Capital Funding Contract between:

Lewis County

and

Washington State Department of Commerce
Multifamily Housing Unit

Washington State Housing Trust Fund Program
Multifamily Rental Project

For: Lewis County Drug Court House

Contract Number: 22RC-94120-015

Washington State Department of Commerce www.commerce.wa.gov

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CONTRACT FACE SHEET

Contract Number: 22RC-94120-015

Washington State Department of Commerce

Multifamily Housing Unit (MHU)

1. Contractor Lewis County 351 NW North St Chehalis, Washington 98532-1926		**2. Contractor Doing Business As (optional)** N/A	
3. Contractor Representative Steve Wohld, Chief of Internal Services Phone: (360)740-3349 Email: Steve.Wohld@lewiscountywa.gov		**4. Commerce Representative** Project Manager: Amy Evans Phone: (360) 725-3002 Email: amy.evans@commerce.wa.gov	
5. Contract Amount $467,235.00	**6. Funding Source** Federal:☐ State:☒	**7. Contract Start Date** Date of last signature below	**8. Contract End Date** 10/23/2063
9. Federal Funds Included in Contract Amount above (as applicable): N/A		**Federal Agency** N/A	**CFDA Number** N/A
10. Tax ID# 91-6001351	**11. SWV#** SWV0001232-36	**12. UBI#** 212-002-978	**13. UEI#** N/A

14. Contract Purpose

The purpose of this Contract is to fund the acquisition twelve (12) beds of affordable housing to serve the population identified in Attachment B – Scope of Work.

The DEPARTMENT, defined as the Washington State Department of Commerce, including its successor agency, and the CONTRACTOR, as identified above and defined below ("the parties"), agree to enter into and acknowledge and accept the terms of this Contract (as defined herein) and its Parts and Attachments, and have executed this Contract on the date of the last signature below, which shall also be the effective date of this Contract (the "Contract Start Date"). The rights and obligations of both parties to this Contract are governed by this Contract including all of its Parts and Attachments incorporated into this Contract as identified in the Table of Contents.

FOR CONTRACTOR:	**FOR DEPARTMENT:**
_____ Steve Wohld, Chief of Internal Services	_____ Corina Grigoras, Assistant Director, Housing Division
_____ Date	_____ Date **APPROVED AS TO FORM ONLY:** September 15, 2021 Sandra Adix, Assistant Attorney General

PART 1 – SPECIAL TERMS AND CONDITIONS

This "Part 1 – Special Terms and Conditions" applies to all project types and funding sources, unless otherwise indicated below or in the other Parts of this Contract.

1.1. DEFINITIONS

As used throughout this entire Contract, the following terms shall have the meaning set forth below:

A. "Authorized Representative" shall mean the Director of the DEPARTMENT and/or the designee authorized in writing to act on the Director's behalf.

B. "Commerce Representative" shall mean a person acting on behalf of the DEPARTMENT, as identified on the Contract Face Sheet or his or her successor.

C. "Commitment Period" shall mean the period during which the CONTRACTOR shall use and keep the Property as affordable housing serving the target population identified in, and subject to the terms of, Attachment B – Scope of Work. The Commitment Period shall commence at the time the Property is placed in service (the "Placed in Service Date" as defined below) to serve the target population identified in Attachment B and shall end on the later of the Contract End Date as identified on the Contract Face Sheet, or the period specified in any Covenant in favor of Department that is executed in accordance with this Contract. All Multifamily Rental Projects shall be evidenced by a county-recorded Low Income Housing Covenant Agreement.

D. "Contract Amount" shall mean the funding amount approved by the DEPARTMENT for the CONTRACTOR to undertake the Project, which is the maximum amount that the CONTRACTOR can receive under this Contract.

E. "Contract" shall mean this entire written agreement between the DEPARTMENT and the CONTRACTOR, including all the Parts, Attachments, Exhibits, and documents or materials incorporated by reference. The Contractor's email transmission of a signed and scanned copy of this entire Contract shall be the same as delivery of an original, provided that the Contractor shall deliver the original signed document to the DEPARTMENT within thirty (30) days of DEPARTMENT execution.

F. "Contractor Representative" shall mean the CONTRACTOR's Executive Director and/or the designee authorized in writing to act on the CONTRACTOR's behalf, as identified on the Contract Face Sheet, or his or her successor.

G. "CONTRACTOR" shall mean the Eligible Organization identified on the Contract Face Sheet performing service(s) under this Contract, and its successors and assigns, and shall include all employees and agents of the CONTRACTOR.

H. "DEPARTMENT" shall mean the Washington State Department of Commerce or its successor agency.

I. "Eligible Organization" shall mean a local government, local housing authority, behavioral health administrative assistance organization established under chapter 71.24 RCW, nonprofit community or

neighborhood-based organization, federally recognized Indian Tribe in the State of Washington, or a regional or statewide nonprofit housing assistance organization, and which is in compliance with the revenue and taxation laws, as applicable to such organization.

J. "Escrow Office" shall mean the neutral third party authorized by the CONTRACTOR as being responsible for collecting and disbursing funds and documents for the DEPARTMENT, CONTRACTOR, and other primary transacting parties related to the execution of this Contract and related legal documents.

K. "First-time Homebuyer" shall mean an individual or his or her spouse or domestic partner who have not owned a home during the three-year period prior to purchase of a home.

L. "Housing Trust Fund Handbook" or "HTF Handbook" shall mean the set of program policies and guidelines that the CONTRACTOR shall apply to the Project, which is published and made available on the DEPARTMENT's website at www.commerce.wa.gov, as may be amended by the DEPARTMENT from time to time. The Housing Trust Fund Handbook is incorporated in this Contract by reference.

M. "Low-income Household" shall mean a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the Project is located.

N. "Low-income Units" shall mean the affordable housing units or beds to be acquired, constructed or improved under this Contract and which shall be occupied by Low-income Households, as described in Attachment B – Scope of Work.

O. "Multifamily Rental Project" or "Multifamily Project" shall mean an affordable housing project consisting of two or more multifamily household units, in one or more separate buildings or real properties, and which are being rented or leased to eligible tenants as identified in Attachment B – Scope of Work.

P. "Placed in Service Date" shall mean the date that the DEPARTMENT has deemed the Project is placed in service for the intended target population as defined in Attachment B and pursuant to the terms of Housing Trust Fund Handbook as evidenced by the issuance of a certificate of occupancy by the applicable regulatory authority or such other evidence as the DEPARTMENT deems adequate.

Q. "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW. (For reference purposes, refer to RCW 36.70A.030)

R. "Project" shall mean the project funded and undertaken under this Contract, as described in Attachment B – Scope of Work.

S. "Property" shall mean the real property or properties plus any improvements described in the legal description and address, as specified in Attachment B – Scope of Work.

T. "State" shall mean the State of Washington.

U. "Subcontractor" shall mean a person or business not in the employment of the CONTRACTOR, who is providing all or part of the work or materials in relation to this Contract under a separate contract with the CONTRACTOR. The terms "subcontractor" and "subcontractors" mean Subcontractor(s) in any tier.

1.2. AUTHORITY

The DEPARTMENT has received appropriations from the Washington State Legislature under the authority of Chapters 43.185 RCW, "Housing Assistance Program," and 43.185A RCW, "Affordable Housing Program," to provide financial assistance to Eligible Organizations to assist Low-income Households in meeting their basic housing needs.

The DEPARTMENT is contracting with the CONTRACTOR as an Eligible Organization to receive funding to undertake a local affordable housing project that furthers the goals and objectives of the Housing Assistance and/or Affordable Housing Programs (the Project).

1.3. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

A. Applicable Federal and State of Washington statutes and regulations.

B. All Parts contained in this Contract including all terms and conditions, and all Attachments, and documents attached hereto and incorporated into this Contract.

