



OFFICE  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

County Executive

## MEMORANDUM

**TO:** Satpal Sidhu, County Executive

**FROM:** Tyler Schroeder, Deputy Executive

**RE:** Opportunity Council  
Laurel and Forest Project – Senior Housing

**DATE:** December 1, 2021

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Attached is an interlocal agreement between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**

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

- **Funding Amount and Source**

Funding for this Agreement may not exceed \$3,000,000 and is provided by the American Rescue Plan Act. With the adoption of Ordinance 2021-072, these funds are now included in the 2021 budget.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
202111036

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

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

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

Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#:
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>		
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		ARPA Funding
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):		Contract Cost Center:	138100
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			

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

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

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.
\$ 3,000,000	
This Amendment Amount:	
\$	
Total Amended Amount:	
\$	

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

Term of Contract:	Expiration Date:	06/30/2023
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Contract Routing:	1. Prepared by:	Tawni Helms	Date:	10/25/21
	2. Attorney signoff:	Christopher Quinn	Date:	11/24/21
	3. AS Finance reviewed:	BBennett	Date:	11/24/21
	4. IT reviewed (if IT related):		Date:	
	5. Contractor approved:		Date:	
	6. Submitted to Exec.:		Date:	
	7. Council approved (if necessary):		Date:	
	8. Executive signed:		Date:	
	9. Original to Council:		Date:	

**Laurel and Forest Street Agreement  
Qualified Census Tract Low-Income Housing**

**I PARTIES**

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

**II TERM**

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

**III PURPOSE**

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

**IV PROJECT DESCRIPTION**

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

**V RECITALS**

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

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

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

C. Subrecipient, through a limited liability company of which Subrecipient controls the managing member (the **Owner**), will construct the Project. The Project will be partially funded by a **\$3,000,000. grant to Subrecipient from the County's ARPA Fund**. Subrecipient will loan the grant to the Owner. The Project improvements, when complete, will be owned and maintained by the Owner.

D. RCW 82.14.540 defines affordable housing to include units that cost no more than 30% of gross household income for households earning no more than 60% of the area median income.

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

## VI MUTUAL CONSIDERATION

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

**A. SUBRECIPIENT RESPONSIBILITIES:** Subrecipient hereby agrees as follows:

- (i) If after the award of the construction contract, the scope of the Project or the Project budget has materially changed, the **Subrecipient** shall provide the County the following updated documents: 1) a detailed description of the Project; 2) a Project budget itemizing major improvements together with the estimated cost of the improvements; and 3) a schedule showing sources and uses of funding for the Project, if any of the aforementioned documents materially varies from those that were submitted with the **Subrecipient's** application for funding.
- (ii) The **Subrecipient** shall be responsible for all aspects of the design and construction of the Project.
- (iii) **ARPA ELIGIBLE EXPENSES** – The **Subrecipient** agrees to cause the Owner to use the County-granted ARPA funds for those eligible expenses, as provided in Exhibit C. In addition, the County-granted ARPA funds shall not be used to pay the costs of on-site construction of the Project.

- (iv) The **SUBRECIPIENT** through the Owner shall be responsible for all aspects of construction contract administration, which shall include, but not be limited to, advertising, bidding, and awarding the contract. The **SUBRECIPIENT** will cause the Owner to comply with all applicable laws, rules and regulations relating to bidding the Project. The County shall have no responsibility for the Project other than the funding set forth herein.
- (v) The **SUBRECIPIENT** shall provide the County with a final report showing the actual cost of the Project and the actual sources and uses of funding for the Project.
- (vi) The **SUBRECIPIENT** shall comply with all terms and conditions of the American Rescue Plan Act as presented in Exhibit A.
- (vii) The **SUBRECIPIENT** shall cause the Owner to record an Affordable Housing covenant consistent with the covenant as presented in Exhibit D, unless modified by mutual agreement between the Parties.

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

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

**VII RECORDS, REPORTS AND AUDITS**

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

**Subrecipient** which pertain to this Agreement or the Project work for the purpose of making audit, examination, excerpts, and transcriptions.

## VIII RELATIONSHIP OF PARTIES AND AGENTS

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

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

## IX TERMINATION

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

- A. TERMINATION FOR CAUSE— If the **Subrecipient** fails to comply with the terms and conditions of this Agreement, the County will give notice to the **Subrecipient** in writing of its failure to comply. The **Subrecipient** will be given thirty (30) days from date of notice to comply with the terms of the Agreement or submit a plan acceptable to the County to bring the **Subrecipient** into compliance with the Agreement within a time period reasonably acceptable to the County. Failure to comply with the terms and conditions of this Agreement by either party shall constitute an event of default. In the event of default by the **Subrecipient** and a failure by the **Subrecipient** to cure as provided for herein, the County may take such remedial actions under the law as are available to cure the default, including the imposition of the reasonable costs of collection. In the event of default by the County, the **Subrecipient** may take such remedial actions under the law as are available to cure the default, including specific performance.
- B. TERMINATION FOR OTHER GROUNDS—This Agreement may be terminated in whole or in part by mutual consent and written agreement between the parties, duly authorized and executed, setting forth the conditions of termination, including effective date and, in case of termination in part, that portion to be terminated.

## **X COMPLIANCE WITH LAWS**

The County and the **Subrecipient** shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments with regard to the performance of this Agreement.

## **XI NONDISCRIMINATION AND EQUAL OPPORTUNITY**

### **A. GENERAL PROVISIONS**

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

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

**Subrecipient** shall abide by all provisions of the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender 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.

