

# Agenda Summary Report (ASR)

## Franklin County Board of Commissioners

<b>DATE SUBMITTED:</b> 10/22/2021	<b>PREPARED BY:</b> Mari Clark
<b>Meeting Date Requested:</b> 11/2/2021	<b>PRESENTED BY:</b> Click here to enter text.
<b>ITEM:</b> (Select One) <input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Brought Before the Board Time needed:	
<b>SUBJECT:</b> Execute Agreement 2060-2021-CC with Catholic Housing Services of Eastern Washington for the Pasco Haven Project	
<b>FISCAL IMPACT:</b> There is not impact on the current expense budget. All revenues and expenditures are from the Fund 0189-000-0001 Affordable Housing. Total consideration for the Agreement not to exceed \$127,413.00.	
<b>BACKGROUND:</b> This Agreement is to assist Catholic Housing Services of Eastern Washington purchase the land for a fifty-nine-unit permanent supportive housing complex for extremely low-income and low-income individuals in the City of Pasco. The property will provide those who are struggling with various behavioral health conditions and chemical dependency conditions with safe and secure affordable housing. The project will provide residents a place to connect with the community by providing access to services available that assist the resident with their conditions, improve job skills, increase job opportunities, identify and create plans that improve issues that contribute to chronic poverty.	
<b>RECOMMENDATION:</b> <ul style="list-style-type: none"><li>• Approve the proposed Agreement #2060-2021-CC by signing where indicated</li><li>• Approve the resolution to Agreement #2060-2021-CC by signing where indicated</li></ul>	
<b>COORDINATION:</b> Jen Johnson, FC PA  Mari Clark, BCHS Program Specialist	
<b>ATTACHMENTS:</b> (Documents you are submitting to the Board) 2: Agreement #2060-2021-CC (1 Franklin County Commissioner Office) (1 Benton County Human Services) 2: Resolutions to Agreement #2060-2021-CC (1 Franklin County Commissioners Office) (1 Benton County Human Services)	
<b>HANDLING / ROUTING:</b> (Once document is fully executed it will be imported into Document Manager. Please list <u>name(s)</u> of parties that will need a pdf) <ol style="list-style-type: none"><li>1. Franklin County Commissioners Office – Karin Milham, Clerk to the Board of Commissioners</li><li>2. Benton County Department of Human Services – Mari Clark, Program Specialist</li></ol>	

*I certify the above information is accurate and complete.*

\_\_\_\_\_  
Name, Title

**FRANKLIN COUNTY RESOLUTION \_\_\_\_\_**

**BEFORE THE BOARD OF COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON**

***EXECUTION OF GRANT AGREEMENT #2060-2021-CC BETWEEN  
CATHOLIC HOUSING SERVICES OF EASTERN WASHINGTON AND  
BENTON COUNTY DEPARTMENT OF HUMAN SERVICES FOR  
FRANKLIN COUNTY***

**WHEREAS**, the purpose of this Agreement is to assist Catholic Housing Services of Eastern Washington purchase the land for a fifty-nine-unit permanent supportive housing complex for extremely low-income and low-income individuals in the City of Pasco.

**WHEREAS**, the property will provide those who are struggling with various behavioral health conditions and chemical dependency conditions with safe and secure affordable housing. The project will provide residents a place to connect with the community by providing access to services available that assist the resident with their conditions, improve job skills, increase job opportunities, identify and create plans that improve issues that contribute to chronic poverty; and

**NOW, THEREFORE, BE IT RESOLVED** the Board of Franklin County Commissioners hereby accepts the proposed Grant Agreement #2060-2021-CC; and

**BE IT FURTHER RESOLVED**, that the Chairman of the Board of Franklin County Commissioners be, and hereby is, authorized to sign on behalf of Franklin County, Grant Agreement #2060-2021-CC between Benton County Department of Human Services for Franklin County and Catholic Housing Services of Eastern Washington, for the funding to purchase property to develop a fifty-nine unit permanent supportive housing unit in the city of Pasco; for a Grant Agreement consideration of \$127,413.00; and