C. Any other provision, term, or material specifically identified and incorporated by reference in this Contract.

1.4. CONTRACT AMOUNT

The dollar value of the Contract Amount is identified on the Contract Face Sheet and is structured as one or more loans or recoverable grants, or a combination of both, as outlined in Attachment A – Loan or Grant Terms. Subject to the terms and conditions in the Contract regarding payment and drawdown of funds, the DEPARTMENT shall pay to the CONTRACTOR, directly or through an Escrow Office identified by the CONTRACTOR, a dollar amount up to the Contract Amount for the work outlined in Attachment B – Scope of Work and in Attachment C – Development Budget.

The Contract Amount is funded by the following Washington State funding sources:

A. $467,235.00 from the "Capital Community Assistance Account" – State Appropriation (Fund 26V-1), which was appropriated in the 2022 Supplemental Capital Budget, SSB 5651, Laws of 2022, Chapter 296,

Section 1024. The parties hereby acknowledge that these funds are proceeds issued in accordance with RCWs 43.79.565, and 43.185A.040 or 43.185.050.

The CONTRACTOR shall take note of the source(s) of funds identified above and comply with applicable state and federal law in the use of funds under this Contract.

1.5. PROMISSORY NOTE AND DEED OF TRUST

All amounts loaned or granted as identified in Attachment A – Loan or Grant Terms, shall be evidenced by one or more promissory note(s) (the "Promissory Note(s)") and shall be secured by one or more deed(s) of trust in favor of the DEPARTMENT (the "Deed(s) of Trust"). Multiple Deeds of Trust may be necessary for Projects that include multiple properties. Each Deed of Trust shall be recorded in the county or counties in which the Property or Properties is or are located. The CONTRACTOR shall ensure that each original Deed of Trust shall be returned to the DEPARTMENT after recordation. The CONTRACTOR shall also ensure each original Promissory Note shall be returned to the DEPARTMENT at Contract execution. Each Deed of Trust shall secure the following:

A. Payment in the amount of the Contract Amount, together with interest thereon according to the terms of each Promissory Note and Attachment A – Loan or Grant Terms, including all renewals, modifications and extensions thereof, and
B. Performance of each agreement, term and condition set forth in each Deed of Trust, Covenant, any Priority and Subordination Agreement executed in accordance with this Contract, and this Contract, including, without limitation, payment of any Shared Appreciation due pursuant to the terms of this Contract.

1.6. TITLE INSURANCE

The CONTRACTOR shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed(s) of Trust in an amount not less than the Contract Amount, naming the DEPARTMENT as the insured.

1.7. NOTICE IN THE EVENT OF DEFAULT

A. Monetary Default

If a monetary event of default occurs under the terms of this Contract, the Deed of Trust, the Covenant, or the Promissory Note, including any amendments to the foregoing (together, the "Loan Documents"), prior to exercising any remedies thereunder, the DEPARTMENT shall give the CONTRACTOR, and the LLC, and the Investor Members, if any, simultaneous written notice of such default. The CONTRACTOR, and LLC and/or Investor Members, if any, shall have a period of fifteen (15) days after such notice is given within which to cure the default prior to exercise of remedies by the DEPARTMENT or such longer period of time as may be specified in the Loan Documents. The DEPARTMENT's liability for notification shall be limited to notifying all parties at the last known address as shown in the DEPARTMENT's Contract files. The CONTRACTOR is responsible for ensuring that the DEPARTMENT has current names, addresses and telephone numbers for all parties entitled to notice under the Loan Documents.

B. Non-Monetary Default

If a non-monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, the DEPARTMENT shall give the CONTRACTOR, and the LLC and the Investor Members if any, simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the CONTRACTOR and LLC and/or Investor Members, if any, shall have such period to effect a cure prior to exercise of remedies by the DEPARTMENT under the Loan Documents, or such longer period of time as may be specified in the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days or such longer period if so specified, and if the CONTRACTOR or LLC and/or Investor Members, if any, (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then the CONTRACTOR or LLC and/or Investor Members, if any, shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by DEPARTMENT.

1.8. COVENANT RUNNING WITH THE LAND

For Multifamily Rental Projects, the CONTRACTOR shall cause to be recorded one or more covenant(s) running with the land (the "Covenant(s)") limiting the use of the Property or Properties to residential rental housing for Low-income Households that at the time of initial occupancy have gross annual household incomes as outlined in Attachment B – Scope of Work.

1.9. CROSS DEFAULT

The DEPARTMENT shall not cross default or cross collateralize the loan(s) or grant(s) made under this Contract with any other contracts, loans, or grants.

1.10. REIMBURSEMENT OF EXPENSES INCURRED PRIOR TO CONTRACT EXECUTION

Upon the DEPARTMENT's written consent, Contract Amount funds may be used to reimburse costs incurred up to two (2) years prior to the date funds were allocated to the Project, or three (3) years prior to the date of the Contract execution, whichever is earlier. Exceptions allowing the use of the Contract Amount to reimburse earlier expenses must be requested in writing and approved in advance of Contract execution.

Unless otherwise noted in this Contract and unless the DEPARTMENT approved funds are to be drawn down at Contract execution, drawdown of funds shall be made on a reimbursement basis for expenses incurred after formal execution of this Contract. The CONTRACTOR shall provide appropriate documentation and meet the DEPARTMENT's reporting requirements to support all eligible reimbursement requests.

1.11. REQUIREMENTS FOR DRAWDOWN OF CONTRACT AMOUNT

Except as may be approved by the DEPARTMENT in writing, the CONTRACTOR shall meet the following conditions in order to drawdown the Contract Amount:

A. Receipt by the DEPARTMENT of the original Promissory Note(s) and the CONTRACTOR's Recording of the DEPARTMENT's Covenant(s) and Deed(s) of Trust, and if applicable, Assignment, Assumption and Consent Agreement and/or Priority and Subordination Agreement in form and substance acceptable to the DEPARTMENT.

B. The CONTRACTOR has in place all applicable construction, land use, environmental, cultural and historical resource, and zoning permits, and other federal, state and local governmental approvals as necessary to undertake the activity to which the specific draw request applies.

C. If the Project includes acquisition of land and/or buildings, an appropriate appraisal shall have been reviewed and approved by the DEPARTMENT.

D. The CONTRACTOR shall meet the requirements outlined in Attachment B – Scope of Work within the timeframe specified in Attachment D – Project Schedule. The CONTRACTOR shall be reimbursed for all eligible Project expenditures up to the Contract Amount. The CONTRACTOR shall draw down the entire Contract Amount within six (6) months of the Placed in Service date as referenced in Attachment D – Project Schedule, or the DEPARTMENT may reduce the Contract Amount by the amount of the unspent funds.

E. If applicable and approved by the DEPARTMENT, funds for replacement reserves shall be drawn down from the Contract Amount for deposit into a reserve account in accordance with Attachment C – Development Budget. Reserve account balances and any changes to such balances shall be reported by the CONTRACTOR to the DEPARTMENT on an annual basis, in accordance with the annual reporting requirements as stated in this Contract. Any portion of the Contract Amount used to capitalize replacement reserves and the interest that accrues to the replacement reserve account shall be considered part of the Property in the event of transfer, assignment, or sale to an eligible nonprofit organization approved by the DEPARTMENT.

F. The CONTRACTOR shall submit reports and back-up documentation, in a form and manner to be established by the DEPARTMENT, with each request for reimbursement (currently known as the "A19 Voucher") regarding work under this Contract identifying the portion of Contract Amount expended for work or services performed by Subcontractors, at any tier, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned businesses.

G. All requests for reimbursement submitted by the CONTRACTOR to the DEPARTMENT shall be reviewed by the DEPARTMENT and may be reviewed by a third-party reviewer contracted by the DEPARTMENT to perform such activity, unless funds are drawn down at Contract execution. Reimbursement requests will be reviewed for conformance with the respective Subcontractor construction contract, source of the costs, and to provide a recommendation for funding the reimbursement.