## XII INTEREST OF MEMBERS OF THE COUNTY AND THE SUBRECIPIENT

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

## XIII HOLD HARMLESS AND INDEMNITY

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



be performed by the **Subrecipient**, its agents, employees, or subcontractors pursuant to this Agreement.

#### **XIV ASSIGNABILITY**

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

#### **XV NON-WAIVER**

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

#### **XVI CONTRACT MODIFICATIONS**

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

#### **XVII SEVERABILITY**

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

#### **XVIII NOTICES**

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

##### **TO SUBRECIPIENT:**

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

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

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

**XIX INTEGRATION**

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

**XX GOVERNING LAW AND VENUE**

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

**XXI RECORDING**

Upon execution of this agreement by the parties hereto, the County shall cause it to be posted on the county web site, or otherwise published pursuant to the requirement contained within RCW 39.34.040.

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

EXECUTED, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, for **OPPORTUNITY COUNCIL:**

\_\_\_\_\_  
Greg Winter, Executive Director

EXECUTED, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, for **WHATCOM COUNTY:**

WHATCOM COUNTY

\_\_\_\_\_  
SATPAL SIDHU  
County Executive

APPROVED AS TO FORM

\_\_\_\_\_  
Christopher Quinn, Prosecuting Attorney

\_\_\_\_\_  
Date

## **Exhibit A SUBRECIPIENT AWARD**

Funding provided by U.S. Department of the Treasury grant CFDA Number 21.027 Coronavirus State and Local Fiscal Recovery Funds as authorized by Sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Public Law No. 117-2 (March 11, 2021)

SUBRECIPIENT will comply with all applicable terms and conditions for Coronavirus State and Local Fiscal Recovery Funds as issued by the U.S. Department of the Treasury.

SUBRECIPIENT will cooperate with the County concerning any requests for information related to this Project that may be needed for the County to fulfill its reporting obligations to U.S. Treasury.

**General information about this program can be found at:**

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

**Specific compliance requirements can be found in:**

Compliance and Reporting Guidance

<https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

Interim Final Rule (31 CFR 35), specifically housing investment in QCTs

<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

FAQs (and all subsequent updates)

<https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>

**These funds are subject to:**

**Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the “Uniform Guidance”)**

**Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.<sup>8</sup> Recipients and subrecipients may also refer to the Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.

**Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and

nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

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

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

**Clean Air Act**

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

**Federal Water Pollution Control Act**

- The Subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- The Subrecipient agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to U.S. Treasury, and the appropriate Environmental Protection Agency Regional Office.

- The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by ARPA funding.

**Anti-Lobbying (certifications required for all awards and subawards of \$100,000 or more)**

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

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.”

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

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING  
 Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all 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.

\_\_\_\_\_  
Signature of Subrecipient's Authorized Official

Greg Winter, Executive Director  
Name and Title of Subrecipient's Authorized Official

\_\_\_\_\_  
Date

### **Prohibition on Contracting for Covered Telecommunications Equipment or Services**

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

(b) Prohibitions.

- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- (2) Unless an exception in paragraph (c) of this clause applies, the Subrecipient and its subcontractors may not use grant, cooperative agreement, loan, or loan

guarantee funds from the Federal Emergency Management Agency to:

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

(c) Exceptions.

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

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

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

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

(d) Reporting requirement.



- (1) In the event the Subrecipient identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Subrecipient is notified of such by a subcontractor at any tier or by any other source, the Subrecipient shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- (2) The Subrecipient shall report the following information pursuant to paragraph (d)(1) of this clause:
  - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Subrecipient shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

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

### **Domestic Preference for Procurements**

As appropriate, and to the extent consistent with law, the Subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel

products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

**Exhibit B**  
(Financial Commitment)

Funding, in the amount of \$3,000,000 will be disbursed to the Opportunity Council (Subrecipient). Funding will be provided by the American Rescue Plan Act Fund.

Subrecipient will send invoices for Project expenses to:

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

Invoices will include copies of receipts or paid invoices and reference the Whatcom County assigned interlocal agreement number.

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

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## EXHIBIT C – FEDERAL REGULATIONS FOR ARPA GRANT FUNDING

### 1. Use of Funds.

- a. SUBRECIPIENT understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. SUBRECIPIENT will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

### 2. Maintenance of and Access to Records

- a. SUBRECIPIENT shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of SUBRECIPIENT in order to conduct audits or other investigations.
- c. Records shall be maintained by SUBRECIPIENT for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

### 3. Conflicts of Interest. 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 and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

### 4. Compliance with Applicable Law and Regulations.

- a. SUBRECIPIENT agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. SUBRECIPIENT also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and SUBRECIPIENT shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
  - i. 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.

- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. 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.
- iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (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.
- v. SUBRECIPIENT 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.
- vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- ix. Generally applicable federal environmental laws and regulations.

## Exhibit D - Affordable Housing Covenant

### LOW-INCOME HOUSING COVENANT

Grantor: XXX

Grantee (Beneficiary): Whatcom County

Abbreviated Legal:

Assessor's Tax Parcel Number(s):

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

(\*\*description)

This Covenant will be filed and recorded in the official public lands records of Whatcom County, Washington and shall constitute a restriction on the use of the Property and is taken and construed as running with the land which shall pass to and be binding on Grantor, its successors and assigns, heirs, grantees, or leases of the Center beginning XXX and ending XXX. Each and every contract, deed or other instrument covering or conveying the property in which the Center is located, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed or other instruments.

NOW, THEREFORE, it is hereby covenanted, commencing \_\_\_\_\_ and terminating fifty (50) years after project completion (the "Term"), as set forth in the Agreement, as follows:

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

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

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

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

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

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