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Member

**ATTEST:**

\_\_\_\_\_  
Clerk to the Board

**Benton County  
DEPARTMENT OF HUMAN SERVICES  
Grant Agreement #2060-2021-CC**

This Grant Agreement, hereinafter referred to as the "Agreement", is executed by and between **Franklin County**, a political subdivision, with its principal offices at 1016 N. 4<sup>th</sup> Avenue, Pasco, WA 99301, by and for the **Benton County Department of Human Services**, with its principal offices at 7102 West Okanogan Place, Suite 201, Kennewick, WA 99336 (hereinafter collectively referred to as the "County"), and **Catholic Housing Services of Eastern Washington**, a non-profit corporation organized under the laws of the state of Washington with its principal offices at 12 E. 5<sup>th</sup> Avenue, Spokane, WA 99202-1309, (hereinafter "Contractor or EFH").

**County Contact Representative:**

Kyle Sullivan, Manager  
Benton County  
7102 W. Okanogan Place Suite 201  
Kennewick, WA 99336  
Phone: (509) 783-5284  
Fax: (509) 783-5981  
Email: [Kyle.sullivan@co.benton.wa.us](mailto:Kyle.sullivan@co.benton.wa.us)

**Contractor Contact Representative:**

Jonathan Mallahan, Vice President  
Catholic Housing Services of Eastern Washington  
12 E. 5th Avenue  
Spokane, WA 99202-1309  
Phone: (509) 459-6180  
Fax: (509) 358-4259  
Email: [jmallahan@ccspokane.org](mailto:jmallahan@ccspokane.org)

Agreement Start Date ..... October 1, 2021  
Agreement End Date ..... December 31, 2021

Unless this Agreement is terminated sooner as set forth herein.

Consideration ..... Franklin County \$127,413.00

Exhibit A ..... Budget  
Exhibit B ..... Restrictive Covenant  
Attachment A to Exhibit B ..... Legal Description

By their signatures below, the parties agree to the terms and conditions of this Agreement and all documents attached or incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized to sign this Agreement.

**For the Contractor:**

 10/21/2021  
Vice President Date

**For Franklin County:**

\_\_\_\_\_  
Franklin County Commissioners Date

\_\_\_\_\_  
Attest: Clerk of the Board

Approved as to Content:

Approved as to Form:

\_\_\_\_\_  
Department of Human Services

  
\_\_\_\_\_  
Franklin County Prosecutor's Office

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## 1. SPECIAL TERMS AND CONDITIONS

- 1.1 **Purpose:** The purpose of this Agreement is to assist Catholic Housing Services of Eastern Washington with funding a fifty-nine-unit permanent supportive housing for extremely low-income and low-income individuals in the City of Pasco. The property will provide those who are struggling with various behavioral health conditions and chemical dependency conditions with safe and secure affordable housing. The project will provide residents a place to connect with the community by providing access to services available that assist the resident with their conditions, improve job skills, increase job opportunities, identify and create plans that improve issues that contribute to chronic poverty. The award will assist with purchasing the property and construction of the units.
- 1.2 **Compensation:** The County shall pay to the Contractor an amount not to exceed the amount shown in the Budget for land acquisition costs, which are identified on the face of this Agreement and in Exhibit A, for the performance of all things necessary for or incidental to the performance of the obligations of this Agreement.
- 1.3 **Eligible Use of Funds:** Funding awarded under this Agreement may only be used for eligible activities and expenses in accordance with Exhibit A, not to exceed \$127,413.00 in land acquisition costs.
- 1.4 **Contractor's Obligations:** A restrictive covenant is required on the property that will state it cannot be sold, refinanced, assigned, transferred, or otherwise disposed of for 15 years past the contract's expiration date. The property will be used for affordable housing for those 15 years. The restrictive covenant will be executed and filed with the County. A copy of the Restrictive Covenant will be sent to Human Services.
- 1.5 **Period of Performance:** The expenditures awarded by this Agreement shall be made and completed by the Contractor between October 1, 2021 and December 31, 2021 (hereinafter referred to as the "Project Period"). It is agreed upon the completion of the project may be after December 31, 2021.
- 1.6 **Funding Sources:** Funding sources under this Agreement are as follows: Franklin County Affordable Housing Surcharge received pursuant to RCW 36.22.178.
- 1.7 **Billing Procedures and Payment:** The Contractor shall submit written claims for actual costs incurred on the appropriate forms provided by the County, which must be accompanied with verifiable documentation, by the 10th day of each month. Payments made under this Agreement are intended by both the Contractor and the County to be reimbursement for actual land acquisition costs incurred by the Contractor to complete the Project described in Exhibit A, up to the amounts budgeted in the exhibit, and constitute the County's only financial obligation hereunder irrespective of whether the total cost to the Contractor for the Project exceeds \$127,413.00. The final billing for services against this Agreement shall occur no more than 30 days after the end date of this Agreement.