1.12. BILLING PROCEDURES AND PAYMENT

The DEPARTMENT may, at DEPARTMENT's discretion, deliver initial funds to an Escrow Office at Contract execution or to the CONTRACTOR upon completion of work identified in Attachment B – Scope of Work and receipt of properly completed and approved reimbursement requests. Subsequent reimbursement requests shall be timely and regularly submitted to the DEPARTMENT, but shall not be submitted more often than monthly. The CONTRACTOR or Escrow Office shall receive payment from the DEPARTMENT for eligible expenditures through Electronic Funds Transfer whenever possible. Reimbursement requests must be made via the DEPARTMENT's Internet-based data-system (currently known as the Contracts Management System or CMS) and must be accompanied by all supporting documentation.

Each reimbursement request shall describe and document, to the DEPARTMENT's satisfaction, the work performed, costs being reimbursed, the progress of the Project, and any applicable fees. Reimbursement requests shall include the Contract Number as identified on the Contract Face Sheet and shall separately identify funds expended by the CONTRACTOR and those expended by its Subcontractors. A receipt or invoice must accompany each request for reimbursement of any single expense in the amount of Fifty and 00/100 Dollars ($50.00) or more in order to receive reimbursement.

Payment shall be considered timely if made by DEPARTMENT within thirty (30) calendar days after receipt of the properly documented request for reimbursement. Payment shall be sent to the statewide vendor number designated by the CONTRACTOR and identified on the Contract Face Sheet and on the A19 Voucher.

The DEPARTMENT may, in its sole discretion, terminate this Contract or withhold payments requested by the CONTRACTOR for reimbursement if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of work to be provided under this Contract shall be made by DEPARTMENT.

Duplication of Billed Costs: The CONTRACTOR shall not bill the DEPARTMENT, and the DEPARTMENT shall not pay the CONTRACTOR, if the CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that expenditure. The CONTRACTOR shall disclose to the DEPARTMENT when the CONTRACTOR is entitled to payment of, or has been or will be paid by any other source, including grants, for expenditures eligible for reimbursement under this Contract.

Disallowed Costs: The CONTRACTOR is solely responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

1.13. TARGET POPULATION AND BENEFIT STANDARD

For the Commitment Period defined in Part 1 above, the Low-income Units funded under this Contract shall serve the target population(s) at the Area Median Income (AMI) level(s) identified in Attachment B – Scope of Work.

The Low-income Units funded under this Contract shall be occupied by households that at the time of initial occupancy have gross annual household incomes at or below the applicable AMI percentage levels, as listed in Attachment B – Scope of Work, for the AMI County and Area identified.

The median income limits ("HTF Income Limits") can be found on the Annual Reporting page of DEPARTMENT's website. It is the CONTRACTOR's responsibility to follow the most current HTF Income Limits.

If this Project includes a social or human service component, the CONTRACTOR must maintain evidence, to be provided to the DEPARTMENT upon request that such services or an agreement to provide such services, is currently in place with a provider that is licensed as may be required by law, qualified and experienced in providing the services.

1.14. TENANT RENT

Rent to be paid by tenants may not exceed thirty percent (30%) of the monthly income of the target population. Rents shall be adjusted for the household size and are less the monthly allowance for customary utilities and services (excluding telephone, cable television and other telecommunications), to be paid by tenant.

Over-Income Tenants:
Unless otherwise specified in Attachment B – Scope of Work and unless prohibited by law or requirements of any other public funding source for the Project, the CONTRACTOR may incorporate provisions in tenant lease agreements which will allow:

A. Adjusting rents to be paid by any household whose income, after initial occupancy, exceeds the highest AMI level identified in Attachment B of this Contract (defined as "over-income tenants") to the next AMI level under which the household qualifies, and/or
B. Adjusting rents to be paid by any household whose income, after initial occupancy, exceeds 80% of the AMI to the lesser of the Fair Market Rent ("FMR") for the unit size or 30% of the actual income of the household, and/or
C. Terminating lease agreements of households whose income exceed 80% of the AMI.

If an over-income tenant's income later decreases, the rent paid by that household is to be reduced to the appropriate AMI level under which the household qualifies, which is within the AMI level specified in Attachment B of this Contract. When determining the next or the appropriate AMI level under which a household qualifies, the following are the HTF standard AMI levels: 30%, 35%, 40%, 45%, 50%, 60%, 65%, and 80%.

The CONTRACTOR shall be aware that the following exceptions apply to Projects that are funded in part or in whole with federal program funds:

A. For the over-income tenants residing in HOME Program Assisted units, the CONTRACTOR shall follow the 24 CFR Part 92.252.
B. For the over-income tenants residing in National Housing Trust Fund Program Assisted units, the CONTRACTOR shall follow 24 CFR Part 93.302.

1.15. SHARED APPRECIATION

If the use of the Property changes to something other than that stated in Attachment B – Scope of Work of this Contract prior to completion of the Commitment Period or the end of this Contract, either by the CONTRACTOR, its successors or assigns, or as a result of a sale, transfer or refinance of the Property, the DEPARTMENT shall share in the appreciated value of the Property as described below.

The DEPARTMENT reserves the right in some circumstances to waive its Shared Appreciation, partially or in its entirety, where the funds generated by a sale, transfer or refinance of the Property are to be reinvested in affordable housing for Low-income Households to serve the same population targeted in this Contract, pursuant to a plan agreed to in writing by the CONTRACTOR and the DEPARTMENT prior to such sale, transfer or refinance.

The DEPARTMENT's Shared Appreciation shall be due and payable, by the then current owner of the Property, if any or all of the following occurs:

A. Sale, transfer or refinance of the Property, or a portion of the Property, for a use other than that stated in Attachment B – Scope of Work of this Contract.
B. Change in use.
C. Contract termination for cause.
D. Material non-compliance with the terms and obligations of this Contract.

For purposes of Shared Appreciation, "Original Principal" shall mean the Contract Amount awarded under this Contract.

Shared Appreciation is the DEPARTMENT's proportionate share of the appreciated value of the Property, together with the appreciated value of the improvements constructed thereon regardless of whether such improvements are developed by the CONTRACTOR, its assigns, or by any lessee of the Property.

Shared Appreciation (SA) is the product of the Net Proceeds (NP) less Total Original Development Costs (TODC) multiplied by the fraction whose numerator is the Original Principal (OP) amount and whose denominator is the TODC: SA = (NP-TODC) x (OP/TODC).

The Project's Total Original Development Costs (TODC) shall be the same as the final total Project cost amount from the Certified Final Total Development Cost that the CONTRACTOR shall provide to the DEPARTMENT in accordance with Section 1.18. Certified Project Final Development Costs.

Net Proceeds (NP) shall be calculated as follows:

The value as determined by an appraisal satisfactory to the DEPARTMENT in the event the Property is not sold to a bona fide third party or the sales price if sold to a bona fide third party, any balance remaining in the escrow account for replacement and operating reserves established pursuant to this Contract, and any insurance or condemnation proceeds received. For this purpose, bona fide third party is defined as an Eligible Organization that is eligible to receive Housing Trust Fund funds, has

experience managing Housing Trust Fund properties, and intends to continue the purpose and use stated in Attachment B – Scope of Work of this Contract.

Less the actual reasonable approved costs of sale (if the Property is sold), including appraisal, real estate commissions, real property excise tax, escrow fees, recording fees, title, and insurance premiums.

Therefore, the DEPARTMENT's Shared Appreciation percentage is the Original Principal divided by Total Original Development Costs.

Example:

Original Principal (OP) =	$1,000,000
Total Original Development Costs (TODC) =	$3,000,000

Calculation to Determine the Shared Appreciation Percentage: OP/TODC = SA%.
Using the example above: $1,000,000 / $3,000,000 = 33.33%.
In this example, 33.33% is the Shared Appreciation percentage the DEPARTMENT shall utilize to calculate its shared appreciation value of the Property.

