

**WHATCOM COUNTY  
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:

Originating Department:	85 Health and Community Services
Division/Program: (i.e. Dept. Division and Program)	8530 Community Health / 53020 Healthy Children & Families
Contract or Grant Administrator:	Eric Chambers
Contractor's / Agency Name:	Whatcom Family YMCA

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 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"/>	No <input checked="" type="checkbox"/>	

Is this contract grant funded?	If yes, Whatcom County grant contract number(s):
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):	22-52	Contract Cost Center:	1382408
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>			

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"/> Goods and services provided due to an emergency.
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 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.
\$ 1,500,000	
This Amendment Amount:	
\$	
Total Amended Amount:	
\$	

Summary of Scope: This contract provides funding for the purchase of leased property necessary to preserve childcare slots in Whatcom County.

Term of Contract:	9 Months	Expiration Date:	06/30/2024
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Contract Routing:	1. Prepared by:	JT	Date:	08/31/2023
	2. Health Budget Approval	KR/JS	Date:	09/12/2023
	3. Attorney signoff:	RB	Date:	09/15/2023
	4. AS Finance reviewed:	A Martin	Date:	9/28/2023
	5. IT reviewed (if IT related):		Date:	
	6. Contractor signed:		Date:	
	7. Executive Contract Review:		Date:	
	8. Council approved (if necessary):	AB2023-655	Date:	
	9. Executive signed:		Date:	
	10. Original to Council:		Date:	

**Subrecipient Agreement  
Between Whatcom COUNTY and Whatcom COUNTY Family YMCA**

Whatcom Family YMCA, hereinafter called **SUBRECIPIENT** and Whatcom COUNTY, hereinafter referred to as **COUNTY**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 13,
- Exhibit A (Scope of Work), pp. 14 to 16,
- Exhibit B (Compensation), p. 17,
- Exhibit C (Certificate of Insurance), p. 18,
- Exhibit D (ARPA Subrecipient Agreement), pp. 19 to 25,
- Exhibit E (Subaward Information), p. 26,
- Exhibit F (Memorandum to File), pp. 27, to 31,
- Exhibit G (Childcare Covenant Template).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 11th day of October, 2023, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30<sup>th</sup> day of June, 2024.

The general purpose or objective of this Agreement is to: preserve childcare slots in Whatcom County, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$ 1,500,000.000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

SUBRECIPIENT acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on:

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

**SUBRECIPIENT:**  
*Whatcom Family YMCA*  
1256 N. State St.  
Bellingham, WA 98225

\_\_\_\_\_  
*Bill Ziels CEO/Executive Director*      *Date*

**WHATCOM COUNTY:**  
**Recommended for Approval:**

\_\_\_\_\_  
Ann Beck, Community Health & Human Services Manager                      Date

\_\_\_\_\_  
Erika Lautenbach, Health and Community Services Director                      Date

**Approved as to form:**

\_\_\_\_\_  
Royce Buckingham, Senior Civil Deputy Prosecutor                      Date

**Approved:**  
Accepted for Whatcom County:

By: \_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive                      Date

**SUBRECIPIENT INFORMATION:**

*Whatcom Family YMCA*  
*Bill Ziels CEO/Executive Director*  
Address:  
1256 N State St  
Bellingham, WA 98225  
[bziels@whatcomymca.org](mailto:bziels@whatcomymca.org)

## GENERAL CONDITIONS

### **Series 00-09: Provisions Related to Scope and Nature of Services**

#### 0.1 Scope of Services:

The SUBRECIPIENT agrees to provide to the COUNTY services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the COUNTY, unless otherwise provided for in the Agreement.

### **Series 10-19: Provisions Related to Term and Termination**

#### 10.1 Term:

Services provided by SUBRECIPIENT prior to or after the term of this contract shall be performed at the expense of SUBRECIPIENT and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

#### 10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 11.1 Termination for Default:

If the SUBRECIPIENT defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the COUNTY may, by depositing written notice to the SUBRECIPIENT in the U.S. mail, first class postage prepaid, terminate the contract, and at the COUNTY's option, obtain performance of the work elsewhere. Termination shall be effective upon SUBRECIPIENT's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the SUBRECIPIENT shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the COUNTY resulting from such default(s) shall be deducted from any money due or coming due to the SUBRECIPIENT. The SUBRECIPIENT shall bear any extra expenses incurred by the COUNTY in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the COUNTY by reason of such default.

#### 11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the COUNTY may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the COUNTY deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the COUNTY, the COUNTY may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

#### 11.3 Termination for Public Convenience:

The COUNTY may terminate the Agreement in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the interests of the COUNTY. Whenever the Agreement is terminated in accordance with this paragraph, the SUBRECIPIENT shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the COUNTY at any time during the term, whether for default or convenience, shall not constitute breach of contract by the COUNTY.

**Series 20-29: Provisions Related to Consideration and Payments**

20.1 Accounting and Payment for SUBRECIPIENT Services:

Payment to the SUBRECIPIENT for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the COUNTY, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the COUNTY or his designee (hereinafter referred to as the "Administrative Officer") the COUNTY will not reimburse the SUBRECIPIENT for any costs or expenses incurred by the SUBRECIPIENT in the performance of this contract. Where required, the COUNTY shall, upon receipt of appropriate documentation, compensate the SUBRECIPIENT, no more often than monthly, in accordance with the COUNTY's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The SUBRECIPIENT understands and acknowledges that the COUNTY will not withhold Federal or State income taxes. Where required by State or Federal law, the SUBRECIPIENT authorizes the COUNTY to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the SUBRECIPIENT will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the SUBRECIPIENT to make the necessary estimated tax payments throughout the year, if any, and the SUBRECIPIENT is solely liable for any tax obligation arising from the SUBRECIPIENT's performance of this Agreement. The SUBRECIPIENT hereby agrees to indemnify the COUNTY against any demand to pay taxes arising from the SUBRECIPIENT's failure to pay taxes on compensation earned pursuant to this Agreement.

The COUNTY will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The SUBRECIPIENT must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the SUBRECIPIENT's gross or net income, or personal property to which the COUNTY does not hold title. The COUNTY is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the COUNTY's Administrative Officer determines that the SUBRECIPIENT has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the COUNTY may withhold from amounts otherwise due and payable to SUBRECIPIENT the amount determined by the COUNTY as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling SUBRECIPIENT to termination or damages, provided that the COUNTY promptly gives notice in writing to the SUBRECIPIENT of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the SUBRECIPIENT of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the SUBRECIPIENT acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The COUNTY may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the SUBRECIPIENT, (3) to set off any amount so paid or incurred from amounts due or to become due the SUBRECIPIENT. In the event the SUBRECIPIENT obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to SUBRECIPIENT by reason of good faith withholding by the COUNTY under this clause.

23.1 Labor Standards:

The SUBRECIPIENT agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

**Series 30-39: Provisions Related to Administration of Agreement**

30.1 Independent SUBRECIPIENT:

In providing services under this Contract, the SUBRECIPIENT is an independent SUBRECIPIENT, and neither it nor its officers, agents, or employees are employees of the COUNTY for any purpose. The SUBRECIPIENT shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a COUNTY employee under state or local law.

The COUNTY assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the SUBRECIPIENT, its employees, and/or others by reason of this Contract.

