

WHATCOM COUNTY CONTRACT INFORMATION SHEET		Whatcom County Contract No. _____	
Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing	
Contract or Grant Administrator:		Christopher D'Onforio	
Contractor's / Agency Name:		Sean Humphrey House	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/> No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#:
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	Contract Cost Center:		133100 / 129100
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):		
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<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 exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 	
\$	200,000		
This Amendment Amount:			
\$			
Total Amended Amount:			
\$			
Summary of Scope: This funding agreement provides support in the form of a forgivable grant as well as a recoverable loan contingent by SHH's performance of milestone achievements.			
Term of Contract:	9 Months	Expiration Date:	08/31/2023
Contract Routing:	1. Prepared by:	JT	Date: 01/30/2023
	2. Attorney signoff:	C. Quinn	Date: 01/12/2023
	3. AS Finance reviewed:		Date:
	4. IT reviewed (if IT related):		Date:
	5. Contractor approved:		Date:
	6. Submitted to Exec.:		Date:
	7. Council approved (if necessary):	AB2023-111	Date:
	8. Executive signed:		Date:
	9. Original to Council:		Date:

WHATCOM COUNTY
FUNDING AGREEMENT
Karen Durham House Acquisition

Sean Humphrey House
Recipient

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PART I: PROJECT SUMMARY

1.01 Parties to Agreement

The parties to this agreement (the "Agreement") are the **Whatcom County, a municipal corporation** (the "COUNTY") or its successor Agency, and **Sean Humphrey House, a Washington nonprofit corporation** (the "RECIPIENT").

1.02 Purpose

The purpose of this Agreement is for the COUNTY to financially assist RECIPIENT in carrying out a project ("Project") as described in Section 1.04 of this Agreement.

1.03 Notices

All notices, demands and consents under this Agreement shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail, prepaid, to the addresses below, or at such other addresses as any party may have designated in writing to the other party hereto. Notice shall be delivered to:

COUNTY ("Project Manager"):

Adrienne Solenberger
Affordable Housing Specialist
Whatcom County
509 Girard Street
Bellingham, WA 98225
(360) 778-6049

RECIPIENT:

Elizabeth Page
Sean Humphrey House
1630 H Street
Bellingham, WA 98225
Tax ID #: 91-1573874
UEI #: KFJLHCN3MVM7

With a copy to
Whatcom County Executive's Office
311 Grand Ave
Bellingham, WA 98225

1.04 Project Description

The RECIPIENT will acquire a vacant six-bedroom home in order to provide housing and operations as an Adult Family Home for individuals with HIV.

1.05 Project Location

The Project will be located at the following location ("Property") within the COUNTY:

Site Address:	1210 32 nd Street
Parcel Number(s):	370306 222101 0000 (PID 22345)
Short Legal:	PTN LOT 6 PADDEN COURT PARTITION PLAT IN SE ¼ SW ¼ SEC 6, T 37 N, R 3 E

1.06 Scope of Work

A. COUNTY Responsibilities

The COUNTY is responsible for providing funding for the Project as described in Section 1.07(a), for the administration of the Agreement, and for monitoring that funds are used in accordance with all the applicable funding program requirements.

B. General Administrative Tasks

The RECIPIENT is responsible for the following administrative tasks:

- 1) Meeting all federal, state and local requirements for COUNTY funded projects, including but not limited to the following:
 - a) Obtaining any necessary permits from federal, state and local agencies as required; and
 - b) Regularly monitoring project progress and compliance with applicable federal, state and COUNTY regulations and requirements.
- 2) Establishing and maintaining administrative, financial, reporting and record keeping systems consistent with the requirements of the COUNTY funding program:
 - a) Establishing a financial and record keeping system for Project;
 - b) Completing any applicable civil rights requirements;
 - c) Submitting Closeout Performance Reports;
 - d) Preparing and submitting payment requests to the COUNTY;
 - e) Arranging for monitoring visits; and
 - f) Resolving all monitoring issues.

C. Project Scope of Work

The RECIPIENT will undertake the following activities:

- 1) Acquisition – The RECIPIENT will acquire the home.
- 2) Minor modifications and Occupancy – The RECIPIENT will undertake minor modifications to meet any group home licensing requirements, and begin operations of the facility as a licensed group home, occupied by 6 low-income individuals with HIV.
- 3) Close out - Upon completion of the work, the RECIPIENT will submit documentation of project close-out.
- 4) Monitoring - The RECIPIENT will keep records and provide access to the property as required throughout the Affordability Period.

1.07 COUNTY Award and Project Budget

A. COUNTY Award

The COUNTY has awarded no more than **\$200,000** for eligible costs and expenses incurred for the Project. The source of COUNTY funding includes:

Fund	Housing Award	TOTAL
County 1406 Funds	100,000	
County 1590 Funds	100,000	
County EDI Funds		
Other:		
TOTAL	\$ 200,000	\$ 200,000

B. Project Budget

The total eligible Project costs are shown as follows:

Eligible Costs:	COUNTY 1406 Funds	COUNTY 1590 Funds	Other PUBLIC Funds	Other (Non-Public) Funds	Total
Acquisition	\$ 100,000		\$ 628,000	\$ 27,000	\$ 755,000
Development hard costs		100,000		98,168	198,168
Project soft costs					
Reserves				15,000	15,000
Developer Fee					
Relocation					
Total Eligible Costs:	\$ 100,000	\$100,000	\$ 628,000	\$ 140,168	\$ 968,168

The RECIPIENT may make adjustments between Project cost line items not exceeding 15% of the line total, if approved in advance by the COUNTY Project Manager.

C. Project Operational Assistance Budget

- 1) COUNTY Rental Assistance or Supportive Services Assistance.
The Project has not been awarded COUNTY financial assistance in conjunction with this Agreement to support the operation of the Project or the payment of rent when the Project is completed and occupied.
- 2) Project Based Rental Assistance - Non-County Sources.
The Project has not been awarded federal Section 8 assistance or other similar non-COUNTY project-based assistance to support households that will occupy the Project.

1.08 Project Schedule

A. Time of Performance

- 1) Work Completion. The Project activities described in this Agreement shall commence within 30 days after the date this Agreement is fully executed by both parties and be completed no later than August 1, 2023.
- 2) Project Schedule. The Project schedule shall proceed as follows:
 - a) Project Commences January 1, 2023
 - b) Acquisition February 1, 2023
 - c) Minor Modifications Complete April 15, 2023
 - d) Licensing and Occupancy May 1, 2023
 - e) Project Completion Closeout: July 1, 2023
- 3) Authorized Costs Prior to Contract Execution. The RECIPIENT has not incurred allowable costs prior to execution of this Agreement.

