subrecipient have executed this Agreement as of the date and year last written below.

EXECUTED, this _____ day of _____, 2021, for **OPPORTUNITY COUNCIL:**

Greg Winter, Executive Director

EXECUTED, this _____ day of _____, 2021, for **WHATCOM COUNTY:**

WHATCOM COUNTY

SATPAL SIDHU
County Executive

APPROVED AS TO FORM

Christopher Quinn, Prosecuting Attorney

Date

Exhibit A
(Financial Commitment)

Funding, in the amount of \$3,000,000 will be disbursed to the Opportunity Council (Subrecipient). Funding is provided by U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds as authorized by Sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Public Law No. 117-2 (March 11, 2021), CFDA No. 21.027.

Subrecipient will send invoices for qualifying Project expense reimbursement to:

Whatcom County Executive Office
311 Grand Ave, Suite 108
Bellingham, WA 98225

Qualifying Project expenses under this agreement include, but are not limited to, Project-related construction costs and architectural and engineering expenses.

Any reimbursement sought by Subrecipient related to the purchase of real property under this agreement shall be contingent on the Subrecipient providing the County prior written approval issued by the US Treasury that acknowledging that such expense qualifies under the American Rescue Plan Act.

In order to ensure compliance with the existing ARPA guidelines set forth by the US Treasury – while also ensuring that all expenditures within the scope of this Agreement adhere to future guidelines that may be established by the US Treasury during the term of this Agreement – the Subrecipient, when requesting reimbursement for eligible ARPA expenditures, shall provide to the County a comprehensive and detailed list of all such expenditures on an itemized invoice, and shall also provide any backup documentation to support such expenditures. Said invoice must include a statement, signed by the Subrecipient, indicating that all expenditures therein comport with the guidelines of the ARPA as set forth by the US Treasury. Reimbursement requests shall be submitted to the COUNTY no more than once per month. All reimbursement requests, for expenses occurred in the preceding calendar year, must be submitted no later than January 15th after the end of the preceding calendar year.

Invoices shall include the Whatcom County assigned contract (agreement) number.

Funds will be made available by immediately upon execution of this Agreement and will be disbursed within 30 days following receipt of invoice and for reimbursement of Project expenses only.

* * * * *

Exhibit B - Affordable Housing Covenant

LOW-INCOME HOUSING COVENANT

Grantor: XXX

Grantee (Beneficiary): Whatcom County

Abbreviated Legal:

Assessor's Tax Parcel Number(s):

This Low Income Housing Covenant ("Covenant") is made by XXX, LLLP, a Washington limited liability limited partnership, ("Grantor") and is part of the consideration for financial assistance provided by Whatcom County, a political subdivision of the State of Washington (the "County"), to the Opportunity Council pursuant to the Laurel and Forest Street Agreement [for] Qualified Census Tract Low-Income Housing (the "Agreement"), Whatcom County Contract No. XXX, for the new construction of real property (the "Property") legally described as follows:

(**description)

This Covenant will be filed and recorded in the official public lands records of Whatcom County, Washington and shall constitute a restriction on the use of the Property and is taken and construed as running with the land which shall pass to and be binding on Grantor, its successors and assigns, heirs, grantees, or leases of the Center beginning XXX and ending XXX. Each and every contract, deed or other instrument covering or conveying the property in which the Center is located, 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, commencing _____ and terminating fifty (50) years after project completion (the "Term"), as set forth in the Agreement, as follows:

1. Whatcom County Covenant. Funds were made available to GRANTORS from Whatcom County's fund allocated through the American Rescue Plan Act ("ARPA") for residential purposes. GRANTORS covenant as follows:
 - a. During the Term, the residential units of the Property will be rented at no more than 30% of gross household income for households earning no more than 60% of the area median income at initial occupancy. Household incomes are adjusted for housing

size, as estimated from time to time by the United States Department of Housing and Urban Development ("HUD"). If HUD ceases to provide such estimates of median income, then median income shall mean such comparable figure for Whatcom County, Washington published or reported by a federal, state, or local agency as the County shall reasonably select.

- b. The fifty-six (56) residential units are subject to maximum restricted rent no higher than the affordable rent for the target income category based on the number of bedrooms. The County will use the Washington State Housing Finance Commission schedule of maximum rents and income level served for Whatcom County. If the Washington State Housing Finance Commission ceases to provide such schedule of maximum rents and income level served for Whatcom County, then maximum rents and income level shall mean such comparable figure for Whatcom County, Washington published or reported by a federal, state, or local agency as the County shall select.
 - c. This Covenant is for a period of 50 years following project completion as defined in the Agreement.
2. Compliance with State and Local Requirements. The GRANTORS will provide safe and sanitary housing and will comply with all state and local housing codes, licensing requirements, and other requirements regarding the condition of the structure and the operation of the project.
 3. Records. The GRANTORS will keep any records and make any reports relating to compliance with this covenant that County may reasonably require.
 4. Enforcement Provisions. The GRANTORS shall exercise reasonable diligence to comply with the requirements of this Covenant and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the GRANTORS or would have been discovered by the exercise of reasonable diligence, or within 60 days after the GRANTORS receives notice of such noncompliance from the County; provided however, that such period for correction may be extended by the County if the GRANTORS is exercising due diligence to correct the noncompliance. If such noncompliance remains uncured after such period, then the GRANTORS shall be in default and the County on its own behalf may take any one or more of the following steps:
 - a. By any suit, action or proceeding at law or in equity, require the GRANTORS to perform its obligations under this Covenant, or enjoin any acts or things which may be unlawful or in violation of the rights of the County hereunder; it being recognized that the beneficiaries of the GRANTORS' obligations hereunder cannot be adequately

compensated by monetary damages in the event of the Grantor's default;

- b. Have access to, and inspect, examine and make copies of, all of the books and records of the GRANTORS pertaining to the Project. Provided, however, the County shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the County's rights hereunder; and
- c. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, conditions and agreements of the GRANTORS under this Covenant.

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

Exhibit C

SUBRECIPIENT AGREEMENT ADDITIONAL TERMS AND CERTIFICATIONS

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

- The lower tier subrecipient certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- Where the lower tier subrecipient is unable to certify to any of the statements in this contract, such subrecipient will attach an explanation to this contract.
- The subrecipient further agrees by signing this contract that it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

Clean Air Act

- The subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- The subrecipient agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to U.S. Treasury, and the appropriate Environmental Protection Agency Regional Office.
- The subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by ARPA funding.

Federal Water Pollution Control Act

- The subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- The subrecipient agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to U.S. Treasury, and the appropriate Environmental Protection Agency Regional Office.
- The subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by ARPA funding.

Anti-Lobbying (certifications required for all awards and subawards of \$100,000 or more)
“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)”

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.”

Contractors must sign and submit the following certification to the NFE with each bid or offer exceeding \$100,000:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Opportunity Council certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Subrecipient's Authorized Official

Name and Title of Subrecipient's Authorized Official

Date

Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the subrecipient and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the American Rescue Plan Act funding to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that:

- (i) Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the subrecipient identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the subrecipient is notified of such by a subcontractor at any tier or by any other source, the subrecipient shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Subrecipient shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the subrecipient shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Subrecipient shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of

non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

E-Verify

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. Subrecipient represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Subrecipient agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Subrecipient further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Subrecipient understands and agrees that any breach of these warranties may subject Subrecipient to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Subrecipient would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit.” Subrecipient will review and enroll in the E-Verify program through this website: www.uscis.gov