The SUBRECIPIENT shall protect, indemnify, defend, and save harmless the COUNTY, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the SUBRECIPIENT's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the SUBRECIPIENT of work, services, materials, or supplies by SUBRECIPIENT employees or other suppliers in connection with or support of the performance of this Contract.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the SUBRECIPIENT. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the COUNTY.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the SUBRECIPIENT shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the SUBRECIPIENT or any employee of the SUBRECIPIENT or any SUBRECIPIENT or any employee of any SUBRECIPIENT by the COUNTY at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the SUBRECIPIENT and/or its consultants or SUBRECIPIENTS, in connection with performance of this Agreement, shall be the sole and absolute property of the COUNTY. If the SUBRECIPIENT creates any copyrightable materials or invents any patentable property, the SUBRECIPIENT may copyright or patent the same, but the COUNTY retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. SUBRECIPIENT further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the COUNTY upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the SUBRECIPIENT or the SUBRECIPIENT's SUBRECIPIENTS or consultants for delivery to the COUNTY under this Contract shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the SUBRECIPIENT uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the SUBRECIPIENT and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the SUBRECIPIENT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the SUBRECIPIENT agrees to make them promptly available to the COUNTY at no cost to the COUNTY. If the SUBRECIPIENT considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under

law, the SUBRECIPIENT shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the SUBRECIPIENT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the SUBRECIPIENT (a) of the request and (b) of the date that such information will be released to the requester unless the SUBRECIPIENT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the SUBRECIPIENT fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the SUBRECIPIENT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the SUBRECIPIENT for releasing records not clearly identified by the SUBRECIPIENT as confidential or proprietary. The COUNTY shall not be liable to the SUBRECIPIENT for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The SUBRECIPIENT shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the SUBRECIPIENT's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

31.2 Patent/Copyright Infringement:

SUBRECIPIENT will defend and indemnify the COUNTY from any claimed action, cause or demand brought against the COUNTY, to the extent such action is based on the claim that information supplied by the SUBRECIPIENT infringes any patent or copyright. The SUBRECIPIENT will pay those costs and damages attributable to any such claims that are finally awarded against the COUNTY in any action. Such defense and payments are conditioned upon the following:

A. The SUBRECIPIENT shall be notified promptly in writing by the COUNTY of any notice of such claim.

B. SUBRECIPIENT shall have the right, hereunder, at its option and expense, to obtain for the COUNTY the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the COUNTY.

32.1 Confidentiality:

The SUBRECIPIENT, its employees, SUBRECIPIENTS, and their employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the SUBRECIPIENT in performance of this Agreement, except upon the prior written consent of the COUNTY or an order entered by a court after having acquired jurisdiction over the COUNTY. SUBRECIPIENT shall immediately give to the COUNTY notice of any judicial proceeding seeking disclosure of such information. SUBRECIPIENT shall indemnify and hold harmless the COUNTY, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from SUBRECIPIENT's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or COUNTY auditor. The COUNTY or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the COUNTY Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by COUNTY agents or employees, inspection of all records or other materials which the COUNTY deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The SUBRECIPIENT shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom COUNTY, State of Washington, upon request. SUBRECIPIENT also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the SUBRECIPIENT, then the SUBRECIPIENT agrees to notify the Administrative Officer as soon as it is practical.

34.1 Insurance

The SUBRECIPIENT shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include 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 SUBRECIPIENT, its agents, representatives, SUBRECIPIENTS or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the COUNTY) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance

Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the SUBRECIPIENT without regard to this Contract, whichever are greater.

**1. Commercial General Liability**

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent SUBRECIPIENT Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the COUNTY.

**2. Business Automobile Liability**

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

SUBRECIPIENT shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If SUBRECIPIENT owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

**3. Additional Insurance Requirements and Provisions**

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom COUNTY, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on SUBRECIPIENT's and SUBRECIPIENT's SUBRECIPIENTS' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the SUBRECIPIENT and SUBRECIPIENT, whichever is greater.
- c. Primary and Non-contributory Insurance. SUBRECIPIENT shall provide primary insurance coverage and the COUNTY's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the COUNTY shall be excess and non-contributory to SUBRECIPIENT's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit SUBRECIPIENT to enter into a pre-loss agreement to waive subrogation without an endorsement, then SUBRECIPIENT agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the SUBRECIPIENT enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the SUBRECIPIENT shall provide a full and complete certified copy of all requested insurance policies to the COUNTY. The COUNTY reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the COUNTY reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The SUBRECIPIENT shall furnish the COUNTY with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind



coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the COUNTY prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the SUBRECIPIENT must submit the certificate and endorsements required in this contract to the COUNTY prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the COUNTY project, Whatcom COUNTY, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.

- g. The COUNTY must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. SUBRECIPIENT shall always provide the COUNTY with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the SUBRECIPIENT to the coverage provided by such insurance, or otherwise limit the COUNTY's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the SUBRECIPIENT under this Contract are expressly conditioned upon the SUBRECIPIENT's compliance with all insurance requirements. Failure on the part of the SUBRECIPIENT to maintain the insurance as required shall constitute a material breach of contract. Payment to the SUBRECIPIENT may be suspended in the event of non-compliance, upon which the COUNTY may, after giving five business days' notice to the SUBRECIPIENT 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 COUNTY on demand or offset against funds due the SUBRECIPIENT. Upon receipt of evidence of SUBRECIPIENT's compliance, payments not otherwise subject to withholding or set-off will be released to the SUBRECIPIENT.
- j. Workers' Compensation. The SUBRECIPIENT shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all SUBRECIPIENTS' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the SUBRECIPIENT to take out and/or maintain required insurance shall not relieve the SUBRECIPIENT or SUBRECIPIENTS from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The COUNTY does not waive any insurance requirements even in the event the certificate or endorsements provided by the SUBRECIPIENT were insufficient or inadequate proof of coverage but not objected to by the COUNTY. The COUNTY's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the SUBRECIPIENT's insurance requirements under this Contract.
- l. Availability of SUBRECIPIENT Limits. If the SUBRECIPIENT maintains higher insurance limits than the minimums shown above, the COUNTY shall be insured for the full available limits, including Excess or Umbrella liability maintained by the SUBRECIPIENT, irrespective of whether such limits maintained by the SUBRECIPIENT are greater than those required by this contract or whether any certificate furnished to the COUNTY evidences limits of liability lower than those maintained by the SUBRECIPIENT.
- m. Insurance for SUBRECIPIENTS. If the SUBRECIPIENT subcontracts (if permitted in the contract) any portion of this Contract, the SUBRECIPIENT shall include all SUBRECIPIENTS as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each SUBRECIPIENT. Insurance coverages by SUBRECIPIENTS must comply with the insurance requirements of the SUBRECIPIENT in this contract and shall be subject to all of the requirements stated herein, including naming the COUNTY as additional insured.

- n. The SUBRECIPIENT agrees SUBRECIPIENT's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

#### **4. Proof of Insurance Required Prior to the Release of Funds**

No funds shall be released under this agreement shall be made until the Subrecipient provides evidence of coverage as outlined in this section.