B. Continued Affordability

Upon completion of the activities described in the Project Description, the RECIPIENT agrees to continue to serve the target population described in Section 1.09 for the balance of the Affordability/Commitment Period defined in Section 1.10. This Agreement will remain in effect for the balance of the Affordability/Commitment Period, or until all remaining funds owed to the COUNTY are repaid, whichever is longer.

1.09 Project Benefit

Funding for this Project was awarded based on the representations and assurances made by RECIPIENT that the Project will provide the following public benefits and commitments.

A. Activity Type

The Project being funded by the COUNTY includes the following activities:

- Acquisition of Existing Housing

B. Population Served

Funding for this Project was awarded based on the representations and assurances made by RECIPIENT that the Project will serve the following persons:

- Homeless or at risk of homelessness
- Low income affordable housing

C. Restricted Housing Units

The Project has the following number of units with income, rent or re-sale restrictions:

Funding Source	# of restricted units	Tenure	Fixed or Floating Units
County 1590/1406	6	Rental	Fixed
EDI		Rental	Fixed
ARPA		Rental	Fixed

D. Low-Income Benefit

- 1) Income Target. The RECIPIENT will ensure that the Project is occupied by households that, at the time of initial occupancy, have gross annual household incomes as follows:

# of Units	Income Target	# of 1406/1590 units
6	<= 60% AMI	6
6		6

- 2) **Continued Benefit.** The Project requires continued benefit to low-income households or persons beyond initial occupancy during the Affordability/Commitment Period, or until all remaining funds owed to the COUNTY are repaid, whichever is longer, with rent restrictions as specified in this Agreement. The RECIPIENT will submit annual reports to the COUNTY that certify income level for tenants occupying units assisted with COUNTY funds.

1.10 Affordability/Commitment Period

The Affordability/Commitment Period is the number of years during which the Project financed by this Agreement is required to serve the target population described in Section 1.09, or until all remaining funds owed to the COUNTY are repaid, whichever is longer.

A. COUNTY Commitment

For COUNTY funded activities, the Commitment Period for this Agreement will be twenty (20) years from the date of "project completion," or until all loan payments due and payable to COUNTY from RECIPIENT are received, whichever period is longer.

Project completion means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of the COUNTY funding source rules; the final drawdown has been disbursed for the Project; and the Project completion information has been received by the COUNTY and entered into the disbursement and information system established by COUNTY. The RECIPIENT is responsible for notifying the COUNTY that the Project has been completed, all requests for (non-service) funds have been submitted and disbursed, and all Project beneficiary information has been provided to the COUNTY in order to establish the Project completion date.

1.11 Minimum Housing and Property Standards

The Project must meet the minimum housing and property standards established by all federal, state, and local guidelines. The Project will not be considered complete until the COUNTY has conducted a Housing Quality Standards inspection to determine that the Project meets these minimum standards. The COUNTY will perform on-site inspections of the housing units during the Affordability/Commitment Period to determine ongoing compliance with the minimum standards and to verify annual reports submitted by the RECIPIENT are in accordance with this Agreement.

1.12 Management and Operations

Good management is critical to the overall success of the Project. The RECIPIENT will be required to submit an operations and management plan to the COUNTY for approval prior to Project completion. Contact the County Project Manager for specific requirements.

1.13 Reserve Requirements

Unless otherwise approved by the COUNTY, the RECIPIENT shall make best efforts, following Project completion, to fund all Replacement Reserves at a minimum amount of \$1,400 annually.

1.14 Fees

The RECIPIENT may not charge fees that are not customarily charged in rental housing, such as laundry room access fees. The RECIPIENT may charge reasonable application fees to prospective tenants, parking fees in neighborhoods where such fees are customary, and the fees for the cost of non-mandatory services such as meal or bus service.

1.15 Affirmative Marketing

It is the affirmative marketing goal of the COUNTY to assure that individuals who normally might not apply for vacant rehabilitated, constructed or for sale units, or rental assistance, because of their race or ethnicity: know about the vacancies; feel welcome to apply; and have the opportunity to rent or purchase the units. The RECIPIENT must affirmatively market units offered financial assistance from the COUNTY in accordance with federal and state fair housing guidelines. Projects with five or more units assisted with COUNTY funds must provide an Affirmative Marketing Plan prior to COUNTY payment of any incurred expenses of the RECIPIENT.

1.16 Tenant Selection

The RECIPIENT must adopt and follow written tenant selection policies and criteria that:

- 1) Limit the housing units financially assisted by the COUNTY to those households with income targets set forth in Section 1.09(D);
- 2) Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, to not damage the housing, to not interfere with the rights and quiet enjoyment of other tenants);
- 3) Limit eligibility or give preference except as allowed in Section 1.09(B), Population Served and limited by Section 2.12(C), Housing Preferences;
- 4) Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance: Housing Choice Program or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document;
- 5) Provide for the selection of tenants by referral from the Whatcom Homeless Service Center; and
- 6) Give prompt written notification to any rejected applicant of the grounds for any rejection.

1.17 Tenant Rent

A. Overview

Tenants must be income qualified prior to move in or prior to COUNTY funding for acquisition of occupied units. A maximum restricted rent is established for each housing unit assisted with COUNTY funds, no higher than Affordable Rent for the target income category based on the number of bedrooms, as defined and published periodically by the U.S. Department of Housing and Urban Development (hereinafter “HUD”); www.hud.gov/portal/datasets/fmr.html . The COUNTY waives the unit affordability restrictions for existing over-income tenants for up to two years of the date of the Agreement.

The COUNTY will use HUD’s schedule of maximum Fair Market Rent limits; and income level served for Whatcom County, as published periodically by HUD, www.hud.gov/portal/datasets/fmr.html (rent limits) and <https://www.huduser.gov/portal/datasets/il.html> (income limits).

B. Rent Increases

Housing units within the Project must be rented to income-qualified households as set forth in this Agreement and the rent on the unit must be restricted to ensure affordability as set forth

in this Agreement. If rent limits rise, the rent may be increased depending on the terms of the lease and/or applicable landlord-tenant law. The COUNTY may, in its discretion, provide an allowance for the RECIPIENT to raise rents above rent limits if the Project has experienced extraordinary expenses so long as the higher rent remains consistent with the applicable affordability restrictions as delineated in this agreement.