No payment shall be made for any work performed by the Contractor, except for work identified and set forth in this Agreement.

Unless otherwise provided for in this Agreement or any exhibits hereto, the Contractor will not be paid for any billings or invoices presented for costs incurred prior to the date of execution or after December 31, 2021.

The County may, at its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the County.

The Contractor is responsible for any audit exceptions or disallowable costs incurred by its own organization or that of its sub-contractors.

- 1.8 **Recovery of Overpayment:** The Contractor shall not be reimbursed more than the amount of the allowable costs of performance of the Agreement. If the Contractor, County, or any other state agency determines that the Contractor has received payments under this Agreement in excess of the amount authorized by this Agreement, or otherwise not in conformity with the Agreement and/or if the Contractor bills and is paid fees for costs that County later finds were (a) not incurred; or (b) for work not performed in accordance with applicable standards, the County may recoup those payments, together with interest, as provided in this section.

The Contractor shall pay interest on overpayments at the rate of one percent (1%) per month or portion thereof. Where partial repayment of an overpayment is made, interest accrues on the remaining balance. Interest will not accrue when the overpayment occurred due to County error.

If the overpayment is discovered by the Contractor prior to discovery and notice by the County, the interest shall begin accruing ninety (90) days after the Contractor notifies the County of such overpayment.

If the overpayment is discovered by the County prior to discovery and notice by the Contractor, the interest shall begin accruing as follows, whichever occurs first:

- a. Thirty (30) days after the date of notice by the County to the Contractor; or
- b. Ninety (90) days after the date of overpayment by the County, whichever is later.

If the Contractor receives a notice of overpayment, which the County shall be required to timely provide, the Contractor may protest the overpayment determination pursuant to the Dispute Resolution Section of this Agreement. Failure to invoke said section within fifteen (15) days of receipt of a notice of overpayment will result in an overpayment debt against the Contractor.

- 1.9 **Fiscal Management:** The Contractor shall establish and maintain a system of accounting and internal controls that complies with generally accepted accounting principles and all state, and local accounting principles and governmental accounting and financial reporting standards that are applicable to state and/or local grants, awards, and/or contracts. The Contractor shall ensure that construction and management of the Project is done in the most cost-effective and efficient manner possible.

The Contractor's financial management system at a minimum shall:

- Be a viable, single organizational entity capable of effective and efficient processing of all of the fiscal matters, including proof of adequate protection against insolvency.
- Have the ability to pay for all expenses incurred during the Agreement period, including services that have been provided under the Agreement but are paid for after the Project Period.
- Include source documentation in support of allowable actual costs necessary to indicate costs incurred by the Contractor directly related to the costs identified in the Budget.