34.3 Defense & Indemnity Agreement. To the fullest extent permitted by law, the SUBRECIPIENT agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the SUBRECIPIENT, its employees, agents or volunteers or SUBRECIPIENT's SUBRECIPIENTS and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the SUBRECIPIENT's or its SUBRECIPIENTS' use of, presence upon, or proximity to the property of the COUNTY. This indemnification obligation of the SUBRECIPIENT shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the COUNTY. Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the SUBRECIPIENT, its SUBRECIPIENTS, employees or agents, and the COUNTY, its employees or agents, this indemnification obligation of the SUBRECIPIENT shall be valid and enforceable only to the extent of the negligence of the SUBRECIPIENT, its SUBRECIPIENTS, employees, and agents. This indemnification obligation of the SUBRECIPIENT shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the SUBRECIPIENT hereby expressly waives any immunity afforded by such acts. It is further provided that no liability shall attach to the COUNTY by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of SUBRECIPIENT's indemnity obligations under this Agreement. In the event the SUBRECIPIENT enters into subcontracts to the extent allowed under this Contract, the SUBRECIPIENT's SUBRECIPIENTS shall indemnify the COUNTY on a basis equal to or exceeding SUBRECIPIENT's indemnity obligations to the COUNTY. The SUBRECIPIENT shall pay all attorney's fees and expenses incurred by the COUNTY in establishing and enforcing the COUNTY's rights under this indemnification provision, whether or not suit was instituted. The SUBRECIPIENT agrees all SUBRECIPIENT's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the SUBRECIPIENT are a material inducement to COUNTY to enter into this Agreement and are reflected in the SUBRECIPIENT'S compensation. By signing this contract, the SUBRECIPIENT acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the COUNTY from all claims and suits including those brought against the COUNTY by the SUBRECIPIENT'S own employees, arising from this contract.

#### **35.1 Non-Discrimination in Employment:**

The COUNTY's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. The SUBRECIPIENT shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the SUBRECIPIENT is governed by such laws, the SUBRECIPIENT shall take affirmative action to ensure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in

recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the SUBRECIPIENT shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any SUBRECIPIENT, provided that the foregoing provision shall not apply to contracts or SUBRECIPIENTs for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The SUBRECIPIENT shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

36.1 Waiver of Noncompetition:

SUBRECIPIENT irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the COUNTY, and SUBRECIPIENT further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the COUNTY.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, SUBRECIPIENT or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the COUNTY's interest, then SUBRECIPIENT shall immediately notify the COUNTY of the same. The notification of the COUNTY shall be made with sufficient specificity to enable the COUNTY to make an informed judgment as to whether or not the COUNTY's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the COUNTY may require the SUBRECIPIENT to take reasonable steps to remove the conflict of interest. The COUNTY may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The SUBRECIPIENT also agrees to comply with applicable federal, state, COUNTY or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The COUNTY hereby appoints, and the SUBRECIPIENT hereby accepts, the Whatcom COUNTY Executive, and his or her designee, as the COUNTY's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the COUNTY's right to receive and act on all reports and documents, and any auditing performed by the COUNTY related to this Agreement. The Administrative Officer for purposes of this agreement is:

Eric Chambers, Special Projects Manager  
Whatcom County Health and Community Services

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health and Community Services  
Eric Chambers, Special Projects Manager  
509 Girard Street  
Bellingham, WA 98225  
[ekchambe@co.whatcom.wa.us](mailto:ekchambe@co.whatcom.wa.us)  
360-303-9582

Whatcom Family YMCA  
Bill Ziels, CEO/Executive Director  
1256 N. State St.  
Bellingham, WA 98225  
[bziels@whatcomymca.org](mailto:bziels@whatcomymca.org)  
360-255-0085

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works SUBRECIPIENT's Status under State Law:  
If applicable, SUBRECIPIENT certifies that it has fully met the responsibility criteria required of public works SUBRECIPIENTs under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:  
If applicable, the SUBRECIPIENT further certifies, by executing this contract, that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The SUBRECIPIENT also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the SUBRECIPIENT and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the SUBRECIPIENT agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. SUBRECIPIENT shall immediately notify Whatcom COUNTY if, during the term of this Contract, SUBRECIPIENT becomes debarred.

38.3 E-Verify:  
The E-Verify SUBRECIPIENT 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. If applicable, 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. The term "employee" as used herein means any person that is hired to perform work for Whatcom COUNTY. 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/Seller 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/Seller 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/Seller understands and agrees that any breach of these warranties may subject SUBRECIPIENT/Seller 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/Seller 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](http://www.uscis.gov)

**Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes**

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 SUBRECIPIENT Commitments, Warranties and Representations:

Any written commitment received from the SUBRECIPIENT concerning this Agreement shall be binding upon the SUBRECIPIENT, unless otherwise specifically provided herein with reference to this paragraph. Failure of the SUBRECIPIENT to fulfill such a commitment shall render the SUBRECIPIENT liable for damages to the COUNTY. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the COUNTY to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the SUBRECIPIENT and the COUNTY, arising under and by virtue of the Contract Documents, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The SUBRECIPIENT shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the COUNTY, or (2) the happening of any event or occurrence, unless the SUBRECIPIENT has given the COUNTY a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the COUNTY. The written Notice of Potential Claim shall set forth the reasons for which the SUBRECIPIENT believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. SUBRECIPIENT shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The SUBRECIPIENT shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the COUNTY, the SUBRECIPIENT has given the COUNTY a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom COUNTY Superior Court rather than mediation or arbitration.

*Unless otherwise specified herein, this Contract shall be governed by the laws of Whatcom COUNTY and the State of Washington.*

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the COUNTY of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

**EXHIBIT "A"**  
(SCOPE OF WORK)

**I. Background**

According to the latest census<sup>5</sup>, there are approximately 10,500 children under the age of 5 living in Whatcom County. The total current child care capacity in the County is, however, only 3,686 children enrolled in 106 programs<sup>6</sup> leaving a substantial service gap. Access to safe and affordable access to childcare is more salient among families at or below the federal poverty line: in a low income needs assessment<sup>7</sup> conducted by the Opportunity Council, childcare access was ranked as one of the most important needs for families with children under five who also ranked it as lowest in availability across multiple needs.

The COVID-19 pandemic further limited access to safe and affordable childcare in Whatcom County. Across the state, Washington lost approximately 25% of their childcare workers<sup>8</sup> due to the pandemic and has still not fully recovered. One of the goals of the Coronavirus State and Local Fiscal Recovery Fund (SLFRF) established under the American Rescue Plan Act (ARPA) is to expand and enhancing childcare and early learning services.

Through a competitive bidding process (RFP 22-52) Whatcom Family YMCA (hereinafter, 'Subrecipient') was selected and recommended for funding in the amount of \$1,500,000 to be used to purchase their currently leased property located at 2410 Rimland Dr. Bellingham, WA, 98226. Upon purchase, the facility will have preserved 84 slots and created an additional 20 slots. At capacity, the facility will provide 104 child care slots for infants through 5 years and include 20% that meet low income thresholds as described below.

**II. Statement of Work**

Project implementation will occur in two phases: Capital and Covenant. The Capital Phase begins with the receipt of a fully executed contract between Whatcom County and the subrecipient and includes, the purchase of the property and the recording of the deed and covenant. The Covenant Phase begins with the end of the Capital Phase and continues for ten (10) years.

**During the Capital Phase, the Subrecipient will:**

1. Attend a "Kickoff" meeting with Whatcom County Staff.
2. Purchase the real property located at 2410 Rimland Dr. Bellingham, WA 98226.
3. Attend a transition meeting with Whatcom County Staff, including site inspection.