All rent increases are subject to other funder restrictions, and State and local law. If the Project includes federal HOME funds, then those units must follow HOME rent restrictions, which may differ slightly.

C. Over-Income Tenants

Tenants of the Project who are income-eligible at the time of their initial occupancy or the time of COUNTY funding, whichever is later, are not generally required to be relocated when their incomes exceed the restrictions of their unit. However, such over-income tenants are subject to separate mandatory or optional rent increases, or both, as follows: (1) If a tenant's income surpasses 140% of the maximum income limit for the unit, the RECIPIENT must charge the maximum restricted rent for that unit, and (2) If a tenant's income surpasses 65% of median income, the RECIPIENT has the option of raising the rent to a level up to 30% of the tenant's income at the following year's income certification, regardless of the maximum restricted rent. Upon unit turnover, rents may be adjusted to the maximum allowable rent based on number of bedrooms and affordability level.

D. Rent Approval

Rents proposed for units subject to the maximum rent limitations must be submitted to the COUNTY for review and approval.

The RECIPIENT will submit initial rents to the COUNTY for approval at the time of Project completion. After Project completion, the COUNTY will review rents for approval at the time of annual report submission.

PART II: PROGRAM TERMS AND CONDITIONS

2.01 Non-Recourse Award

The funding provided by the COUNTY under this Agreement is a non-recourse loan or grant to the RECIPIENT as specified in Section 3.02(A) and the RECIPIENT, its lessees and their respective assigns, members, partners, officers, employees, agents and contractors shall have no personal liability for payment of the indebtedness evidenced hereby or performance of the covenants set forth in the Note, in the Deed of Trust or in this Agreement and the sole recourse of the holder of the Note shall be confined to the exercise of its rights under the Deed of Trust. Nothing however, shall diminish RECIPIENT's liability for damages or deficiencies resulting from fraud, waste, material misrepresentation and the misappropriation of funds.

2.02 Amendments and Modifications

The COUNTY or the RECIPIENT may request an amendment or modification of this Agreement. However, such amendment or modification shall not take effect until approved, in writing, by the COUNTY and the RECIPIENT. Any material change in the Project, its operations, financing, ownership, management, or any activity related to this Agreement or the Note or Deed of Trust shall be immediately brought to the attention of the COUNTY in writing for review and approval and may result in restructuring of the terms and conditions of the funding provided under this Agreement.

2.03 Prevailing Wage

The Project may require payment of “prevailing wages” in compliance with Chapter 39.12 RCW. The RECIPIENT should consult with the Washington State Department of Labor and Industries and/or legal counsel prior to applying for funding to determine whether prevailing wages must be paid on this Project and, if so, whether commercial or residential rates apply. If prevailing wages are required to be paid under Chapter 39.12 RCW, RECIPIENT shall comply, and require that its general contractor for the Project complies, with these prevailing wage requirements.

2.04 Evergreen Sustainability Standards

The RECIPIENT agrees to follow the Washington State requirements for Evergreen Sustainable Development Standards, where applicable. Details are available through the Washington State Department of Commerce (<http://www.commerce.wa.gov/Programs/housing/TrustFund/Pages/EvergreenSustainableDevelopment.aspx>).

2.05 Acquisition, Anti-Displacement and Relocation

Relocation assistance is required if the Project displaces a tenant who is low-income. COUNTY funds may not be used if the result would be displacement of low-income residents. If applicable, the RECIPIENT must submit a relocation plan to the COUNTY, for review and approval that complies with this requirement.

2.06 COUNTY Recognition; Project Funding Sign

The RECIPIENT shall ensure recognition of the role of the COUNTY in providing financial assistance through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the RECIPIENT will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. The RECIPIENT shall post a Project Funding Sign at the Project construction site(s). Sign graphics shall be approved by the COUNTY and shall be installed at the commencement of work on the site through Project completion and occupancy.

2.07 Annual Reporting

Annual performance reports, rents and income certifications must be completed by the RECIPIENT and submitted to the COUNTY as prescribed by the COUNTY funding agreement and outlined in Exhibit A. The reserve account balances shall be carried forward each year and reserve account activity shall be identified on the Annual Report. Failure to file timely annual performance reports in accordance with COUNTY requirements may result in penalties that may include, but not be limited to, the COUNTY denying the RECIPIENT’s application in future funding rounds.

2.08 Documentation and Record Keeping

A. Records to be Maintained

The RECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- 1) Records providing a full description of each activity undertaken;
- 2) Records required to determine the eligibility of activities;
- 3) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with COUNTY assistance;
- 4) Records documenting compliance with the civil rights components of HUD-funded programs;

- 5) Financial records as required by 24 CFR 570.502, 24 CFR §92.508 and 24 CFR 84.21–28;
- 6) Labor standards records required to document compliance with the Davis Bacon Act, the provisions of the Contract Work Hours and Safety Standards Act, and all other applicable Federal, state and local laws and regulations applicable to HUD-funded construction projects;
- 7) Documentation that verifies compliance with Section 3 of the Housing and Urban Development Act of 1968;
- 8) Other records necessary to document compliance with Subpart K of 24 CFR Part 570 and 24 CFR §92.508; and
- 9) Records as required for public works projects required by Chapter 39.12 RCW.

B. Access to Records and Retention

All such records and all other records pertinent to this Agreement and work undertaken under this Agreement will be retained by the RECIPIENT for a period of six years after final audit of the COUNTY, unless a longer period is required to resolve audit findings or litigation. In such cases, the COUNTY will request a longer period of record retention.

2.09 Audits & Inspections

All RECIPIENT records with respect to any matters covered by this Agreement will be made available to the COUNTY, HUD, and duly authorized officials of the state and federal government, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

Any deficiencies noted in audit reports must be fully cleared by the RECIPIENT within 30 days after receipt by the RECIPIENT. Failure of the RECIPIENT to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

The RECIPIENT hereby agrees to have an annual agency audit conducted in accordance with current COUNTY policy concerning RECIPIENT audits and OMB Circular A-81.

2.10 Close Out

A. Project Completion

The RECIPIENT will complete close-out procedures when the scope of work in Section 1.06 has been completed. At this stage, all costs to be paid by the COUNTY should have been incurred with the exception of audit and inspection costs and any Retainage held by the COUNTY. The RECIPIENT shall complete these steps as required by the COUNTY to ensure compliance with this Agreement, including submission of all financial records to verify eligible costs, final housing and property inspection, including a certificate of occupancy, reports demonstrating compliance with labor requirements, and information regarding Project beneficiaries, including income, household size and race/ethnicity if available.