- 1.10 **Access to Children, Disabled Persons, and Vulnerable Adults:** The Contractor shall prohibit staff or volunteers with a criminal conviction set forth in RCW 43.43.830 from having access to children, developmentally disabled persons, or vulnerable adults in the course of providing the services herein. The Contractor must conduct a background check for all applicants for staff or volunteer positions who have unsupervised access to children, developmentally disabled persons, or vulnerable adults. The Contractor shall immediately report to the County any allegations/arrests identified in the background checks. If it becomes known to the Contractor, or the Contractor has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of his or her most recent criminal background inquiry, the Contractor shall immediately report that finding to the County and immediately remove and thereafter restrict the

employee or volunteer from providing services to children, developmentally disabled persons, or vulnerable adults, unless otherwise granted written permission by the County's authorized representative(s).

- 1.11 **Relationship of Parties:** The relationship of the Contractor to the County shall be that of independent contractor. No provision of this Agreement is intended or deemed to create any relationship between the Parties hereto other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither of the Parties hereto, nor any of their respective employees, shall be construed to be the agent, employee, representative, joint venture, or partner of the other.

The Contractor and its employees or agents will not hold themselves out as, nor claim to be, an agent, officer, or employee of the County, nor will they claim any of the rights, privileges, or benefits which might accrue to County employees.

Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of services and resulting compensation for services described herein.

The Contractor agrees to immediately remove any of its employees or agents from their assignment to perform services under this Agreement upon written request to do so from the County's Authorized Representative or designee.

- 1.12 **Insurance:** The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the County and its agents, officers, and employees should there be any claims, suits, actions, costs, damages, or expenses arising from any loss, or negligent or intentional act or omission of the Contractor, or agents of the Contractor, while performing under the terms of this Agreement. Prior to request for reimbursement under this Agreement, Contractor shall submit to the County certificates of insurance or certified copies of insurance policies and endorsements for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for five (5) years. Each insurance certificate shall provide that coverage will not be canceled or reduced below the contractual amounts stated herein without forty-five (45) days prior notice to the County. Contractor shall maintain at Contractor's sole expense, unless otherwise stipulated, the following insurance coverages, insuring Franklin County and its elected and appointed officials, officers, employees, and agents as required herein.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Washington unless an exception is given in writing by the County's authorized representative(s). All insurance, other than Professional Liability and Workers' Compensation, shall specifically include the County and its officials, officers, employees, and agents as an "Additional Insured" and shall not be reduced or canceled without forty-five (45) days prior written notice to the County. The Contractor's insurance coverage shall be primary insurance with respect to the County and its elected and appointed officials, officers, employees, and agents. Any insurance or self-insurance maintained by the County or its elected and appointed officials, officers, employees, or agents shall be excess of the Contractor's insurance and shall not contribute to it.

Liability coverage, except Professional Liability, should be written on an Occurrence policy form. Should Claims Made be the only option, a minimum of three (3) year tail coverage shall be maintained after the expiration of this Agreement. If coverage is Claims Made form, the retroactive date shall be prior to or coincident with the date of this Agreement, and the policy shall state that coverage is Claims Made and state the retroactive date.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

**1.11.1 Commercial General Liability Insurance Policy:** The Contractor shall maintain, during the life of this Agreement, Commercial General Liability Insurance (Policy Form CG0001 or equivalent) to protect the County from claims or actions for damages for bodily injury, including wrongful death, as well as from claims or actions of property damage which may arise from any operations under this Agreement whether such operations are by the Contractor or by anyone directly employed by or contracting with the Contractor.

Specific limits required	\$2,000,000 General Aggregate
	\$1,000,000 Products/Completed Operations Aggregate
	\$1,000,000 Personal Injury and Advertising Injury
	\$1,000,000 Each Occurrence

**1.11.2 Workers' Compensation Insurance:** Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Contractor shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to the commencement of work. With respect to the performance of this Agreement and as to claims or actions against the County and its officials, officers, agents, and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend, and hold harmless provided in this Agreement extend to any claim or actions brought by or on behalf of any employee of the Contractor against the County. However, Contractor's waiver of immunity by the provisions of this paragraph extend only to claims or actions against Contractor by County and does not include or extend to claims or actions by Contractor's employees directly against Contractor. This waiver is mutually negotiated by the parties to this Agreement.