With regard to this Contract and Project specifically, the **Shared Appreciation percentage** is **96%**, based on an **Original Principal amount of $467,235.00 divided by Total Original Development Costs of $485,134.00.** The above number representing Total Original Development Costs is an estimated amount. At the time any Shared Appreciation is due, Total Original Development Costs will be based on actual final project costs as described in **Section 1.18 Certified Project Final Development Costs**.

1.16. PROJECT OPERATING BUDGET AND RENTAL ASSISTANCE

If the Project receives, or is expected to receive, Federal Section 8 assistance or any other similar rental assistance, should the CONTRACTOR's Section 8 or other rental assistance eligibility or participation be reduced or terminated, this Contract may be amended to reflect changed conditions.

In the event rental assistance to the Project is reduced or terminated, to the extent permitted under state statute and to the extent such reduction or termination is not caused by any act or omission of the CONTRACTOR, its successors or assigns, including but not limited to failure to meet property maintenance or condition requirements, the parties may, at the DEPARTMENT's sole discretion, renegotiate the loan repayment terms (if applicable), the target population, and the rent requirements as described in Attachment B – Scope of Work. If applicable, the CONTRACTOR shall continue to apply for receipt of Federal Section 8 subsidies or other rental assistance programs and make commercially reasonable efforts to maintain eligibility of the Project for such programs.

It is the responsibility of the CONTRACTOR to notify the DEPARTMENT or its designee in a timely manner of any termination or reduction in Section 8 or other rental assistance and whether such termination or reduction

results in the Project failing to meet any applicable debt service coverage, expense requirements, or serving the target population identified in Attachment B – Scope of Work.

Similarly, if the CONTRACTOR derives a significant portion of its operating budget from a third party providing operating subsidy, and if that third party funding amount decreases or terminates, the CONTRACTOR shall notify the DEPARTMENT in a timely manner of such decrease or termination when such termination or reduction results in the Project failing to meet any applicable debt service coverage, expense requirements, or the activities described in the Attachment B – Scope of Work. At the DEPARTMENT's sole discretion, this Contract may be amended and the loan terms (if this Contract includes one or more loans) and target population may be renegotiated, to the extent permitted under state statute and to the extent such decrease or termination of subsidy is not caused by any act or omission of the CONTRACTOR, its successors or assigns, including but not limited to failure to meet property maintenance or condition requirements.

1.17. ENVIRONMENTAL REVIEW

The CONTRACTOR shall comply with the environmental requirements under the State Environmental Policy Act (SEPA). If this Project is funded in part or in full by the HOME, 24 CFR 58, or the National Housing Trust Fund, 24 CFR 93, programs, then the CONTRACTOR shall also comply with requirements under the National Environmental Policy Act (NEPA).

1.18. CERTIFIED PROJECT FINAL DEVELOPMENT COSTS

The CONTRACTOR agrees to submit to the DEPARTMENT a third-party certification of the Project's Final Total Development Cost no more than 90 days from the time the Project is placed in service, in a format required by the DEPARTMENT. See Section 1.23 for placed in service procedures. If the Project is also financed by the Low-Income Housing Tax Credit program, the 90-day requirement may be extended if the reason for the delay is to comply with procedures or requirements of the Low-Income Housing Tax Credit program.

Alternatively, the CONTRACTOR has the option to obtain the third-party certification of the Project's Final Total Development Cost as part of their organization's annual audit. If such option is selected, the third-party certification of the Project's Final Total Development Cost shall be submitted to the DEPARTMENT no later than 90 days from the end of the organization's fiscal year that is being audited. For example, if the organization's fiscal year ends on December 31, the third-party certification of the Project's Final Total Development Cost shall be submitted to the DEPARTMENT no later than March 30 the following year.

The cost to obtain the third-party certification is reimbursable under this Contract and may be included in the Project's development budget.

1.19. HISTORICAL OR CULTURAL REVIEW, HUMAN REMAINS

Prior to approval and disbursement of any funds awarded under this Contract, CONTRACTOR shall complete the requirements of the Governor's Executive Order 21-02, or shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. CONTRACTOR agrees that the CONTRACTOR is legally and

financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the DEPARTMENT and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract. The DEPARTMENT shall not expend funds for acquisition, demolition, or construction until the Governor's Executive Order 21-02 review and consultation process is complete.

In addition to the requirements set forth in this Contract, CONTRACTOR shall, in accordance with Governor's Executive Order 21-02, coordinate with the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and *prior to title transfer as well as construction* to determine the existence of any tribal cultural resources affected by Project. CONTRACTOR agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The CONTRACTOR agrees that if historical or cultural resources are discovered during construction, the CONTRACTOR shall immediately stop construction and notify the local historic preservation officer and the state's historic preservation officer at DAHP. If human remains are uncovered, the CONTRACTOR shall stop work, report the presence and location of the remains to the coroner and local law enforcement immediately, and contact DAHP and the concerned tribe's cultural staff or committee.

The DEPARTMENT is responsible for holding all records related to the Tribal consultation process and is required to demonstrate that the Tribal consultation was completed and must be able to demonstrate compliance by providing such records to DAHP.

In addition to the requirements set forth in this Contract, CONTRACTOR agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the CONTRACTOR finds it necessary to amend the construction work performed under this Contract, the CONTRACTOR may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

The CONTRACTOR shall require this provision to be contained in all subcontracts for work or services resulting from this Contract.

1.20. 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 Contract.

1.21. CODE REQUIREMENTS

All construction and rehabilitation Projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building department.

1.22. PREVAILING WAGE LAW

The CONTRACTOR hereby certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The CONTRACTOR shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW and shall make such records available for the DEPARTMENT's review upon request.

If the funding under this Contract is in the form of a repayable loan that is incurring interest, is not forgivable, and is required to be repaid in full, this loan in and of itself is not expected to trigger a requirement that state prevailing wages be paid on the Project. Notwithstanding the foregoing, the CONTRACTOR acknowledges that the full set of facts for its Project must be considered to ascertain the applicability of Prevailing Wages law, Chapter 39.12 RCW, and a definitive determination can only be obtained from the Washington State Department of Labor and Industries. If the Project is receiving other public funds and/or the CONTRACTOR is a public entity (e.g., a city, county, housing authority), the CONTRACTOR may be required to pay prevailing wages on the Project. The CONTRACTOR agrees that the CONTRACTOR is responsible for determining if Prevailing Wages laws, Chapter 39.12 RCW, apply to the Project and that the DEPARTMENT shall not make such a determination.

The CONTRACTOR shall be responsible for any prevailing wage payments that may be required by law. The DEPARTMENT strongly recommends that the CONTRACTOR consult with the Washington State Department of Labor and Industries and/or private legal counsel to determine whether or not prevailing wages must be paid on the Project and, if so, what wage rates apply. The CONTRACTOR acknowledges that failure to secure a determination from the Washington State Department of Labor and Industries prior to commencement of work on the Project can result in significant additional cost to the Project.

If the funding provided under this Contract is in whole or in part a grant or a forgivable loan, the CONTRACTOR agrees that Prevailing Wages on Public Works, Chapter 39.12 RCW, shall apply to the Project, and all contractors and subcontractors performing work on the Project shall consult with Washington State Department of Labor and Industries, as necessary, and file the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040.

1.23. PERFORMANCE REPORTING

A. Comprehensive Management Plan

The CONTRACTOR shall provide to the DEPARTMENT, according to a negotiated timeline, a management plan for the operation of the Property (the "Management Plan") that meets the requirements of the Housing Trust

Fund Handbook. The DEPARTMENT may require additional information to be included in the Management Plan.

B. Capital Needs Assessment

The CONTRACTOR shall provide to the DEPARTMENT, within six (6) months of receipt of a certificate of occupancy, a Capital Needs Assessment that meets the requirements of the Housing Trust Fund Handbook. The DEPARTMENT may require additional information to be included in the Capital Needs Assessment.