B. Final Close Out

Upon the expiration of the Affordability/Commitment Period and payment in full of the promissory note securing RECIPIENT’s performance under this Agreement (the “Note”), the COUNTY will complete Final Close Out of the Project. The Deed of Trust recorded against the Property will be reconveyed and the Note will be marked “Paid” and returned to the RECIPIENT of record. Any excess COUNTY monies that may be in the RECIPIENT'S possession shall be returned by the RECIPIENT to the COUNTY.

2.11 Debarred, Suspended, or Ineligible Contractors and Participants

A. Recipient Certification

The RECIPIENT certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.

B. Lower Tier Requirements

The RECIPIENT further agrees by signing this Agreement that it will search a listing of individuals and entities debarred, suspended, declared ineligible, or voluntarily excluded from participation by HUD, and will not knowingly enter into any lower tier covered transaction with any individuals and entities debarred, suspended, declared ineligible, or voluntarily excluded from participation by HUD or the State of Washington that is included in the financial assistance provided by the COUNTY. The RECIPIENT will use the System for Award Management website at <http://sam.gov/> to search for any individuals and entities that are excluded from participation in HUD funded projects, and the Washington State Department of Labor & Industries Debarred Contractor List at <http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>.

2.12 Nondiscrimination and Equal Opportunity

A. General Provisions

The RECIPIENT shall make the Project facilities available to the public in a manner that assures fair, equal, and non-discriminatory treatment to all persons without regard to race, creed, color, national origin, sex, honorable discharged veteran or military status, sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability. No personnel shall be refused service, be given discriminatory treatment, be denied any privilege, use of facilities, or participation in activities on account of race, creed, color, national origin, sex, honorable discharged veteran or military status, sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability, nor shall any person be required to participate in any religious worship, exercise, or instruction. The funds provided under this Agreement shall not be used to fund religious worship, exercise, or instruction.

B. Equal Access to Housing Regardless of Sexual Orientation or Gender Identity

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

C. Housing Preferences

Projects which have committed to limit eligibility or preference to a particular segment of the population may do so only if permitted by the COUNTY and 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

The RECIPIENT 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.

2.13 Other requirements

The RECIPIENT agrees to comply with the following requirements as applicable to the Project.

A. Administration/Audits/Financial Management

- 1) Found within 2 CFR § 200 (OMB Circular A-81, commonly referred to as Uniform Guidance).

B. Affirmative Action/Laws Against Discrimination

- 1) Nondiscrimination in Benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1;
- 2) Nondiscrimination in Employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352;
- 3) Nondiscrimination in Housing, Title III of the Civil Rights Act of 1968 (Public Law 90284; 42 U.S.C. 3601), 24 CFR 5;
- 4) Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90;
- 5) Nondiscrimination in Federally Assisted Programs, 10 CFR Part 104;
- 6) Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375, and supplemented in U.S. Department of Labor regulations, 41 CFR 60, and Executive Order 13279;
- 7) Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. Section 793;
- 8) Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. Section 794;
- 9) American with Disabilities Act 1990, 42 U.S.C. 12101 et seq ; and

10) Displaced Persons - Title II and III of the Uniform Relocation Act of 1973, Section 504, 29 U.S.C. Section 794;

C. Conflicts of Interest

- 1) The RECIPIENT agrees to abide by the provisions of 24 CFR § 84.42 and 24 CFR § 570.611, which includes maintaining a written code or standards of conduct that will govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- 2) The RECIPIENT covenants that its employees have no interest and will not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. The RECIPIENT further covenants that in the performance of this Agreement, no person having such interest will be employed.
- 3) Conflict of Interest, 24 CFR Part 84.44, OMB Circular A-110, 24 CFR § 92.356 and 24 CFR 570.611(2).
- 4) Anti-Kickback Act, 18 U.S.C. 874, 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

D. Environmental Standards

- 1) Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846, 24 CFR 35;
- 2) Asbestos, USEPA Standards for Hazardous Air Pollutants.

E. Section 504 of the Rehabilitation Act of 1973, as Amended

- 1) The RECIPIENT certifies that no otherwise qualified individual will, solely by reason or his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds (29 U.S.C. 794); and
- 2) Accessibility requirements in 24 CFR 5.105(a) Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

2.14 Section 3 Economic Opportunities

The Project is not a covered project or activity subject to Section 3, Housing and Urban Development Act of 1969, 12 U.S.C. 1701u (see 24 CFR 570.607(b)).

PART III: FINANCIAL TERMS

3.01 Eligible COUNTY Expenses

The COUNTY will reimburse the Recipient for those expenses eligible under the applicable funding program as provided in Section 1.07(B).

A. Affordable and Supportive Housing Sales and Use tax / 1406 Funds

The RECIPIENT agrees to use COUNTY 1406 funds for eligible expenses, as identified in RCW 82.14.540.

B. Housing and Services Sales and Use tax / 1590 Funds

The RECIPIENT agrees to use COUNTY 1590 funds for eligible expenses, as identified in RCW 82.14.530.

3.02 Funding Terms

A. COUNTY Award

The COUNTY is providing the funding awarded under this Agreement in the following forms and amount and from the following sources:

Funding Form	County 1406 Funds	County 1590 Funds	Total
Amortized Loan	\$	\$	\$
Deferred Payment Loan	100,000		100,000
Recoverable Grant			
Grant		100,000	100,000
TOTAL	100,000\$	100,000\$	\$ 200,000

B. Deferred Loans

The COUNTY award in the form of a Deferred Payment Loan shown above in the amount of \$100,000 is provided as a no interest loan with payment due in full as follows:

- 1) The Deferred Payment Loan balance, at the COUNTY’s option, is due in the event that the Property subject to this Agreement is sold, transferred, whether by operation of law or otherwise, refinanced, or ceases to be used to provide benefits to persons as outlined in this Agreement; or
- 2) Upon failure of the RECIPIENT to comply with the terms of this Agreement, Covenant, Note, or Deed of Trust.
- 3) If any installment of interest and principal or any part of such installment remains unpaid for a period of fifteen (15) days from its due date, the RECIPIENT hereby agrees to pay to the COUNTY a late charge in the amount of four percent (4.00%) of the unpaid amount of such installment.
- 4) Payments shall be made to the COUNTY at its address specified at the beginning of this Agreement, or to such other party and address as the COUNTY may designate in writing. Said principal and interest shall be paid in lawful money of the United States.