**During the Covenant Phase, the Subrecipient will:**

1. Operate as a licensed early learning facility for a period of at least ten (10) years.
2. Report any licensing inspections that result in an adverse finding including, but not limited to, compliance action, enforcement action, facility licensing compliance agreements, or loss of license within fourteen (14) days of notification.
3. Provide a minimum 100 childcare slots as outlined below. For the purposes of compliance, a slot is defined as either a part-time slot, a full-time slot, or a working day slot. A part-time slot is at least 3 hours per day and less than 5.5 hours a day and is the equivalent to 0.5 slots. A full-time slot is at least 5.5 hours to 9.5 hours and is the equivalent to 1.0 slots. A working day slot is 10 hours per day and is equivalent to 1.5 slots. To meet the requirements below, any combination of part-time, full-time, or working day slots may be used.

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<sup>5</sup> <https://www.census.gov/quickfacts/whatcomcountywashington>

<sup>6</sup> <https://www.oppco.org/wp-content/uploads/2023/04/ELAFS-Community-Needs-Assessment-2023.pdf>

<sup>7</sup> [https://www.oppco.org/wp-content/uploads/2021/10/Community-Needs-Assessment\\_09.15.21editspdf.pdf](https://www.oppco.org/wp-content/uploads/2021/10/Community-Needs-Assessment_09.15.21editspdf.pdf)

<sup>8</sup> <https://aspe.hhs.gov/sites/default/files/documents/71981d3ec3a1d02537d86d827806834b/Child-Care-Trends-COVID.pdf>

4. Collect, at a minimum, the following demographic information for each child at intake: age and income status for those filling low income slots.
5. Provide a minimum of 20% of all slots for children from households that have income 80% or lower than the current area median income (AMI) for the City of Bellingham or are eligible for assistance through the Working Connections Child Care Program. For the purposes of compliance with this requirement the County will update the subrecipient each year, on or about January 1, with the most current AMI.

**During both the Capital and Covenant Phases, the Subrecipient will:**

1. Maintain site control of the facility located at 2410 Rimland Dr. Bellingham, WA, 98226.
2. Maintain books, records, documents, and other evidence directly related to the performance of the work in accordance to Generally Acceptable Accounting Principles (GAAP) when applicable, in which Whatcom County, or any of its duly authorized representatives, shall have access to for inspection and audit for a period of five years beyond the last date of service. The last date of service, as described in Section II, is ten (10) years after the end of the Capital Phase. Specifically,
  - a. Records used to determine financial eligibility of families.
  - b. Invoices and supporting documentation, including procurement records, for all reimbursable expenses.
  - c. Any applicable child care licenses and modifications.
3. Document and make available, information regarding their acquisition activities, service delivery model, experience working with the County, experience with ARPA funds, and the covenant process.

**III. Timeline**

Date	Activity	Milestone
October 2023	Project Kickoff	Project kick off meeting
June 2024	Purchase	Deed and Covenant recorded
July 2024	Capital Phase Close Out	Project closeout meeting
August 2024 – December 2034	Covenant Phase Quarterly Monitoring	Covenant Phase kickoff meeting Quarterly reports
January 2034	Final Closeout	Final closeout meeting Removal of covenant

**IV. Reporting and Documentation**

Clear communication during the **Capital Phase** is essential to project success. During the Capital Phase the Subrecipient is responsible for providing the following information to the County Designee.

1. Monthly progress reports, due on the first of each month. Progress reports must include, at a minimum, the following:
  - a. Progress including any milestones achieved
  - b. Outline of a plan for the coming month
  - c. Any problems experience, including delays.

During the **Covenant Phase**, the Subrecipient is responsible for providing the following information to the County Designee.

1. Quarterly Utilization Reports, due on the 15<sup>th</sup> of the month following the completion of the previous quarter. Quarters are defined as follows:
  - a. First Quarter: January 1 through March 31



- b. Second Quarter: April 1 through June 30
  - c. Third Quarter: July 1 through September 30
  - d. Fourth Quarter: October 1 through December 31
2. Quarterly reports must include the following:
- a. Average # of part-time, full-time, and work-time slots filled.
  - b. Average # of part-time, full-time, and work-time slots filled with qualifying child.
  - c. Average I # of toddlers, preschool-aged, and school-age children. Following WAC 100-300-0005, a “toddler means a child 12 months through 29 months,” a preschool-aged child is ‘30 months through 6 years of age not attending kindergarten or elementary school” and a school aged child is one “who is five years of age through 12 years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.”
3. A qualifying child is one that resides with a family whose income is 80% or lower than the current area median income (AMI) for the City of Bellingham or that qualify for assistance through the Working Connections Child Care Program.

The County reserves the right to request additional related documentation, including but not limited to; contracts and lower-tier Subrecipient agreements, permits, environmental assessments, Washington State DCYF licensing documentation and inspection reports, City of Bellingham inspection reports. The County's Designee may amend reporting frequency during the Covenant phase.

During both the Capital and Covenant Phases, when an event of unusual and significant nature occurs, whether or not directly related to the project, the Subrecipient is responsible for notifying the County Designee as soon as reasonably possible with the chain of events, persons participating, response, and other pertinent information.

## **V. Project Closeout**

Project closure occurs when the following conditions have been met:

- 1. The County has satisfied their financial commitment to the subrecipient.
- 2. The Subrecipient has operated a licensed child care center at 2410 Rimland Dr. Bellingham, WA, 98226. a period of ten (10) years beyond the Capital Phase.
- 3. The Subrecipient has resolved all monitoring and compliance issues, if any, with the County.
- 4. The Subrecipient has participated in an exit interview with the County designee.

## **VI. Inconsistencies**

In the event inconsistencies or disputes among this contract, the initiating RFP, the Subrecipient's response, or other documents, the following order of precedence shall prevail in descending order of priority:

- 1. Applicable Federal, Washington State, and Whatcom County statutes, codes, regulations, ordinances and the like.
- 2. This contract.
- 3. The award letter issued on May 5, 2023 and signed by Tyler Schroeder, Deputy Executive.
- 4. Request for Proposal # 22-52 including all addenda, issued by Whatcom County on December 14, 2022.
- 5. The subrecipients response to RFP #22-52.

**EXHIBIT "B"**  
(COMPENSATION)

Funding, in the amount of \$1,500,000 will be dispersed to Whatcom Family YMCA, the Subrecipient, through escrow at closure.

Funding will be provided by the American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds assistance listing 21.027.

The Subrecipient will send final settlement statement to:

Whatcom County Health and Community Services  
*Attn: Eric Chambers, Special Projects Manager*  
509 Girard Street  
Bellingham, WA 98225

Prior to closing, the County must approve a draft settlement statement with sufficient detail to meet County requirements.

Funds will be made available immediately upon execution of this Agreement and receipt of insurance information as outlined in in §34.1 and Exhibit C of this agreement, and will be dispersed into escrow for use by the Subrecipient for project acquisition expenses only. This date may be amended by mutual agreement of the County and Subrecipient.

**EXHIBIT "C"**  
(CERTIFICATE OF INSURANCE)

Prior to the release of funds under this agreement, the Subrecipient must provide evidence of insurance as outlined in §34.1 of this agreement.

**EXHIBIT "D"**  
(AMERICAN RESCUE PLAN FUNDING)

The Subrecipient is considered a Subrecipient for purposes of this contract and will hereafter be referred to as Subrecipient for this portion of the contract. Source of funding is Coronavirus State and Local Fiscal Recovery Funds, CFDA No. 21.027

**1. 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 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.
  - (v) Governmentwide Requirement for Drug-Free Workplace, 31 CFR Part 20.
  - (vi) New Restrictions on Lobbying, 31 CFR Part 21 and Byrd Anti-Lobbying Amendment at 31 U.S.C § 1352 (as amended).
    - Subrecipients 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.
    - By signing this agreement, the Subrecipient certifies, to the best of its knowledge and belief that:

- 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.
- 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.
- 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 Subrecipients 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.