**1.11.3 Professional Liability Insurance:** Professional Liability Insurance. Prior to the start of work, the Contractor will secure and maintain at its own expense Professional Liability Insurance in the amount of not less than \$1,000,000 per claim and in the aggregate. If coverage is Claims Made, the retroactive date shall be prior to or coincident with the date of this Agreement. The policy shall state that coverage is Claims Made and state the retroactive date. Claims Made form coverage shall be maintained by the Contractor for a minimum of three (3) years following the termination of this Agreement, and the Contractor shall annually provide the County with proof of renewal.

**1.11.4 Waiver of Subrogation Clause:** The County shall not be liable to the Contractor or to any insurance company (by way of subrogation or otherwise) insuring the Contractor for any loss or damage to any person, building, structure, or tangible personal property of the other occurring as a result of activity under the Agreement, even if such loss or damage might have been occasioned by the negligence of the County or its officials, officers, agents, or employees, when the loss or damage is covered by insurance benefiting the Contractor suffering such loss or damage was required to be covered by insurance under terms of this Agreement. Contractor shall cause each insurance policy it obtains to contain this waiver of subrogation clause.

**1.13 Reporting:** Contractor will be required to use the Homeless Management Information System (HMIS) and work with the Washington State Department of Commerce and Benton and Franklin Counties Department of Human Services in order to get trained. All tenants living in the EFH duplex will be tracked in HMIS for reporting measures.

**1.14 Order of Precedence:** In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal, state, and local laws, regulations, rules and ordinances.
2. This Agreement, including all documents attached to or incorporated by reference.



## 2. GENERAL TERMS AND CONDITIONS

2.1 **Definitions:** As used throughout this Agreement, the following terms shall have the meaning set forth below:

2.1.1 **"Authorized Representative"** shall mean the Director, Executive Director, and/or the designee authorized in writing to act on the Director's behalf and/or Administrator of the Benton and Franklin Counties' Department of Human Services.

2.1.2 **"Personal Information"** shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

2.1.3 **"Contractor"** shall mean the entity identified on the face sheet performing service(s) under this Agreement and shall include all employees and agents of the Contractor.

2.1.4 **"State"** shall mean the State of Washington.

2.2 **Advance Payments Prohibited:** No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by the County.

2.3 **Agreement:** This Agreement, including all documents attached to or incorporated by reference; contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties.

2.4 **All Writings Contained Herein:** This Agreement contains 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.

2.5 **Amendments and Modifications:** Except as provided otherwise herein, this Agreement may be amended only in writing by the agreement of all parties hereto and their authorized representatives. The Contractor hereby acknowledges that this Agreement is subject to all federal, state, and local laws, rules, and regulations applicable to this Agreement. Any provision of the Agreement that conflicts with federal, state, or local laws, rules, or regulations is hereby amended to conform to those provisions, as applicable or controlling. Such amendment of the Agreement will be effective on the effective date of the law, rule, or regulation necessitating it and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties. The Contractor agrees to accept and execute any and all amendments offered by the County needed to effectuate the federal, state, or local laws, rules, or regulations.

Any proposed change(s) in the Project must be submitted in writing to the County for approval prior to Contractor implementing any such change. Any such change shall be considered a request to modify or amend this Agreement.

2.6 **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35:** The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.7 **Approval:** This Agreement shall be subject to the written approval of the County's Authorized Representative and shall not be binding until so approved. The Agreement may be altered amended or waived only by a written amendment executed by both parties' authorized representatives.