C. Grants

The COUNTY award in the form of a Grant as shown above in the amount of \$100,000 will have no expectation of repayment if the terms and conditions of this Agreement have been met.

3.03 Monitoring Fee

The COUNTY Monitoring Fee of \$0 is due at closing or before a voucher is processed and approved by the COUNTY.

3.04 COUNTY Retainage

Ten percent (10%) of the COUNTY deferred loan funds awarded to the Project will be retained until the applicant has completed the Project and complied with all submittal requirements and terms and conditions of this Agreement, including Project close out.

3.05 Matching Funds

This Project does not include a requirement for matching funds.

3.06 Requirements for Drawdown

Funds will be disbursed based on the COUNTY award in this Agreement.

A. Prior to Drawdown

Before disbursement of COUNTY 1406 funds is approved, the following preconditions shall have been satisfied:

- 1) Execution of the Note, Deed of Trust and Covenant and recording of the Covenant and Deed of Trust, pursuant to Section 3.08A below.

- 2) Presentation of evidence of standard lender's title insurance and all other insurance required under section 3.10(C) in a form acceptable to the COUNTY.
- 3) The RECIPIENT shall have submitted any required Affirmative Marketing Plan for the Project, consistent with COUNTY funding guidelines.
- 4) Prior to final drawdown of COUNTY funds awarded to the Project, the RECIPIENT must complete the Project, submit closeout documentation to the COUNTY, and meet the time of performance required by this Agreement.

B. Vouchers

- 1) For all expenses other than acquisition not paid at time of closing, the RECIPIENT will submit payment requests ("Vouchers") to the COUNTY with back-up documentation.
- 2) If the COUNTY's financial assistance is used for acquisition, the preliminary closing statement prepared by the title company or escrow agent may serve as back-up documentation for the Voucher.
- 3) The RECIPIENT may not request disbursement of funds until the funds are needed for payment of eligible costs.
- 4) The COUNTY will make a determination whether each invoice or bill is an eligible cost. If an invoice or bill is determined to include an ineligible cost, the amount must be subtracted from the total requested.
- 5) The COUNTY will withhold payment on Vouchers as set forth in Section 3.04, COUNTY Retainage.

3.07 Security

A. Promissory Note and Deed of Trust

The Deferred Payment Loan shall be evidenced by the Note and secured by the Deed of Trust in favor of the COUNTY. The Deed of Trust shall be recorded in Whatcom County, Washington and the original returned to the COUNTY after recordation.

The amount secured by the Deed of Trust and Note shall be **ONE HUNDRED THOUSAND DOLLARS** (\$100,000).

B. Title Insurance

The COUNTY requires the RECIPIENT to purchase standard lender's title insurance in the amount of the COUNTY financial assistance. Evidence of all insurance commitments must be provided to the COUNTY prior to execution of this Agreement. The standard coverage lender's policy of title insurance insuring the lien position of the Deed of Trust shall be in an amount not less than **\$100,000**.

C. Covenant Running with the Land

The Covenant shall run with the land and limit the use of the Property as set forth in Section 1.09, Project Benefit through the Affordability/Commitment Period as set forth in Section 1.10, Affordability/Commitment Period. The Covenant shall be recorded in Whatcom County, Washington and the original returned to the COUNTY after recordation.

D. Cross Default

An event of default under any of the Agreement, Note, Deed of Trust or Covenant constitutes an event of default under the other documents. The COUNTY has not and will not cross default or cross collateralize the Loan, Deferred Payment Loan or Recoverable Grant made hereunder with any other loan or award.

3.08 Other Conditions of Financial Assistance

The obligation of the COUNTY to provide financial assistance under this Agreement shall be subject to the fulfillment at the time of closing of each of the following conditions:

A. Execution and Delivery of Agreement, Note, Deed of Trust and Covenant

The RECIPIENT shall have executed and delivered to the COUNTY this Agreement, the Note, Deed of Trust, and the Covenant all in acceptable form to COUNTY. The Property and any other assets provided as security for this financial assistance shall further be free and clear of all prior liens and encumbrances, except those which are disclosed by RECIPIENT to COUNTY in writing prior to the date of this Agreement.

B. Subordination

The RECIPIENT may request to refinance senior debt that is secured by the Property. Such approval will be at the COUNTY'S sole discretion and will not be unreasonably withheld. The RECIPIENT will need to submit a written request documenting their proposed plan and how it will enhance the Project, the organization, and provide public benefit.

C. Approval of Others

The RECIPIENT shall have secured all necessary approvals or consents required with respect to this transaction by any mortgagor, creditor or other party having any financial interest in the RECIPIENT or its business.

D. Execution and Certification of Resolution of Board of Directors

The RECIPIENT shall have executed and delivered to the COUNTY, a duly certified copy of a resolution of the RECIPIENT authorizing the execution and delivery by the RECIPIENT of this Agreement, the Note, Deed of Trust and Covenant.

E. Free of Environmental Risks and Contaminants

The RECIPIENT shall have delivered to the COUNTY, as requested, a letter stating that the Property is free of any known environmental risks and contaminants, except as otherwise disclosed in Phase I Environmental Site Assessment or additional environmental reports.

3.09 Affirmative Covenants of the Recipient

The RECIPIENT agrees to comply with the following covenants from the date hereof until the COUNTY has been fully repaid with interest, unless the COUNTY or its assigns shall otherwise consent in writing:

A. Payment under the Note

The RECIPIENT agrees to pay punctually the principal and interest on the Note according to its terms and conditions and to pay punctually any other amounts that may become due and payable to the COUNTY under or pursuant to the terms of this Agreement or the Note. Additionally, RECIPIENT agrees to reimburse COUNTY (or other party designated by COUNTY in writing) for any "insufficient funds" or like service charges incurred by COUNTY, which charges arise from RECIPIENT's conduct related to payments herein.

B. Payment of Other Indebtedness

The RECIPIENT agrees to pay punctually and otherwise keep in good standing any and all other indebtedness it has or incurs in the future with respect to the Project. RECIPIENT hereby authorizes any and all parties to whom RECIPIENT is now, or in the future becomes, indebted with respect to the Project to provide the COUNTY with any and all information requested by the COUNTY in regard to the repayment of such other indebtedness by RECIPIENT.