C. Annual Reporting

Annual performance reports must be completed by the CONTRACTOR and submitted to the DEPARTMENT in a form and manner as prescribed by the DEPARTMENT. The DEPARTMENT reserves the right to change the reporting requirements, in which case the DEPARTMENT shall notify the CONTRACTOR within a reasonable period of time. Reserve account balances shall be carried forward each year and reserve account activity shall be identified in the Annual Report. Failure to file timely annual performance reports in accordance with DEPARTMENT requirements may result in penalties that may include, but are not limited to, the termination of this CONTRACT, a notice of default, and/or the DEPARTMENT denying the CONTRACTOR's application in future funding rounds.

1.24. PROJECT CLOSEOUT

A. Placed In Service

The CONTRACTOR shall comply with placed in service procedures as outlined in Housing Trust Fund Handbook. The placed in service procedures shall be completed within the timeframe identified in Attachment D – Project Schedule.

B. Final Contract Close Out

Upon the expiration of the Commitment Period and, if applicable, payment in full of the Promissory Note(s), the DEPARTMENT shall complete a Contract Close Out. Any Deed(s) of Trust and Covenants recorded against the Property shall be reconveyed and the Promissory Note(s) shall be marked "Paid" or "Released" and returned to the CONTRACTOR of record at the time the Commitment Period expires. Any excess HTF monies that may be in the CONTRACTOR's possession shall be returned by the CONTRACTOR to the DEPARTMENT.

1.25. SUBCONTRACTING

The parties anticipate that the CONTRACTOR shall subcontract work contemplated under this Contract. The CONTRACTOR shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the DEPARTMENT in writing may: (a) require the CONTRACTOR to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the CONTRACTOR from subcontracting with a particular person or entity; or (c) require the CONTRACTOR to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The CONTRACTOR is responsible to the DEPARTMENT if its Subcontractors fail to comply with any applicable

term or condition of this Contract. The CONTRACTOR shall appropriately monitor the activities of its Subcontractors to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the CONTRACTOR to the DEPARTMENT for any breach in the performance of the CONTRACTOR's duties.

Every subcontract shall include a condition that the DEPARTMENT and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

1.26. CONTRACTOR ORGANIZATION INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the DEPARTMENT 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 Subcontractor, or agents of either, while performing under the terms of this Contract.

The insurance required shall be issued by an insurance company authorized to do business within the State of Washington. The insurance shall name the State of Washington Department of Commerce, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall instruct the insurers to give DEPARTMENT thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The CONTRACTOR shall submit to DEPARTMENT, within fifteen (15) calendar days of the Contract start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, the CONTRACTOR shall provide renewal certificates if requested prior to expiration of each policy required under this section.

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

A. Commercial General Liability Insurance Policy

Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1,000,000.00 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

B. Automobile Liability

In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the CONTRACTOR or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000.00 per occurrence, using a Combined Single Limit for bodily injury and property damage.

C. Professional Liability, Errors and Omissions Insurance

In the event the CONTRACTOR provides professional services, the CONTRACTOR shall maintain Professional Liability Insurance in such limits as are appropriate in light of the type and extent of services provided. The CONTRACTOR shall maintain Errors and Omissions Insurance, minimum limits of no less than $1,000,000.00 per occurrence to cover all activities by the CONTRACTOR and licensed staff employed or under contract to the CONTRACTOR. The State of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

D. Fidelity Insurance

Every officer, director, employee, or agent who is authorized to act on behalf of the CONTRACTOR for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- The amount of fidelity coverage secured pursuant to this Contract shall be $100,000.00 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the DEPARTMENT as beneficiary.

- Subcontractors that receive $10,000.00 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the CONTRACTOR as beneficiary.

- The CONTRACTOR shall provide, at the DEPARTMENT's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered, the amounts, the period of coverage, and that the DEPARTMENT shall be provided thirty (30) days advance written notice of cancellation.

E. Contractors and Local Governments that Participate in a Self-Insurance Program

A CONTRACTOR that participates in a Self-Insured/Liability Pool or Self-Insured Risk Management Program may seek approval from the DEPARTMENT to the have the above liability/fidelity/property insurance requirements met under a self-insured/liability pool or self-insured risk management program satisfactory to the DEPARTMENT. In its request to the DEPARTMENT, the CONTRACTOR shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles.

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

1) Governmental Accounting Standards Board (GASB),
2) Financial Accounting Standards Board (FASB), and
3) Washington State Auditor's annual instructions for financial reporting.

A CONTRACTOR that participates in a joint risk pool shall maintain sufficient documentation to support the aggregate claim liability information reported its own balance sheet reporting its assets and liabilities. If the pool

is prohibited from naming third parties as additional insureds, the State of Washington, its agents, and employees need not be named as additional insured, provided sufficient proof of such prohibition is provided to the DEPARTMENT.

CONTRACTOR shall provide to the DEPARTMENT annually, on the anniversary of the start date of this Contract, a summary of coverages and a letter of self-insurance, evidencing continued coverage under CONTRACTOR's self-insured/liability pool or self-insured risk management program.

1.27. PROPERTY INSURANCE

The CONTRACTOR shall submit to the DEPARTMENT, prior to execution of this Contract, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, the CONTRACTOR shall submit to the DEPARTMENT renewal certificates on an annual basis, not less than thirty (30) calendar days prior to the policy expiration date.

The CONTRACTOR shall keep the Property insured in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. Throughout the term of this Contract, such insurance shall cover the following hazards:

- Loss or damage by fire and such other risks;
- Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises;
- Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in a building or building on the premises.

The DEPARTMENT highly recommends the CONTRACTOR to obtain earthquake and flood insurance, in addition to the insurance coverage described above.

The State of Washington Department of Commerce, its agents, officers, and employees shall be specifically named as loss payee or additional insureds on all policies and all policies shall be primary to any other valid and collectable insurance.

1.28. NON-RECOURSE AWARD

Notwithstanding anything to the contrary herein, the CONTRACTOR, its assigns and their respective members, partners, officers, directors, employees, agents and subcontractors shall have no personal liability for payment of the indebtedness evidenced hereby or performance of the covenants set forth in the Promissory Note, in the Deed of Trust or in this Contract, and the sole recourse of the holder of the Promissory Note shall be confined to the exercise of its rights under the Deed of Trust, provided that nothing shall diminish the CONTRACTOR's liability for damages or deficiencies resulting from theft, waste, fraud, material misrepresentation and misuse of rents.

1.29. CASUALTY, CONDEMNATION, ETC.

In the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, the CONTRACTOR shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefore, provided that:

A. Such proceeds are sufficient to keep the loan in balance and rebuild the Property in a manner that provides adequate security to the DEPARTMENT for repayment of the loan, or if such proceeds are insufficient to provide adequate security or to keep the loan in balance, then the CONTRACTOR has funded any deficiency,

B. The DEPARTMENT shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and such approval shall not be unreasonably withheld, and

C. No uncured material default then exists under this Contract, the Promissory Note, the Deed of Trust or the Covenant. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then such insurance and/or condemnation proceeds may be used for partial rebuilding and partial repayment of the loan in a manner that provides adequate security to the DEPARTMENT for repayment of the remaining balance of the Contract Amount.

The DEPARTMENT shall specifically be named as a lender loss payee on all policies, and all policies shall be primary to any other valid and collectable insurance.

1.30. PROJECT AND RELATED PRESS RELEASES

The CONTRACTOR shall identify the DEPARTMENT as a Project financier or capital funder on any press releases about the Project. If signage is erected during construction or rehabilitation, signage shall identify the Project as one funded by the "Washington State Department of Commerce" and "Washington State Housing Trust Fund."

The CONTRACTOR may affix, in a publicly viewed common area, a plaque or other approved permanent signage that identifies the DEPARTMENT, program, and housing as an investment of the people of the State of Washington.