SUBRECIPIENT 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.

- (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, including but not limited 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 the United States Department of the 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 the American Rescue Plan Act
    - 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 the United States Department of the 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 the American Rescue Plan Act.
- 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 understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. 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, or lower-tiered Subrecipient, 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 Subrecipients, lower-tiered Subrecipient, 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, Subrecipients, lower-tiered Subrecipient, successors, transferees, and assignees:

*The Subrecipient, lower-tiered Subrecipient, 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.*

## **2. 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.*

## **3. REPAYMENT OF FUNDS TO THE 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 lower-tiered Subrecipient in conformance with its debt collection policy.

#### **4. NONDISCRIMINATION AND EQUAL OPPORTUNITY**

##### **A. General Provisions**

Subrecipient shall make the 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 Identity, 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.

## **5. DOMESTIC PREFERENCES FOR PROCUREMENTS**

### **Domestic Preference for Procurements**

As appropriate, and to the extent consistent with the 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.

## **6. 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.*

- i. 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.
- ii. Unless an exception in paragraph (c) of this clause applies, the Subrecipient and its lower-tiered Subrecipient may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
  - a. 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;
  - b. 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;
  - c. 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
  - d. 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.*

- i. This clause does not prohibit Subrecipients from providing –
  - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
  - a. Covered telecommunications equipment or services that:
    - i. Are *not used* as a substantial or essential component of any system; and

- ii. Are *not used* critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

D. *Reporting Requirement.*

- i. 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 lower-tiered Subrecipient 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.
  - ii. The Subrecipient shall report the following information pursuant to paragraph (d)(1) of this clause:
    - a. 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.
    - b. 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.

**7. RECORDS MAINTENANCE**

The Subrecipient shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Subrecipient shall maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity.

The Subrecipient shall retain such records for a period of five (5) years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the five (5) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**EXHIBIT "E"**  
(ARPA SUBAWARD INFORMATION)

	<b>Item Description</b>	<b>Contract Information</b>
1	<b>Contractor Name (Exactly as listed in DUNS):</b> <a href="http://www.SAM.gov">www.SAM.gov</a>	Whatcom Family YMCA
2	<b>Contractor DUNS Number: <a href="http://www.SAM.gov">www.SAM.gov</a> or Unique Entity ID</b>	CZDKLNF6GKI5
3	<b>Federal Award Identification Number (FAIN):</b>	SLFRP1195
4	<b>Federal Award Date (from Federal contract)</b>	March 3, 2021
5	<b>Start and End Date of the contract:</b>	October 1, 2023 – December 31, 2026
6	<b>Amount of Federal Funds Obligated by this action:</b>	\$1,500,000.00
7	<b>Total Amount of Federal Funds Obligated to the contractor by Whatcom County for this subaward (current and past obligations):</b>	\$1,500,000.00
8	<b>Total Amount of the Federal Award <u>committed</u> to the contractor through Whatcom County:</b>	\$1,500,000.00
9	<b>Project description from Federal Award:</b>	Sections 602( b) and 603( b) of the Social Security Act ( the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117- 2 ( March 11, 2021) authorize the Department of the Treasury ( Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.
10	<b>Name of the Federal awarding agency:</b>	United States Department of the Treasury
11	<b>Name of the pass-through entity/entities:</b>	Whatcom County
12	<b>Contact information for awarding official- (Name of County project coordinator)</b>	Eric Chambers, <a href="mailto:ekchambe@co.whatcom.wa.us">ekchambe@co.whatcom.wa.us</a> 360.303.9582
13	<b>Contact information for awarding official- General Contact email or phone number:</b>	Whatcom County Executive / 360-778-5200
14	<b>CFDA Number</b>	21.027
15	<b>CFDA Name Program Name</b>	Coronavirus State and Local Fiscal Recovery Funds (CSLFRF), Coronavirus State Fiscal Recovery Fund (CDFRF) and Coronavirus Local Fiscal Recovery Fund (CLFRF)
16	<b>Is the award Research and Development?</b>	No
17	<b>Indirect Cost Rate per the Federal Award</b>	n/a
18	<b>Federal requirements imposed on the contractor by Whatcom County:</b>	See contract terms above
19	<b>Additional requirements imposed by Whatcom County to meet its own responsibilities to the awarding agency:</b>	See contract terms above
20	<b>Indirect Rate: Contractor approved rate or de minimis</b>	n/a
21	<b>Access to contractor's accounting records and financial statements as needed.</b>	Confirmed
22	<b>Closeout Requirements</b>	Full drawdown of contract or expiration of contract

**EXHIBIT "F"**  
(MEMORANDUM TO FILE)

FROM: ERIC CHAMBERS, SPECIAL PROJECTS MANAGER  
DATE: September 28, 2023  
RE: AMERICAN RESCUE PLAN ACT CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS- DETERMINATION OF ELIGIBLE USE, WHATCOM FAMILY YMCA

This memo is organized into four sections:

1. Summary of Proposed Uses
2. Eligible Use
3. Impacted Households or Community
4. Written Justification for Capital Projects

**Section 1: Summary of Proposed Uses**

Whatcom County is entering into a subrecipient agreement with Whatcom Family YMCA to preserve eighty-four (84) slots and add twenty (20) slots. Whatcom Family YMCA will maintain 20% of these slots for children from households that earn below the 80% AML for the City of Bellingham or who are eligible for the Working Connections Childcare Program. This is responsive to the negative economic impact families in the community experienced during the pandemic; in particular, this provider states:

*"The emotional and financial impacts of the pandemic on the children and families in our community are unprecedented and immeasurable...Though we have been providing childcare for 30 years in Whatcom County, the pandemic has created a challenging environment and added significant expenses to providing safe, affordable, and accessible care." Further, "...we had a significantly reduced number"*

According to data from the Opportunity Council, a local childcare access point in Whatcom County, temporary and permanent closures of childcare centers reduced care options for families during the pandemic. During the pandemic, 80% of Whatcom County childcare programs had to close at least temporarily. These losses are especially significant as Whatcom County was already a "child care desert" prior to COVID-19.

Through the proposed contract with Whatcom Family YMCA, Whatcom County is responding proportionately to the economic impacts of COVID-19 on Whatcom County households and communities.

**Section 2: Eligible Use**

The Department of the Treasury Final Rule implementing the Coronavirus State Fiscal Recovery Fund and the Local Fiscal Recovery Fund (SLFRF) established under the American Rescue Plan allows funds to be used for the purposes of childcare and early learning services. Childcare and early learning services are responsive to the pandemic's negative economic impacts on households and communities with young children. Per Treasury, "Under the final rule, childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities. Further, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures" (p. 4364, Federal Register / Vol 87, No. 18).

**Federal Regulations**

**Federal Register Vol 87, No 18, January 27, 2022 Rules & Regulations, 31 CFR Part 35**  
<https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

The final rule offers guidance on p. 4363-4364 identifying childcare and early learning as an eligible use of funds to provide assistance to households or populations who faced negative economic impacts due to COVID-19.