C. Maintain and Insure Property

1) RECIPIENT will obtain and maintain in force at least the following minimum insurance coverages covering all activity under this Agreement, and as to which the COUNTY shall be named as additional insured (with any endorsement required by the policy):

- a) Workers Compensation Statutory Amount
- b) Broad Form Comprehensive General Liability \$1,000,000 per occurrence
\$2,000,000 aggregate

c) Property

The RECIPIENT agrees at all times to maintain the Property or cause it to be maintained in such condition and repair that the COUNTY's security will be adequately protected. The RECIPIENT also agrees to maintain or cause to be maintained during the term of the Agreement adequate hazard insurance policies covering fire and extended coverage and such other hazards as may be deemed appropriate in amounts and form sufficient to prevent the RECIPIENT or its successor-in-interest from becoming co-insurer, and issued by companies satisfactory to the COUNTY with acceptable loss payee clauses in favor of the COUNTY. Such insurance shall be in an amount not less than the greater of (a) the total debt secured by the Deed of Trust, or (b) one hundred percent (100%) of the replacement value of the improvements on the Property.

In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, RECIPIENT shall have the right to rebuild the Project and to use all available insurance or condemnation proceeds therefore, provided that (a) such proceeds are sufficient to rebuild the Project in a manner consistent with the Deed of Trust, or if such proceeds are insufficient to rebuild the Project in a manner consistent with the Deed of Trust, then RECIPIENT has funded any deficiency; (b) COUNTY shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and such approval shall not be unreasonably withheld; and (c) no material default then exists under this Agreement, the Note the Deed of Trust or the Covenant. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then such insurance and/or condemnation proceeds may be used for partial rebuilding and repayment of COUNTY funding to the extent of such proceeds. COUNTY shall be specifically named as a loss payee on all policies, and all policies shall be primary to any other valid and collectable insurance.

Said insurance shall be primary and noncontributory with any other insurance for which the COUNTY is a named insured. Except with regard to Workers Compensation coverage, all insurance coverages required under this Agreement shall include a waiver of subrogation against the COUNTY for losses arising from work performed by the Recipient.

RECIPIENT specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this contract shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts.

An insurance certificate showing the coverage required under this section will be submitted to the COUNTY for approval at least annually.

- 2) Flood Insurance: The RECIPIENT further agrees to purchase Federal Flood Insurance, if available, if at any time during the life of the Loan the Property is declared to be within a flood hazard area. Such insurance shall be in an amount at least equal to the lesser of:
 - a) The amount of the loan;
 - b) The insurable value of the property; or
 - c) The maximum limit of coverage available.

D. Pay All Taxes

The RECIPIENT agrees to duly pay and discharge, or cause to be paid or discharged, all taxes, assessments and governmental charges upon it or against its properties prior to the date on which the penalties attach thereto, except that the RECIPIENT shall not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate proceedings until the resolution of such proceedings.

E. Provide Additional Equity

The RECIPIENT agrees to provide, or cause to be provided, additional equity funds to cover additional Project costs incurred as a result of overruns or unanticipated expenses or changes in work orders in the Project.

F. Maintain Existence

The RECIPIENT agrees to maintain its existence, rights, privileges, and franchises within the State of Washington and qualify and remain qualified as a nonprofit organization in each jurisdiction in which its present or future operations or its ownership of property require such qualification.

G. Provide Financial Information

The RECIPIENT agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions, such entries to be made in accordance with generally accepted accounting principles applicable to its particular corporate structure and applied in the case of financial transactions.

In addition, the RECIPIENT agrees to deliver to the COUNTY, if requested, financial statements, including but not limited to a profit and loss statement and a balance sheet on at least an annual basis, certified by the RECIPIENT to be true and accurate copies within thirty (30) days of the close of the period or a reasonable period thereafter. Upon the written request of the COUNTY, the RECIPIENT agrees to meet with the COUNTY to review the performance and financial position of the RECIPIENT's business.

H. Null and Void Covenants

The RECIPIENT agrees that, in the event that any provision of this Agreement or any other instrument executed at closing, or the application thereof to any person or circumstances, shall be declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of such Agreement or instrument shall nevertheless remain in full force and effect, and to this end, the provisions of all covenants, conditions, and agreements described herein are deemed separate and severable.

I. Expenses and Closing Costs

The RECIPIENT agrees to pay all fees, expenses and charges in respect to this Agreement including, but not limited to, the fees and out-of-pocket expenses of counsel employed by the COUNTY or contracted with by the COUNTY, title insurance and survey costs, recording

and filing fees, mortgage taxes, documentary stamp, and any other taxes, fees and expenses payable in connection with this transaction or with the enforcement of this Agreement, the Note, the Deed of Trust and the Covenant.

J. Indemnification

The RECIPIENT agrees to defend the COUNTY, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability arising out of the acts or work of the RECIPIENT, its employees, subcontractors, or agents (including field work) pursuant to this Agreement, where such liability is incurred as a result of the actions or omissions of such parties.

K. Expenses of Collection or Enforcement

If at any time the RECIPIENT defaults on any provision of this Agreement, the RECIPIENT agrees to pay the COUNTY or its assigns, in addition to any other amounts that may be due from the RECIPIENT, an amount equal to the costs and expenses of collection, enforcement, correction or waiver of the default, including reasonable attorney's fees, incurred by the COUNTY or its assigns in such collection, enforcement, correction or waiver of default.

3.10 Negative Covenants of the Recipient

The RECIPIENT covenants and agrees that, from the date hereof until payment in full of the Note, unless the COUNTY or its assigns shall otherwise consent in writing, it will not enter into any agreement or other commitment the performance of which would constitute a breach of any of the covenants contained in this Agreement including, but not limited to, the following covenants:

A. Encumber the Property

The RECIPIENT will neither create nor suffer to exist without the written permission of the COUNTY, any mortgage, pledge, lien, charge, or encumbrance (including liens arising from judgments) on the chattels, as personal property, real estate, or any other assets provided as security for the Note.

B. Sale of Property and Owner's Withdrawals

Except as otherwise provided herein, RECIPIENT agrees that it will not, without the prior written permission of the COUNTY, sell or otherwise dispose of the Property securing the Note (unless such Property is no longer useful).

C. Change of Ownership or Controlling Interest

- 1) Except as otherwise provided herein, RECIPIENT agrees that it will not, without the prior written permission of the COUNTY, permit any material change in the ownership structure, control, or operation of the RECIPIENT's business including but not limited to:
 - a) Merger into or consolidation with any other person, firm or corporation;
 - b) Sale or other distribution (including issuance of shares of capital stock) of a significant ownership interest in RECIPIENT's business;
 - c) Changing the nature of its business as carried on at the date hereof; or,
 - d) Substantial distribution, liquidation or other disposal of the Property of the RECIPIENT's business.