2.8 **Assignment, Delegation, and Subcontracting:** The Contractor shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under this Agreement shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the County. Notwithstanding the foregoing, Contractor may freely assign this Agreement or delegate all or part of its obligations to any affiliate or successor in interest, without the consent of the County. For the avoidance of doubt, County's consent is not required for an assignment of this Agreement in connection with a sale or other disposition of substantially all of the assets of Contractor or subsequent sale by Contractor's successor in interest.

The Contractor warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

The Contractor may contribute or lend the funds awarded under this Agreement to a limited liability company of which Contractor (or a wholly owned affiliate of Contractor) is the sole managing member, provided such limited liability company (i) uses the funds in conformity with Section 1.3 and (ii) otherwise complies with the Contractor's obligations hereunder.

2.9 **Attorney Fees:** Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney's fees and costs.

2.10 **Audit, Monitoring, Access, and Examination:** When requested by the Contractor, the County shall provide technical assistance to the Contractor, to the extent practicable, regarding compliance with the statutory use of the funds paid hereunder throughout the term of this Agreement. The County may monitor Contractor's performance hereunder and compliance with the terms of this Agreement. Monitoring may include a visit to the Property or to the Contractor organization.

The Contractor shall cooperate with the County or its agent in the evaluation of Contractor's performance under this Agreement and make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with the Public Records Act, Chapter 42.56 RCW.

The Contractor shall provide right of access to its facilities, including those of any subcontractor, to the County, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Contractor's performance hereunder. The County shall provide reasonable notice of any county monitoring or evaluation, unless the County has reason to believe that monitoring without notice is necessary. The County shall monitor the Contractor programmatically and financially on site within the sole discretion of the County. The Contractor shall make available to the County and/or the state auditor all records, books, or pertinent information that the Contractor shall have kept pertaining to this Agreement and as required by this Agreement, federal law, and/or Washington law. Contractor shall also furnish such progress reports, schedules, financial and costs reports, and other such program or fiscal data reasonably required to evaluate the performance of this Agreement.

The Contractor shall respond timely and accurately to requests from the County to provide information necessary to respond to inquiries from other entities having authority to make such requests.

The Contractor agrees to notify the County in advance of any state or other formal inspections, audits, accreditation, or program reviews and provide to the County copies of said review, including any final written plan of correction or other written response, within thirty (30) days of receipt.

- 2.11 **Confidentiality/Safeguard of Information:** The parties to this Agreement shall use Personal Information (and other information such as demographics, personal health information, and income verification) gained as a result of this Agreement only for purposes of carrying out this Agreement. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of confidential information. The Contractor shall use confidential information solely for the purposes of this Agreement and shall not use, share, transfer, sell, or disclose any confidential information to any third-party except with the prior written consent of the County or as may be required by law. The Contractor shall take all necessary steps to assure that confidential information is safeguarded to prevent unauthorized use, sharing, transfer, sale, or disclosure of confidential information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the County with its policies and procedures on confidentiality. The County may require changes to such policies and procedures as they apply to this Agreement whenever the County reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the County. Upon request, the Contractor shall immediately return to the County any confidential information that the County reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

The Contractor shall notify the County within five (5) working days of any unauthorized use or disclosure of any confidential information and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

The Contractor understands that as public entities, the County is subject to the Public Records Act (RCW 42.56.020) which mandates the release of most public records held for any purpose. The Contractor understands that any written record (including electronically stored records) it submits to the County, including, but not limited to, descriptions of work, client files, billings, and correspondence, may be subject to the Public Records Act and if requested by a member of the public, will be disclosed by the County if mandated by the Public Records Act. Provided, however, that the County will not disclose any records that are protected by a statutory scheme (e.g., the Health Information Portability and Accountability Act) or case law. Accordingly, Contractor agrees that to the extent it feels that any of the written records it submits to the County are confidential, proprietary, or otherwise protected from disclosure under the Public Records Act, the Contractor will prominently designate the record(s) as such on its face. To the extent that the County receives a Public Records Act request for any written records that have been designated as confidential or proprietary, the County will take all reasonable steps to contact Contractor as soon as possible and advise of the request so that Contractor can request a court order protecting the record(s). Contractor also hereby waives any and all rights to recover damages against the County for any records released pursuant to the Public Records Act.