The final rule states:

*“As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the day. Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic. As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.*

*Low-income households are also more likely to lose access to quality childcare. The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.*

*Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.*

*In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households. This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay, and health and safety concerns. As a result, children’s school readiness has suffered, leading to potential long-term impacts on life outcomes. The impact also extended to parents. Parents, especially mothers, may face challenges in the workforce if early learning services are unavailable.*

*Treasury agrees with commenters’ analysis that challenges accessing or affording childcare have been widespread during the pandemic, affecting many jurisdictions and populations across the country. Disruptions to early care and learning services similarly have had broad impact and likely result in negative impacts for young children and their parents.*

Under the final rule, childcare and early learning services – including capital expenditures - are an eligible use of SLFRF funds. Discussed below is further information related to the eligibility of the population served through childcare and early learning programs funded by SLFRF.

## **Section 2: Impacted Households or Community**

The final rule allows the use of SLFRF funds for childcare and early learning services (including capital expenditures) targeted toward families and communities impacted by COVID-19.

In addition to the populations presumed eligible (page 4345), Whatcom County has designated additional classes of households as impacted and that should benefit from childcare programs and services implemented by the County:

- Households within ‘high-impact COVID-19 areas’ as defined by Washington State Department of Children, Youth and Families (DCYF).
- Households below 80% AMI for the City of Bellingham

Whatcom County seeks here to outline ways in which beneficiaries of childcare and early learning services were impacted by the pandemic.

### Impacted Communities

#### *Low to Moderate Income Families*

Page 4359 of the final rule states “Recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic, and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.”

Page 4447 defines moderate-income households (the upper limit for receiving assistance) as those with incomes at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published

most recently by the Department of Health and Human Services or those with incomes at or below 65 percent of the Area Median Income for its county and size of households based on data published most recently by the U.S. Department of Housing and Urban Development.

The project funded under this contract serves/will serve a number of low or moderate income-households, as defined by incomes below 300 percent of the federal poverty level or participation in childcare subsidies through the Child Care & Development Fund Program, Head Start, Early Head Start, and/or SNAP. The project sponsor's application states that they will provide a 20% increase of overall slots and a 44% increase in slots for families with low-moderate income. The project-sponsor will keep data on file regarding the incomes of clients served. Further, the project will require recording of a covenant ensures a continued public good by requiring that 20% of all child care slots are reserved for children of low-moderate income.

Whatcom County recognizes that in order to promote economic integration, it's imperative that childcare providers serve households with a diverse range of incomes. As such, childcare providers funded through SLFRF are unlikely to have more than 20-40% of enrolled families be low or moderate-income. Whatcom County recognizes the dual policy goals of healthy childcare business models and community integration as priorities for investments of SLFRF.

#### *Households below 80% AMI*

Whatcom County has identified the metric of households below 80% area median income (AMI) for the City of Bellingham as determined by the Department of Housing and Urban Development as negatively impacted and will receive benefits from childcare programs funded by ARPA SLFRF. An 80% AMI provides consistency with the definition of low to moderate income for the delivery of other federal and state programs. For household sizes of three and greater, 80% AMI is less than the 300% federal poverty guideline. For households of two, the 80% AMI threshold is \$2,290 above the 300% FPG presumed eligible (as of 2023), however, a household of two which includes a child eligible for these programs is a single-parent/income household. Status as a single-parent household is recognized by the Centers for Disease Control as an indicator of vulnerability to impacts from natural and anthropogenic disasters, including COVID-19.

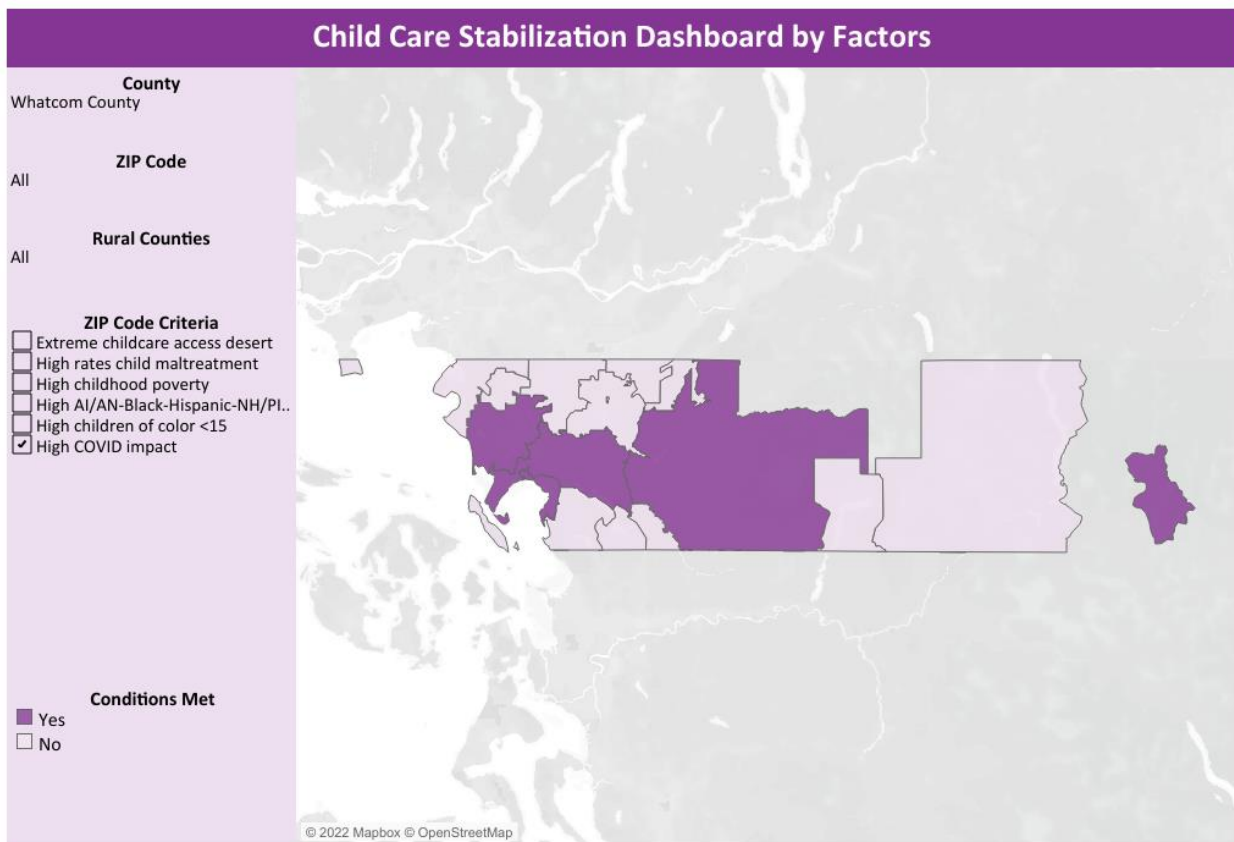
#### *Working Childcare Connections*

The Final Rule includes households that are eligible for childcare subsidies through the Child Care and Development Fund (CCDF) as impacted (pg 4348). In Washington State, the Child Care and Development Fund Plan includes the Working Connections Child Care Program. Households that qualify for the Working Connections Child Care Program are recognized by the Final Rule as an impacted household.

#### *DCYF High Impact COVID-19 Areas for Childcare*

Additionally, as described on p. 4350 of the final rule, Treasury allows recipients to "identify classes of households, communities, small businesses, nonprofits, or populations that have experienced a disproportionate impact based on academic research or government research publications, through analysis of their own data, or through analysis of other existing data sources."