- 2) The COUNTY may permit the transfer and assumption of the Note, and the transfer of the Property acquired, constructed or rehabilitated with the proceeds of the Note, without requiring repayment of principal, interest or other amounts owing under the Note at the time of the transfer, under any of the following circumstances:
 - a) The Note is assumed by a tax credit entity and the entity makes a substantial equity investment in the low-income housing;

- b) The Property is transferred by a tax credit entity to a nonprofit corporation or public agency approved by the COUNTY, including without limitation a transfer to the general partner or manager pursuant to the terms of an option agreement made in connection with the formation of the tax credit entity; or
 - c) The Property is transferred, with the approval of the COUNTY, to a qualified nonprofit corporation or public agency, without substantial consideration to the transferor other than assumption by the transferee of outstanding obligations.
- 3) The RECIPIENT agrees that any decision or action to lease, sub-lease, or rent, except to eligible tenants as identified in Section 1.09 of this Agreement, or otherwise transfer its control over the Property, except as otherwise permitted herein, during the Affordability/Commitment Period must be submitted in writing and approved by the COUNTY in writing at least sixty (60) days prior to the execution of such decision or action. Any such transfer shall not affect RECIPIENT's obligations under this Agreement period. The RECIPIENT is also responsible for ensuring that it and any sub-lessee are in compliance with all provisions of this Agreement.

D. Change of Use

Except as otherwise provided for herein, if the use of the Property changes to something other than that stated in Section 1.04 and 1.09 of this Agreement prior to completion of the Affordability/Commitment Period (as defined in Section 1.10), either by the RECIPIENT, its successors or assigns, or as a result a sale of the Property, the Note principal, plus the greater of either deferred interest or contingent interest, shall be due.

"Contingent Interest" is defined as the amount of COUNTY funds contributed as financing to a project, modified by any additional funds contributed during the term of this Agreement, such as capital contributions approved by the COUNTY or RECIPIENT subsidy necessary to cover operating losses. For example, if the Note is paid or becomes payable before the maturity date, if COUNTY funds are 50% of total Project costs, the COUNTY should receive, in addition to repayment of its principal, 50% of proceeds remaining after repayment of approved Project debt (but not including contingent interest owing to other Project lenders).

The RECIPIENT will neither permit nor suffer to exist, without prior written COUNTY consent, any material change in the Project's plans and/or specifications submitted to the COUNTY. Material change will include, without limitation, any significant variance in the accepted plans, specifications or specific items of equipment, increases in contract or equipment prices, and/or additional financial obligations with respect to the construction and the Property.

E. Prepayment

Prepayment of the Note will be subject to COUNTY approval. Such approval shall not be unreasonably withheld if the RECIPIENT provides adequate assurances of future compliance with the affordability and occupancy restrictions in the Covenant.

3.11 Events of Default; Acceleration

The entire unpaid principal of the Note, and the interest then accrued thereon plus late charges if any, shall become and be immediately due and payable upon the written demand of the COUNTY or its assigns, without any other notice or demand of any kind or any presentment or protest, if any one of the following events (herein an "Event of Default") shall occur and be continuing at the time of such demand, whether voluntarily or involuntarily, or whether or not occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or

order of any court or any order, rules or regulation of any administrative or governmental body; provided however, that such sum shall not be then payable if RECIPIENT's payments have been waived or if the time for making the RECIPIENT's payments has been extended in writing by the COUNTY. Events of Default include:

A. Nonpayment of Loan

If the RECIPIENT shall fail to make payment when due of any installment of principal on the Note, or interest accrued, and if the payment is not made within ten (10) days following notice to RECIPIENT of such nonpayment.

B. Nonpayment of Other Indebtedness

If RECIPIENT defaults in the payment when due of any installment of principal or of interest on any of the RECIPIENT's other indebtedness secured by the Project and if such default is not cured within the applicable cure periods under such indebtedness.

C. Incorrect Representation or Warranty

If any representation or warranty of the RECIPIENT contained in, or made in connection with the execution and delivery of, this Agreement, or in any certificate furnished pursuant hereto, proves to have been incorrect when made in any material respect.

D. Default in Covenants

The RECIPIENT defaults in the performance of any other term, covenant or agreement contained in this Agreement, and such default continues unremedied for thirty (30) days after either:

- 1) It becomes known to the RECIPIENT; or,
- 2) COUNTY gives RECIPIENT written notice of such default, pursuant to Section 3.11(I), Notice and Opportunity to Cure.

E. Voluntary Insolvency

If the RECIPIENT becomes insolvent or fails to pay its debts as they mature, or voluntarily files a petition seeking reorganization, or the appointment of a receiver, trustee, or liquidator for its business or a substantial portion of its assets; or seeks to effect a plan or other arrangement with creditors; or is adjudicated bankrupt, or makes a voluntary assignment for the benefit of creditors.

F. Involuntary Insolvency

If an involuntary petition shall be filed against the RECIPIENT under any bankruptcy, insolvency or similar law seeking reorganization, or the appointment of any receiver, trustee or liquidator for the RECIPIENT's business or a substantial part of the property of the RECIPIENT, or a writ or warrant of attachment or similar process shall be issued against a substantial part of the property of the RECIPIENT, and such petition shall not be dismissed, or such writ or warrant of attachment or similar process shall not be released or bonded, within thirty (30) days after filing of levy.

G. Judgments

If any final nonappealable judgment for the payment of money involving more than \$100,000 in the aggregate, in excess of available insurance proceeds, is entered against RECIPIENT; and RECIPIENT fails to discharge the same, or causes it to be discharged or bonded off to COUNTY's satisfaction, within thirty (30) days from the date of the entry of such judgment.

H. Tenant Certifications

If the RECIPIENT fails to provide to the COUNTY the tenant certifications required in Section 1.09 and 2.07 of this Agreement and if such certifications are not provided to the COUNTY within thirty (30) days following notice to RECIPIENT of such failure to provide the required tenant certifications.

I. Notice and Opportunity to Cure

In the event of default by the RECIPIENT in any of its obligations to the COUNTY or other parties, the COUNTY shall, subject to the notice provisions herein, have the right to demand cure of the default, as well as the right to exercise additional contractual remedies, as provided herein or by the principles of law or equity.