- 2.12 **Copyright Provisions:** Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the County. The County shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the County effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, and register, and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Contractor hereby grants to the County a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the County has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the County.

The Contractor shall exert all reasonable effort to advise the County, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Contractor shall provide the County with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Agreement. The County shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

- 2.13 **Debarment Certification:** The Contractor, by signature to this Agreement, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. The Contractor shall not employ any person or contract with any person or agency excluded from participation in federal health care programs or debarred or suspended per this Agreement.
- 2.14 **Disputes:** Disputes between the Contractor and the County, arising under and by virtue of this Agreement, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled, or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the Contractor shall be decided by the County's Authorized Representative or designee. All rulings, orders, instructions, and decisions of the County's Authorized Representative shall be final and conclusive, subject to Contractor's right to seek judicial relief.
- 2.15 **Duplicate Payment:** The Contractor certifies that work to be performed under this Agreement does not duplicate any work to be charged against any other grant, sub grant, or other source.
- 2.16 **Ethics/Conflicts of Interest:** In performing under this Agreement, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.
- 2.17 **Governing Law and Venue:** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and this Agreement shall be governed by laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in the courts of competent jurisdiction in Franklin County, Washington.
- 2.18 **Headings and Captions:** The headings and captions used in this Agreement are for reference and convenience only, and in no way define, limit, or decide the scope or intent of any provisions or sections of this Agreement.
- 2.19 **Indemnification:** The Contractor shall hold harmless, indemnify, and defend the County and its officers, officials, employees, and agents, from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the Contractor or its subcontractors or their property upon or in the proximity of the property of the County. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness,

death, or damage caused by or arising out of the sole negligence of the County or its officers, officials, employees, or agents.

In any and all claims against the County and its officers, officials, employees, and agents by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefits acts, it being clearly agreed and understood by the parties hereto that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing this Agreement, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated as relevant, into any Agreement the Contractor makes with any subcontractor or agent performing work hereunder. Contractor's obligations under this Section 2.19 shall survive termination and expiration of this Agreement.

The Contractor's obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from actions, error, or omission, or breach of any common law, statutory, or other delegated duty by the Contractor, the Contractor's employees, agents, or subcontractors.

- 2.20 Licensing, Accreditation and Registration:** The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Agreement.
- 2.21 Limitation of Authority:** Only the County Commissioners shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement.
- 2.22 Performance Goals:** The performance goals for the Franklin County Affordable Housing and Assistance funds are:
- a. to provide direct services to homeless individuals;
  - b. to provide supportive services to eligible clients;
  - c. to support County efforts in meeting the goals of the Benton and Franklin Counties Ten-Year Homeless Housing Plan; and
  - d. to decrease homelessness.
- 2.23 Proprietary Rights:** The County hereby retains a nonexclusive, royalty free, and irrevocable right to duplicate, use for its own purposes, disseminate, disclose, or authorize others to utilize any copyrighted or copyrightable work developed or purchased with Affordable Housing funds (RCW 36.22.178).
- 2.24 Recapture:** In the event that the Contractor fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, the County reserves the right to recapture funds in an amount to compensate the County for the noncompliance in addition to any other remedies available at law or in equity.
- Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the County. In the alternative, the County may recapture such funds from payments due under this Agreement.
- 2.25 Records Maintenance:** The Contractor shall maintain all books, records, documents, data, and other evidence relating to this Agreement and performance of the services described herein, including, but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Contractor shall retain such records for a period of six (6) years following the date of final payment.