The Washington State Department of Children, Youth and Families (DCYF) has compiled childcare access data to create a "[Child Care Stabilization Dashboard](#)", which among other things, shows communities across the state with the highest COVID-19 impact as it relates to childcare. According to the dashboard, "High impact COVID-19 areas are defined as zip codes where  $\geq 40\%$  of licensed providers reported any temporary COVID closure in the 14 months between March 2020-May 2021, AND the zip codes with the top quartile of COVID closure days." DCYF has classified the following Whatcom County zip codes as high-COVID impact areas for childcare: 98862, 98267, 98248, 98244, 98226, and 98225.



The program funded through this contract is located at 2410 Rimland Drive, Bellingham, WA 98226. This community is defined as a high-COVID impact area by DCFY and, thus, families seeking childcare in this zip code are considered an impacted community.

#### Section 4: Written Justification for Capital Projects

##### A. Background

The American Rescue Plan requires local jurisdictions to document use of funds for capital expenditures greater than \$1,000,000. Whatcom County has provided \$1,500,000 to Whatcom Family YMCA for the purpose of purchasing a facility to preserve eighty (80) child care slots and add twenty (20) additional slots.

##### B. Description of the Harm or Need to be Addressed

The COVID-19 public health emergency expanded an already growing childcare 'desert' in Whatcom County reducing the number of available child care slots by 20% across the state. The causes of the loss of slots was manifold: (1) reduced allowable density, (2) increased cost of supplies including personal protective equipment and cleaning supplies, (3) increased staffing costs, (4) unpredictability of staffing, and (5) unpredictability of children. Supporting the purchase of this building will reduce harm in the short and long term by reducing operational expenses, thus increasing resiliency.

##### C. Explanation of Why a Capital Expenditure is Appropriate

According to the [Whatcom County Childcare Demand Study](#), Whatcom County would need to increase age 0-5 childcare capacity by 5,817 slots and school-age capacity by 6,252 slots to meet the demand forecast. While programmatic changes to improve childcare and early learning quality are critical, growing childcare capacity (i.e. adding slots) requires capital expenditures.

Further, on January 25, 2022, the Whatcom County Council adopted Resolution 2022-005 Regarding Permanent Affordability of Child Care in Whatcom County which supports recommendations from the Whatcom County Child & Family Well-Being Task Force to prioritize increasing child care capacity by, among other strategies, "build new, expand existing, or re-purpose buildings for child care. This could involve buying land, building new child care facilities, and/or renovating current facilities to reduce the overall cost of running a child care facility."

By investing in this capital project, Whatcom County is implementing locally-based research and policy guidance to address this community-wide threat to economic, business and family wellbeing.

*D. Comparison of Proposed Capital Project Against At least Two Alternative Capital Expenditures and Demonstration of Why the Proposed Capital Expenditure is Superior*

The investment of \$1,500,000 for this project represents a significant value to the community when compared to other, similar projects. The selection of this project followed a highly competitive bidding process where not all applicants were funded. Proposals were evaluated based on project design, public benefit, budget, and provider capacity. The YMCA's project scored in the fundable range with a near perfect score in provider capacity and project feasibility when ranked by eight (8) internal and external reviewers. In comparison, one capital project was not selected for funding because the selection committee had "... concerns over available programing (limited hours of operation, no meals provided, etc.), ability to carry out the proposal at the same time as [another] project with a very small team, as well as location being not one of high priority...". In a second unfunded project, the committee felt that "the proposal did not include details of a program to operate onsite nor materials, equipment and/or structures to be utilized for outdoor play." In short, there was no guarantee—apart from a more comprehensive plan to operate in the facility—that there would be any public good provided from an award. Whatcom Family YMCA is a long-standing and well-trusted organization that has operated in Whatcom County since 1890 and has a high likelihood of offering childcare services into the future.



**EXHIBIT "G"**  
(CHILDCARE COVENANT)

**When Recorded Return to:**

Whatcom County Health and Community Services  
509 Girard Street, Bellingham WA 98225

Attention: Eric Chambers

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**CHILDCARE COVENANT**

Grantor: Whatcom Family YMCA Grantee: Whatcom County Abbreviated Legal: BARKLEY FAMILY VILLAGE CONDOMINIUM UNIT 1 & 2 -TOG WI UNDIV INT IN COMMON AREAS DESC AF 2022-0403114 Additional legals on page: Assessor's Tax Parcel Number(s):                    3803210464860001 & 3803210464860002
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THIS DECLARATION OF RESTRICTIVE COVENANTS (hereinafter referred to as "Covenant"), dated \_\_\_\_\_, 2023, by Whatcom Family YMCA, a non-profit organization registered in Washington State, and its successors and assigns (hereinafter referred to as "GRANTOR") is given in consideration of American Rescue Plan Act (ARPA) funds provided for the purpose of the purchase of real PROPERTY (hereinafter referred to as "PROPERTY") legally described below:

BARKLEY FAMILY VILLAGE CONDOMINIUM UNIT 1 & 2 -TOG WI UNDIV INT IN COMMON AREAS DESC AF 2022-0403114

This Covenant will be filed and recorded in the official public land records of Whatcom County, Washington and shall constitute a restriction upon the use of the PROPERTY described herein, subject to and in accordance with the terms of this Covenant, for ten years (10) years beginning after the purchase of the PROPERTY is complete.

RECITALS

WHEREAS the GRANTOR is currently leasing the PROPERTY located at 2410 Rimland Drive, Bellingham, WA 98226, commonly known as Units 1 and 2 of Barkley Family Village, a condominium, for the purpose of operating a licensed child care center in Whatcom County, and

WHEREAS the land and common areas of the PROPERTY are owned by Talbot Real Estate, a Limited Liability Company, and

WHEREAS, the GRANTOR entered into an agreement with the COUNTY for the consideration of funds from Whatcom County ARPA funds to purchase the PROPERTY for the express purpose of continuing to provide

licensed child care for a period not less than ten (10) years after the closing and recording of the sale of the PROPERTY, and recording of this covenant.

WHEREAS, the GRANTOR, agrees to reserve twenty percent (20%) of all child care slots for children from families meeting low-income thresholds as described in Section 4, Paragraph (b), and

WHEREAS, the GRANTOR is creating a real property covenant on the PROPERTY for purposes of ensuring the PROPERTY is used for the provision of licensed childcare for a period of not less than 10 years commencing on the date of closing and recording of the sale of the PROPERTY and recording of this Covenant.

NOW THEREFORE, in consideration of the promises and Covenants hereinafter set forth and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the GRANTOR intends, declares, and Covenants that the restrictive Covenants set forth herein governing the use, occupancy, and transfer of the PROPERTY shall be and are Covenants pertaining to the PROPERTY and running with the land for the term stated herein and are binding upon all subsequent owners of the PROPERTY and for such terms, except as specifically provided herein, and are not merely personal Covenants of the GRANTOR.