1.31. RESERVE REQUIREMENTS

Replacement reserves shall not be used for purposes other than capital replacements or improvements to the Project, without the prior written consent of the DEPARTMENT. Operating reserves shall not be used for purposes other than the funding of operating deficits, without the prior consent of the DEPARTMENT, which consent shall not be unreasonably withheld. Any other reserves shown in Attachment C – Development Budget, if applicable, shall not be used for purposes other than the purposes designated, without the prior written consent of the DEPARTMENT, which consent shall not be unreasonably withheld. All reserves shall remain with the

Project upon its sale or transfer and shall be used solely for the purposes stated in Attachment C – Development Budget.

1.32. REFINANCE AND FUTURE ENCUMBRANCE

Approval by the DEPARTMENT shall be required for refinancing or any further encumbrance on the Project or the Property. Such approval shall be at the DEPARTMENT's sole discretion and shall not be unreasonably withheld. Approval shall be based on the current DEPARTMENT guidelines, and factors to be considered shall include but not be limited to the following: enhancement of the Property value; shared appreciation; use of the refinance proceeds in furtherance of the DEPARTMENT's affordable housing objectives; improvement of the position of the DEPARTMENT's lien; and pay-down of the debt owed to the DEPARTMENT.

1.33. AUDIT

Except as otherwise approved by the DEPARTMENT, the CONTRACTOR shall provide the DEPARTMENT with annual audits that meet the requirements of the Housing Trust Fund Handbook.

1.34. RECEIPT OF OTHER PUBLIC OR PRIVATE FUNDING

The CONTRACTOR shall notify the DEPARTMENT, upon receipt and in its Annual Report, of any other public or private subsidy for the Project at any time during the Commitment Period. Such written notification shall explain the source of the funds, conditions and the effect upon the Project. The DEPARTMENT reserves the right to amend, reduce, and restructure its Contract Amount to the CONTRACTOR based upon the CONTRACTOR's receipt of additional project funding.

1.35. STORED MATERIALS FOR CONSTRUCTION AND REHABILITATION PROJECTS

The DEPARTMENT may withhold any disbursement for materials or fixtures ("Stored Materials") for the Project until such time as the same have been incorporated into the improvements and permanently affixed to the real property. Any disbursement of funds, in whole or in part, to pay for any Stored Materials will be made on a case-by-case basis and will be subject, in addition to satisfaction of the other conditions to disbursements contained in this Contract, and to the DEPARTMENT's receipt of evidence reasonably acceptable to the DEPARTMENT that such:

- **A.** Stored Materials are included within the coverages of insurance policies carried by the CONTRACTOR in accordance with this Contract;
- **B.** Stored Materials have been, or upon disbursement of the requested advance will be, fully paid for with the ownership thereof vested in the CONTRACTOR free of any liens or claims of third parties;
- **C.** Stored Materials are stored either on the Property or in a bonded warehouse;
- **D.** Stored Materials are suitably protected against casualty, theft or damage; and
- **E.** Stored Materials, if they are finished components, are ready for installation and are appropriate for purchase during the current stage of construction.

1.36. NONDISCRIMINATION

The CONTRACTOR shall make the Project facilities available in a manner that assures fair, equal, and non-discriminatory treatment to all persons. During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, including but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination; Chapter 51-50 WAC, Washington State's Building Code; 42 U.S.C. 12101 et seq., the American with Disabilities Act ("ADA"); and Title VII of the Civil Rights Act of 1964, Public Law 88-352 the Federal Fair Housing Act; and 24 CFR Part 100, Housing for Older Persons Act of 1995.

The funds provided under this Contract shall not be used to fund religious worship, exercise, or instruction. The CONTRACTOR shall not require persons to participate in any religious services as a condition of receiving shelter, housing, or any other housing-related assistance.

1.37. COMPLIANCE WITH THE HOUSING TRUST FUND HANDBOOK

The parties acknowledge and agree that the work under this Contract is subject to the Housing Trust Fund Handbook, which is a set of program policies and guidelines available on the DEPARTMENT's website (currently at http://www.commerce.wa.gov/htf), and that the Housing Trust Fund Handbook may be amended by the DEPARTMENT from time to time. The DEPARTMENT reserves the right to require changes to an approved Management Plan, reporting requirements, placed in service procedures, or other requirements or procedures identified in this Contract, consistent with amendments to the Housing Trust Fund Handbook.

1.38. CONSTRUCTION OF CONTRACT, ENTIRE AGREEMENT

All Parts, terms and provisions in this Contract, as well as the Attachments, shall be construed in accordance with their ordinary and customary meaning.

Parts 1 and 2 of this Contract apply to all Project types and funding sources, unless otherwise indicated in the Contract.

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

1.39. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by all Parts contained in the text of this Contract instrument including all Attachments. Furthermore, the following are incorporated into this Contract by reference:

- HTF Income Limits found on the DEPARTMENT's website.
- The CONTRACTOR's Housing Trust Fund application for funds (if any).

- The DEPARTMENT's Deed(s) of Trust, including all renewals, modifications and extensions thereof, if applicable.
- The DEPARTMENT's Promissory Note(s), including all renewals, modifications and extensions thereof.
- The DEPARTMENT's Low Income Housing Covenant Agreement(s), including all renewals, modifications and extensions thereof, if applicable.
- The Housing Trust Fund Handbook, as it may be modified or amended from time to time.
- The Priority and Subordination Agreement, if applicable.
- The Assignment, Assumption and Consent Agreement, if applicable.

PART 2 – GENERAL TERMS AND CONDITIONS

2.1. ALL WRITINGS CONTAINED HEREIN

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

2.2. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

2.3. AMERICANS WITH DISABILITIES ACT (ADA)

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.

2.4. APPROVAL

This Contract shall be subject to the written approval of the DEPARTMENT's authorized representative and shall not be binding until so approved. This Contract may be altered, amended or waived only by a written amendment executed by both parties.

2.5. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the DEPARTMENT.

2.6. ATTORNEYS' FEES

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

2.7. AUDIT

A. General Requirements

The CONTRACTOR is to procure audit services based on the following guidelines.

- The CONTRACTOR shall maintain its records and accounts to facilitate audits and shall ensure that Subcontractors also maintain auditable records.

- The CONTRACTOR is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.
- DEPARTMENT reserves the right to recover from the CONTRACTOR all disallowed costs resulting from the audit.
- Responses to any unresolved findings and disallowed or questioned costs shall be included with the audit report. The CONTRACTOR must respond to DEPARTMENT requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the CONTRACTOR is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of nonprofit organizations are to be conducted by a certified public accountant selected by the CONTRACTOR.

The CONTRACTOR shall include the above audit requirements in any subcontracts.
In any case, the CONTRACTOR's records must be available for review by the DEPARTMENT.

C. Documentation Requirements

The CONTRACTOR must send a copy of any audit report no later than nine (9) months after the end of the CONTRACTOR's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the CONTRACTOR must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by DEPARTMENT.
- Copy of the Management Letter and Management Decision Letter, where applicable.

If the CONTRACTOR is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to DEPARTMENT; no other report is required.

2.8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

- All material provided to the CONTRACTOR by the DEPARTMENT that is designated as "confidential" by the DEPARTMENT;
- All material produced by the CONTRACTOR that is designated as "confidential" by the DEPARTMENT; and

- All personal information in the possession of the CONTRACTOR that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. 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 Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the DEPARTMENT 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 DEPARTMENT with its policies and procedures on confidentiality. The DEPARTMENT may require changes to such policies and procedures as they apply to this Contract whenever the DEPARTMENT reasonably determines that changes are necessary to prevent unauthorized disclosures. The CONTRACTOR shall make the changes within the time period specified by the DEPARTMENT. Upon request, the CONTRACTOR shall immediately return to the DEPARTMENT any Confidential Information that the DEPARTMENT reasonably determines has not been adequately protected by the CONTRACTOR against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The CONTRACTOR shall notify the DEPARTMENT 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.

2.9. CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

2.10. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the DEPARTMENT. The DEPARTMENT 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 DEPARTMENT 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, register and the ability to transfer these rights.