Within sixty (60) days of the occurrence of a default, breach, lapse of any condition or requirement, failure to perform a duty, or non-compliance with any material term in any agreement which RECIPIENT has with the COUNTY or another party which event may affect the COUNTY's financial interest, security or public purpose, the RECIPIENT shall provide the COUNTY with notice thereof.

- 1) **Monetary Default.** If a monetary event of default occurs under the terms of this Agreement, the Note, the Deed of Trust or the Covenant, prior to exercising any remedies thereunder the COUNTY shall give the RECIPIENT written notice of such default. The RECIPIENT and/or any of its assigns shall have a period of thirty (30) days after such notice is given within which to cure the default prior to exercise of remedies by the COUNTY. The COUNTY's liability for notification shall be limited to notifying all parties at the last known address as shown in the COUNTY's Contract files. The RECIPIENT is responsible for ensuring that the COUNTY has current names, addresses and telephone numbers for all parties entitled to notice under the Agreement, the Note, the Deed of Trust or the Covenant.
- 2) **Non-Monetary Default.** If a non-monetary event of default occurs under the terms of the Agreement, the Note, the Deed of Trust or the Covenant, prior to exercising any remedies thereunder the COUNTY shall give the RECIPIENT written notice of such default. If the default is reasonably capable of being cured within sixty (60) days, the RECIPIENT and/or any of their assigns shall have such period to effect a cure prior to exercise of remedies by the COUNTY under the Agreement, the Note, the Deed of Trust or the Covenant. If the default is such that it is not reasonably capable of being cured within sixty (60) days or such longer period if so specified, and if the RECIPIENT and/or their assigns (a) initiate corrective action within said period, and (b) diligently, continually, and in good faith work to effect a cure as soon as possible, then the RECIPIENT shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the COUNTY. The above notwithstanding, in no event shall the COUNTY be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given. The COUNTY's liability for notification shall be limited to notifying all parties at the last known address as shown in the COUNTY's Agreement files. The RECIPIENT is responsible for ensuring that the COUNTY has current names, addresses and telephone numbers for all parties entitled to notice under the this Agreement.

PART IV: INTERPRETATION AND EXECUTION OF AGREEMENT

4.01 Representation and Warranties

A. Duly Qualified

The RECIPIENT is a State of Washington non-profit and has power to enter into this Agreement, and to borrow hereunder.

B. Duly Authorized; No Conflict or Breach

The making and performance by the RECIPIENT of this Agreement, and the execution and delivery of the Note, and any security agreements and other documents will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect having applicability to the RECIPIENT or result in a breach of, or constitute a default under any indenture or bank loan or credit agreement or any other agreement or instrument to which the RECIPIENT is a party or by which it, or its property may be bound or affected.

C. Legally Binding Instruments

When this Agreement is executed by the RECIPIENT and the COUNTY, and when the Note is executed and delivered by the RECIPIENT for value, each such instrument shall constitute the legal, valid, and binding obligation of the RECIPIENT in accordance with its terms. Any security agreements and instruments, financing statements, mortgages, deeds of trust or other liens on personal property or real estate that are executed and/or recorded in connection with this transaction shall constitute legal, valid and binding liens free and clear of all prior liens and encumbrances except as provided for in Section 3.08 herein.

D. No Legal Suits

There are no legal actions, suits, or proceedings pending or, to the knowledge of the RECIPIENT, threatened against the RECIPIENT before any court or administrative agency, which, if determined adversely to the RECIPIENT, would have a material adverse effect on the financial condition or business of the RECIPIENT.

E. No Legal Authorization Needed

No authorization, consent or approval, or any formal exemption of any Governmental body, regulatory authorities (Federal, State or Local) or mortgagee, creditor or third party is or was necessary to the valid execution and delivery by the RECIPIENT of this Agreement, the Note, or any security agreement, financing statement or mortgage except as provided for under Section 3.08 herein.

F. Not In Default

The RECIPIENT is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

G. Taxes are Paid

The RECIPIENT has filed all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against the RECIPIENT or its personal or real property by any taxing agency, federal, state or local. No tax liability has been asserted by the Internal Revenue Service or other taxing agency, federal, state, or local for taxes materially in excess of those already provided for and the RECIPIENT knows of no basis for any such deficiency assessment.

4.02 Interpretation of Agreement

A. Construction

All terms and provisions in the Agreement, as well as the attachments, shall be construed in accordance with their ordinary and customary meaning. Where there is conflict between this Agreement and the funding request application, this Agreement controls.

B. Entire Agreement

This Agreement including any attachments represents all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

C. Jurisdiction

This Agreement shall be governed by the law and statutes of the state of Washington without recourse to any principle of Conflicts of Laws. The venue of any action hereunder shall be in the Superior Court for Whatcom County, Washington.

D. Obligations Regarding Third-Party Relationships

- 1) The RECIPIENT shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties of the undertaking of all or any part of the Project described herein. Any such party or parties shall comply with all requirements necessary to ensure that the Project is carried out in accordance with the provisions of this Agreement.
- 2) The RECIPIENT shall bind all subcontractors to each and every applicable Agreement provision contained herein. Each subcontract for any work to be performed with funds provided under this Agreement shall specifically include a provision that the COUNTY is not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the subcontracts.

E. Ownership of Project/Capital Facilities

As between the COUNTY and the RECIPIENT, the RECIPIENT shall assume all liabilities arising from the ownership and operation of the Project and agrees to hold the COUNTY harmless from any and all causes of action arising from the ownership of such facilities.

F. Performance

The COUNTY'S failure to insist upon the strict performance of any provision of this Agreement or failure to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute, or be deemed a waiver of any rights or remedies under this Agreement.

G. Documents Incorporated by Reference

The following documents are incorporated into this Agreement by reference:

- Income and Rent Limits found on HUD's website
- Promissory Note
- Deed of Trust
- Covenant

H. Severability

If any provision under this Agreement or its application to any person or circumstances is held invalid by any court of rightful jurisdiction, such invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision and provided that the purpose of this Agreement is substantially preserved.

[SIGNATURES ON FOLLOWING PAGES]

NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT, ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

RECIPIENT

Sean Humphrey House, a Washington nonprofit corporation

BY: _____
Elizabeth Page, Executive Director Date

WHATCOM COUNTY

**WHATCOM COUNTY:
Recommended for Approval:**

Ann Beck, Community Services Manager Date

Erika Lautenbach, Health Department Director Date

Approved as to form:

Chris Quinn, Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive Date

CONTRACTOR INFORMATION:

Sean Humphrey House
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Bellingham, WA 98225
director@seanhumphreyhouse.org