### SECTION 1 REPRESENTATIONS, COVENANTS AND WARRANTIES OF GRANTOR

GRANTOR hereby represents, Covenants and warrants as follows:

1. GRANTOR voluntarily establishes this real property covenant over the PROPERTY for a period of no less than 10 years commencing at closing and subject to the terms and conditions set forth herein exclusively for the purpose of ensuring the PROPERTY is actively used for purposes of licensed childcare services.
2. GRANTOR hereby Covenants and agrees not to sell, transfer or otherwise dispose of the PROPERTY or any portion thereof without first providing a written notice to the buyer and obtaining the agreement of any buyer or successor or other person acquiring the PROPERTY or any interest therein, that such acquisition is subject to the requirements of this Covenant and to the child care requirements provided for herein; *provided, however*, that nothing contained in this Covenant shall restrict transfers of interests.
3. GRANTOR will, at the time of execution, delivery and recording of this Covenant, have good and marketable title to the PROPERTY, free and clear of any liens or encumbrances (except encumbrances created pursuant to this Covenant or other permitted encumbrances identified in Section 2), including, without limitation, the exceptions set forth in the GRANTOR'S policy of title insurance.
4. GRANTOR warrants that it has not and will not execute any other Covenant or deed restriction with provisions contradictory to, or in opposition to, the provisions hereof other than the Permitted Encumbrances or as otherwise approved by the COUNTY.

### SECTION 3 RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

1. Upon execution of this Covenant by the GRANTOR, GRANTOR shall cause this Covenant and all amendments hereto to be recorded in the Whatcom County Auditor's Office. GRANTOR shall pay all fees and charges incurred in connection therewith.
2. GRANTOR intends, declares and Covenants, on behalf of itself and all future owners of the PROPERTY during the term of this Covenant, that this Covenant and the Covenants and restrictions set forth in this Covenant regulating and restricting the use, occupancy and transfer of the PROPERTY shall

- 2.1. constitute Covenants running with the land, encumbering the PROPERTY for the term of this Covenant, binding upon GRANTOR and GRANTOR'S successors in title and all subsequent owners of the PROPERTY and not merely personal Covenants of GRANTOR; and
- 2.2. bind the GRANTOR (and the benefits shall inure to the County and any past, present or prospective owner of the PROPERTY) and GRANTOR'S respective successors and assigns during the term of this Covenant.
3. GRANTOR hereby agrees that any and all requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that these restrictions run with the land. For the term of this Covenant, each and every contract, deed or other instrument hereafter executed conveying the PROPERTY or portion thereof shall expressly provide that such conveyance is subject to this Covenant, provided, however, the Covenants contained herein shall survive and be effective regardless of whether such contracts, deed, or other instrument hereafter executed conveying the PROPERTY or portion thereof provides that such conveyance is subject to this Covenant

#### SECTION 4 ENFORCEMENT OF CHILD CARE REQUIREMENTS

The PROPERTY will be bound by the terms of this Covenant at each sale or transfer, for the purposes of providing child care in Whatcom County. GRANTOR hereby declares and Covenants, on behalf of itself and all future owners of the PROPERTY, that, during the term of this Covenant, the County is a third-party beneficiary of and successor to each and every remedy provided in the Covenant or in law intended to insure the use of the PROPERTY for the purposes defined herein. The COUNTY may, in the event of the failure or default of the GRANTOR, insure the proper use of the PROPERTY as provided for in Covenant and exercise all rights and remedies available to the County for that purpose. Proper use is defined as:

1. The PROPERTY shall be used actively to provide licensed child care services for not less than ten (10) years after the closing and recording of the sale of the PROPERTY, and recording of this covenant.
2. At least 20% of the licenses child care slots offered by GRANTOR shall be filled by children from households that, at the time of enrollment and annually thereafter, have a gross annual household income at or below eighty percent (80%) of the local area median income, as defined by the United States Department of Housing and Urban Development (HUD) and adjusted for household size. In the event that HUD ceases to provide such estimates of area median income, then area median income shall mean such comparable figures for Whatcom County, Washington as published or reported by a federal, state, or local agency as the GRANTEE shall reasonably select. The COUNTY may, at its sole discretion, broaden eligibility to better reflect the needs of families in Whatcom County. Any such adjustments will be communicated to the GRANTOR per the notification requirements in Section 5, Paragraph 2;
3. The GRANTOR shall comply with all federal, state, and local laws and codes regarding the condition of the PROPERTY and any improvements to the PROPERTY;
4. In the event of default by the GRANTOR, the GRANTOR agrees to lease the PROPERTY to another child care provider, subject to mutual acceptance of standards terms and conditions for similar sized facilities and at a cost that preserve the public benefit.
  - 4.1. The COUNTY may waive this requirement if neither the GRANTOR nor the COUNTY can identify an appropriate TENANT within six (6) months of vacancy or in the event the COUNTY recovers the COUNTY award in full from the GRANTOR.
5. GRANTOR Covenants that it will not knowingly take or permit any action that would result in a violation of the terms of this Covenant. The COUNTY, together with GRANTOR, may execute and record any amendment or modification of this Covenant and such amendment or modification shall be binding on third

parties' rights granted under this Covenant.

6. GRANTOR acknowledges that the primary purpose for requiring compliance by GRANTOR with restrictions provided in this Covenant is to assure compliance with the child care use requirements imposed as a term of funding by the COUNTY, AND BY REASON THEREOF, GRANTOR IN CONSIDERATION FOR RECEIVING FUNDS TO PURCHASE THE PROPERTY HEREBY AGREES AND CONSENTS THAT THE COUNTY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREIN, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE BY SPECIFIC PERFORMANCE, GRANTOR'S OBLIGATIONS UNDER THIS COVENANT IN A STATE COURT OF COMPETENT JURISDICTION. GRANTOR hereby further specifically acknowledges that the beneficiaries of GRANTOR'S obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. If legal costs are incurred by the COUNTY, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from GRANTOR.

#### SECTION 5 MISCELLANEOUS

1. **Severability.** The invalidity of any clause, part, or provision of this Covenant shall not affect the validity of the remaining portions thereof.
2. **Notices.** Any Notice shall be in writing and shall be given by depositing the same in the United States mail, postage paid and registered or certified, and addressed to the party to be notified, with return-receipt requested, or by delivering the same in person to an officer or principal of such party. Notices deposited in the mail in the manner hereinabove described shall be effective upon mailing.
3. **Governing Law.** This Covenant shall be governed by the laws of the State of Washington and, where applicable, the laws of the United States of America.

[signature pages follow]

IN WITNESS WHEREOF, Grantor has caused this Covenant to be signed by its duly authorized representative, as of the day and year first above written.

**Grantor:**

**Whatcom Family YMCA**

a Non-Profit Organization Registered in Washington State

By: \_\_\_\_\_

Name: Bill Ziels

Title: Executive Director

STATE OF WASHINGTON )

) ss.

COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that Bill Ziels is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a principle of Whatcom Family YMCA, to be the free and voluntary act of such limited liability corporation on behalf of such company on behalf of such company for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

(Seal or Stamp)

\_\_\_\_\_  
*(Signature of Notary)*

\_\_\_\_\_  
*(Legibly Print or Stamp Name of Notary)*

NOTARY PUBLIC in and for the State of Washington  
My Commission Expires:

IN WITNESS HEREOF, the Whatcom Family YMCA executed this Covenant on the \_\_\_ day of \_\_\_\_\_, 2023.

WITNESS:

entity, a  
nonprofit corporation in the State of Washington

By: \_\_\_\_\_

Name

Its: Title

Dated: \_\_\_\_\_

STATE OF WASHINGTON,        }  
  }SS.  
County of Whatcom         }

I certify that I know or have satisfactory evidence that Billie-Sue Rinn is the person who appeared before me, and said person acknowledged that he/she/they signed this instrument, on oath stated that he/she/they is authorized to execute the instrument and acknowledged as the Administrative Secretary/Grant Coordinator of the Whatcom County Executive's Office to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Washington

Printed Name: \_\_\_\_\_

Residing at Bellingham

My appointment expires \_\_\_\_\_