For Materials that are delivered under this Contract, but that incorporate pre-existing materials not produced under this Contract, the CONTRACTOR hereby grants to the DEPARTMENT 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 CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the DEPARTMENT.

The CONTRACTOR shall exert all reasonable effort to advise the DEPARTMENT, at the time of delivery of Materials furnished under this Contract, 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 Contract. The CONTRACTOR shall provide DEPARTMENT with prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any Materials delivered under this Contract. The DEPARTMENT shall have the right to modify or remove any restrictive markings placed upon the Materials by the CONTRACTOR.

2.11. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the DEPARTMENT, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the CONTRACTOR's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Contact within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days. The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties. The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

2.12. DUPLICATE PAYMENT

The CONTRACTOR certifies that work to be performed under this Contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

2.13. ETHICS/CONFLICTS OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the DEPARTMENT may, in its sole discretion, by written notice to the CONTRACTOR terminate this Contract if it is found after due notice and examination by the DEPARTMENT that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this Contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the State of Washington that worked on the Housing Trust Fund including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the twenty-four (24) month period preceding the start date of this Contract. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by the DEPARTMENT that a conflict of interest exists, the CONTRACTOR may be disqualified for an award.

In the event this Contract is terminated as provided above, the DEPARTMENT shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of this Contract by the CONTRACTOR. The rights and remedies of the DEPARTMENT provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DEPARTMENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

2.14. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

2.15. INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall indemnify, defend, and hold harmless the State of Washington, DEPARTMENT, agencies of the State and all officials, agents and employees of the State, for, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The CONTRACTOR's obligation to indemnify, defend, and hold harmless includes any claim by the CONTRACTOR's agents, employees, representatives, or any subcontractor or its employees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

2.16. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The CONTRACTOR and its employees or agents performing under this Contract are not employees or agents of the State of Washington or DEPARTMENT. The CONTRACTOR shall not hold itself out as or claim to be an officer or employee of DEPARTMENT or of the State of Washington by reason hereof, nor shall the CONTRACTOR make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work shall be solely with the CONTRACTOR.

2.17. INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DEPARTMENT may collect from the CONTRACTOR the full amount payable to the Industrial Insurance Accident Fund. DEPARTMENT may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by DEPARTMENT under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

2.18. LAWS

The CONTRACTOR shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

United States Laws, Regulations and Circulars (applicable if this Contract includes federal funds)

A. **Audits**

2 CFR Part 200

B. **Environmental Protection and Review**

Coastal Barrier Resources Act of 1982, 16 U.S.C. 3501 et seq.

HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.

Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846 also 24 CFR 982.401(j).

National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality) Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.

B. **Flood Plains**

Flood Disaster Protection Act of 1973, 42 USC 4001-4128.

C. **Labor and Safety Standards**

All Rental Units Assisted with Federal Funds Must Meet the Section 8 Housing Quality Standards (HQS) and Local Housing Code Requirements for the duration of the Affordability Period.

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Davis Bacon Act, 40 U.S.C. 276a-276a-5.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

Title IV of the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4831, 24 CFR Part 35.

D. **Laws against Discrimination**

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100.Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-19.

Employment under Federal Contracts, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Nondiscrimination under Federal Grants, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq. 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Programs.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

E. **Office of Management and Budget**

2 CFR Part 200.

F. **Other**

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that CONTRACTORs who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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 other award covered by 31 U.S.C. 1352. Each tier must 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.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

G. **Privacy**

Privacy Act of 1974, 5 U.S.C. 522a.

H. **Relocation**

Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.

Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

<u>Washington State Laws and Regulations</u>

A. Affirmative action, RCW 41.06.020 (1).
B. Affordable housing program, RCW 43.185A

C. Boards of directors or officers of nonprofit corporations – Liability - Limitations, RCW 4.24.264.
D. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
E. Discrimination-human rights commission, Chapter 49.60 RCW.
F. Ethics in public service, Chapter 42.52 RCW.
G. Housing assistance program, Chapter 43.185 RCW
H. Interlocal cooperation act, Chapter 39.34 RCW.
I. Noise control, Chapter 70.107 RCW.
J. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
K. Open public meetings act, Chapter 42.30 RCW.
L. Prevailing wages on public works, Chapter 39.12 RCW.
M. Public records act, Chapter 42.56 RCW.
N. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
O. Shoreline management act of 1971, Chapter 90.58 RCW.
P. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
Q. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
R. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
S. State environmental policy, Chapter 43.21C RCW.
T. State Executive Order 21-02 Archeological and Cultural Resources.

2.19. 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 Contract.

2.20. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

2.21. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, the CONTRACTOR shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the CONTRACTOR shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the CONTRACTOR's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the

DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.23. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES

The CONTRACTOR shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The CONTRACTOR shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications shall include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

2.24. PAY EQUITY

The CONTRACTOR agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

b. The CONTRACTOR may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:

(i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the DEPARTMENT, if the DEPARTMENT or the Department of Enterprise Services determines that the CONTRACTOR is not in compliance with this provision.

2.25. POLITICAL ACTIVITIES

Political activity of the CONTRACTOR employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No Contract Amount funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.26. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Project costs.

2.27. PUBLICITY

The CONTRACTOR agrees not to publish or use any advertising or publicity materials in which the State of Washington or the DEPARTMENT's name is mentioned, or language used from which the connection with the State of Washington's or the DEPARTMENT's name may reasonably be inferred or implied, without the prior written consent of the DEPARTMENT.

2.28. RECAPTURE

In the event that the CONTRACTOR fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, the DEPARTMENT reserves the right to recapture funds in an amount to compensate the DEPARTMENT 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 DEPARTMENT. In the alternative, the DEPARTMENT may recapture such funds from payments due under this Contract.

2.29. RECORDS MAINTENANCE

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

The CONTRACTOR shall retain such records for a period of six (6) years following the termination date of this Contract. At no additional cost, these records, including materials generated under this Contract, shall be subject at all reasonable times to inspection, review or audit by the DEPARTMENT, personnel duly authorized by the DEPARTMENT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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 resolved.

2.30. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the CONTRACTOR shall complete registration with the Washington State Department of Revenue.

2.31. RIGHT OF INSPECTION

At no additional cost all records relating to the CONTRACTOR's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the DEPARTMENT, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The CONTRACTOR shall provide access to its facilities for this purpose.

2.32. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the execution date of this Contract and prior to its normal completion, the DEPARTMENT may terminate this Contract under the "Termination for Convenience" clause without the ten (10) business day notice requirement. In lieu of termination, this Contract may be amended to reflect the new funding limitations and conditions.

2.33. SEVERABILITY

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

2.34. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

2.35. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the CONTRACTOR's income or gross receipts, any other taxes, insurance or expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

2.36. TERMINATION FOR CAUSE

In the event the DEPARTMENT determines the CONTRACTOR has failed to comply with the terms and conditions of this Contract in a timely manner, the DEPARTMENT has the right to suspend or terminate this Contract. Before suspending or terminating this Contract, the DEPARTMENT shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, this Contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The DEPARTMENT reserves the right to suspend all or part of this Contract, withhold further disbursement of funds awarded by this Contract, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the DEPARTMENT to terminate this Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the DEPARTMENT provided in this Contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

2.37. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the DEPARTMENT may, by ten (10) business days written notice, beginning on the second (2nd) day after the written notice, terminate or suspend this Contract, in whole or in part. If this Contract is so terminated or suspended, then DEPARTMENT shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination or suspension.

The Washington State Constitution Article 8 Section 4 and RCW 43.88.130 and RCW 43.88.290 prohibit the expenditure or commitment of state funds in the absence of appropriation. In the event that funding or appropriation is not available at the time the request for reimbursement and supporting documentation are submitted, the issuance of payments will be delayed or suspended until such time as funds or appropriation become available.