If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

Project records shall include evidence of benefit to very low-income persons, description of the work, financial records (source and use of funds, authorization to expend funds, obligations, unobligated balance, assets, liabilities, outlays, and income), property acquisition, fair housing, equal opportunity, property disposition, etc. The public shall be granted reasonable access to all "public records" pursuant to the Public Records Act, Chapter 42.56 RCW.

Contractor shall prepare a report once the agreed upon work has been completed. The report shall include a summary of the work completed and the cost associated with said work.

The Contractor shall additionally report to the County within five (5) business days of a request by the County for the Contractor's policies and procedures for screening and admissions of qualified residents.

- 2.26 **Right of Inspection:** At no additional cost all records relating to the Contractor's performance under this Agreement shall be subject at all reasonable times to unannounced site inspections by the County as necessary to review, monitor, and evaluate performance, compliance, and quality assurance under this Agreement. The Contractor shall provide access to its facilities for this purpose.
- 2.27 **Severability:** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.
- 2.28 **Survival:** The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive.
- 2.29 **Suspension/Reduction of Services:** The Contractor shall provide the County with prompt notification of any discontinuance or suspension of or significant reduction in the provision of housing to low-income persons at the Property.
- 2.30 **Termination for Cause/Suspension:** In the event the County determines that the Contractor has failed to comply with any term or condition of this Agreement, the County may terminate the Agreement in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, upon written notice the County may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the County may suspend further payment to the Contractor in whole or in part or may restrict the Contractor's right to perform duties under this Agreement. Failure by the Contractor to take timely corrective action shall allow the County to terminate the Agreement upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the County determines that the Contractor did not fail to comply with the terms of the Agreement or when the County determines the failure was not caused by the Contractor's actions or negligence.

If the Agreement is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the

replacement Agreement, as well as all costs associated with entering into the replacement Agreement (*i.e.*, competitive bidding, mailing, advertising, and staff time).

The County may terminate the Agreement for default without written notice and without opportunity for correction if the County reasonably believes that the Contractor has violated, or is alleged to have violated, as determined by the County, any law, regulation, rule, or ordinance applicable to this Agreement.

**2.31 Termination for Convenience:** Except as otherwise provided in this Agreement, the County may terminate this Agreement, in whole or in part, for convenience by mailing written notice of termination to the addresses set forth on the face page of this Agreement. Such termination is effective ten (10) business days after the date of mailing. If this Agreement is terminated for convenience, the County shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

**2.32 Termination Procedures:** After receipt of a notice of termination, except as otherwise directed by the County, the Contractor shall:

- Stop work under the Agreement on the date, and to the extent specified, in the notice;
- Place no further orders or sub grants for materials, services, or facilities related to the Agreement;
- Assign all of the rights, title, and interest of the Contractor under the orders and sub-grants so terminated, in which case the County has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-grants. Any attempt by the Contractor to settle such claims must have the prior written approval of the County's authorized representatives; and
- Preserve and transfer any materials, Agreement deliverables, and/or the County's property in the Contractor's possession as directed by the County.

Upon termination of the Agreement, the County shall pay the Contractor for any service provided by the Contractor under the Agreement prior to the date of termination. The County may withhold any amount due as the County reasonably determines is necessary to protect the County against potential loss or liability resulting from the termination. The County shall pay any withheld amount to the Contractor if the County later determines that loss or liability will not occur.

The rights and remedies of the County under this section are in addition to any other rights and remedies provided under this Agreement or otherwise provided under law.

**2.33 Waiver:** No employee of the County or the Contractor has the power, right, or authority to waive any of the terms, conditions, and/or covenants of this Agreement.

The waiver of any breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the Agreement.

The failure of the County or the Contractor to enforce any of the terms or covenants of this Agreement or the failure to require performance under the Agreement shall not be construed as a waiver nor in any way affect the validity of the Agreement or the right of the County or the Contractor to enforce each and every term of the Agreement.