If the Contract Amount is not fully drawn down and should the Washington State Legislature fail to enact a Capital Budget appropriating funds to fulfill the contractual obligation outlined in this Contract by midnight of June 30 of each odd-number year, the CONTRACTOR shall immediately suspend all reimbursable work under this Contract and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

The DEPARTMENT shall notify the CONTRACTOR immediately upon the lifting of the Contract suspension.

2.38. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by an Authorized Representative of the DEPARTMENT.

2.39. WORK HOURS AND SAFETY STANDARDS

If this Contract includes federal funds, all contracts awarded by recipients in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

ATTACHMENT A – LOAN OR GRANT TERMS

The CONTRACTOR agrees to the following loan and/or grant terms and conditions.

1. **Contract Amount:**
   The total Contract Amount is Four Hundred Sixty Seven Thousand Two Hundred Thirty-Five and 00/100 Dollars ($467,235.00) and is structured as outlined in the tables below. The CONTRACTOR shall draw down the entire Contract Amount within six (6) months of the Placed in Service date as referenced in Attachment D – Project Schedule, or the DEPARTMENT may reduce the Contract Amount by the amount of the unspent funds.

   All projects, regardless of HTF administered funding uses, will have a minimum of five percent (5%) of their HTF administered funds retained until the project is completed, including receipt by the DEPARTMENT of materials related to the Placed In Service process. This ensures that projects will meet all requirements of HTF administered funds, including the provision of materials needed for long term monitoring and legislative reporting. The retainage percentage aligns with other public funders' requirements.

   Any Recoverable Grants identified below shall have no expectation of repayment subject to the condition that all of the terms and conditions of this Contract have been met through the Commitment Period, as defined in Part 1.

Table A-1. Loan/Grant Types, Amounts, Fees & Periods

Loan/ Grant #	Type	Funding Source	Amount	Fees	Loan/Grant Term (Years)	Start Date	End Date
1	Recoverable Grant	Fund 26V-1	$467,235.00	N/A	Not less than 40	Contract Start Date	10/23/2063

Table A-2. Interest

Loan/ Grant #	Type	Interest Rate	Calculating Method	Interest Start Date	*Interest End Date
1	Recoverable Grant	2.8% Fully deferred and forgiven upon Final Contract Close Out pursuant to Section 1.24(B.).	Simple	10/24/2023	*Contract End Date*

Table A-3 shown on next page.

Table A-3. Repayment Terms	
Recoverable Grant #	
1	The Recoverable Grant will have no expectation of repayment if the terms and conditions of the Contract have been met through the Commitment Period, as defined in Section 1.1(C.) of this Contract. *In the event that the Property is sold, refinanced, or transferred and the use changes prior to the end of the Commitment Period, or the CONTRACTOR is materially out of compliance with the terms and conditions of this Contract and unable to cure the compliance issues, then the full grant amount, plus two and 80/100 percent (2.80%) simple interest accrued beginning on the Interest Start Date and ending on the Interest End Date, as identified in* ***Table A-2. Interest*** *above, shall be due and payable.* **Interest End Date will be the Contract End Date in the event the Contract is terminated for cause prior to the end of the Commitment Period.* *Pursuant* to *2022 Supplemental Budget, SSB 5651, Section 1024(1)(j), Laws of 2022: "If the recipient [CONTRACTOR] is found to be out of compliance with provisions of the contract, the recipient [CONTRACTOR] shall repay to the state general fund the principal amount of the award plus interest calculated at the rate of interest on state of Washington general obligation bonds issued on the date most close in time to the date of authorization of the award."*

ATTACHMENT B – SCOPE OF WORK

The CONTRACTOR agrees to perform the scope of work described in this Attachment B.

1. PROJECT DEVELOPMENT:

The purpose of this Contract is to fund the acquisition of real property to provide twelve (12) affordable housing beds in a shelter for Low Income Households (the "Project").

This Project is located at 1258 SE Washington Avenue, Chehails, Washington 98532. The real property located at this address and any improvements now existing or hereafter constructed thereon are hereinafter referred to as the "Property."

2. LEGAL DESCRIPTION OF PROPERTY:

LOT 18 OF AUST'S ADDITION TO THE CITY OF CHEHALIS, AS RECORDED IN VOLUME 4 OF PLATS, PAGE 35, RECORDS OF LEWIS COUNTY, WASHINGTON.

3. TARGET POPULATION TO BE SERVED BY PROJECT ONCE PROJECT IS PLACED IN SERVICE:

The following target population shall be housed on the Property from the time of Contract execution through the end of the Commitment Period.

Table B-1. Area Median Income (AMI) Counties and Areas

County	AMI Area
Lewis	Lewis County, Washington is a non-metropolitan county.

Table B-2. Income Levels and Target Populations

Income Levels and Unit Counts			Populations Assisted			
% of Area Median Income	**Beds**		**Population Type**	**Not Homeless at Entry**	**Homeless at Entry**	**Permanent Supportive Housing**
At or Below 50%	12		Substance Abuse	0	12	0
*Common Area Unit**	0					
Total =	**12**		**Total =**	**0**	**12**	**0**
GRAND TOTAL =	**12**		**GRAND TOTAL =**	**12**		**0**

* "Common Area Unit" is a unit which will not be income or rent restricted.

"Homeless person" means an individual living outside or in a building not meant for human habitation or which they have no legal right to occupy, in an emergency shelter, or in a temporary housing program which may include a transitional and supportive housing program if habitation time limits exist. This definition includes substance abusers, people with mental illness, and sex offenders who are homeless. (RCW 43.185C.010).

"Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW. (RCW 36.70A.030)

ATTACHMENT C – DEVELOPMENT BUDGET

The following is a summary of the anticipated Development Budget approved by the DEPARTMENT at the time of the execution of this Contract. Some variations to the anticipated Development Budget are expected. The CONTRACTOR agrees to submit to the DEPARTMENT a third-party certification of the Project's Final Total Development Cost in accordance with the terms and conditions of this Contract.

Cost Category	**Total Cost**	**Residential Costs**	**Non-Residential Costs**	**HTF Amount ("Contract Amount")**
Acquisition	$485,134	$485,134	$0.00	$467,235
Construction	-	-	-	-
Soft Costs:	$13,663	$13,663	$0.00	$13,185
Pre-Development	-	-	-	-
Construction Financing	-	-	-	-
Permanent Financing	-	-	-	-
Capitalized Reserves	-	-	-	-
Other: Methamphetamine Testing and Remediation	$3,000	$3,000	$0.00	$2,895
Other: Permitting	$4,453	$4,453	$0.00	$3,377
TOTALS	**$485,134**	**$485,134**	**$0.00**	**$467,235**

ATTACHMENT D – PROJECT SCHEDULE

The following is a summary of the anticipated Project Schedule that was approved by the DEPARTMENT at the time of the execution of this Contract. Some variations to the anticipated Project Schedule are expected. The CONTRACTOR shall notify and consult with the DEPARTMENT whenever an event materially affects the timely completion of the Project.

Table D-1. Summary of Anticipated Project Schedule		
Category	**Tasks**	**Anticipated Date of Completion**
Site Control	Purchase & Sale Agreement executed	10/25/2022
	Site closing	12/30/2022
Feasibility/Due Diligence	All required 3rd party reports complete	1/11/2023
	SEPA/NEPA clearance complete	12/12/2022
	Cultural resources/archeological completed	1/30/2023
Relocation	All relocation activities complete (if applicable)	N/A
Financing	Allocation of LIHTC from WSHFC	N/A
	Capital financial closing	N/A
Design/Permitting	Building permits issued	04/21/2023
	Final plans and specs completed	04/21/2023
Construction	Begin construction	N/A
	Construction completion	N/A
	Certificate of Occupancy	04/21/2023
Occupancy	Begin lease-up	10/31/2023
Placed in Service	Refer to Housing Trust Fund Handbook	10/24/2023
Commitment Period	Start of the Commitment Period	10/24/2023
	End of the Commitment Period	10/23/2063

ATTACHMENT E – TAX CREDIT ENTITIES [INTENTIONALLY OMITTED]