

ASSIGNMENT OF AGREEMENT

**SOUTH PUGET SOUND HABITAT FOR HUMANITY
TÂLÍCN TOWNHOMES –
CONNECTING HOUSING TO INFRASTRUCTURE PROGRAM (CHIP)**

This Assignment (the “Assignment”) is effective as of _____ (the “Effective Date”) by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and SOUTH PUGET SOUND HABITAT FOR HUMANITY, a Washington non-profit corporation, hereinafter referred to as “ASSIGNEE”.

WHEREAS, the CITY was awarded an American Rescue Plan Act (ARPA) Connecting Housing to Infrastructure Program (CHIP) grant of \$726,984 to support the development of affordable housing by paying for utility infrastructure improvements for the Tâlicn Tumwater Townhomes project; and

WHEREAS, the CITY entered into a Grant Agreement with Washington State Department of Commerce (“Commerce”) dated _____ (Contract Number 22-96720-219) (the “Grant Agreement”); and

WHEREAS, Section 8 of the General Terms and Conditions of the Grant Agreement allows the CITY to assign the Grant Agreement to their affordable housing partner, in this case SOUTH PUGET SOUND HABITAT FOR HUMANITY; and

WHEREAS, CITY desires to assign and ASSIGNEE desires to receive by assignment all of CITY’s rights and obligations under the Contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. ASSIGNMENT. CITY hereby assigns to ASSIGNEE all of its interests, rights and title held by CITY in and to the Grant Agreement attached hereto as Exhibit A. CITY reserves the ability to enforce any and all terms and conditions of the Grant Agreement in the same manner and to the same extent as COMMERCE and the State of Washington.
2. ASSUMPTION OF OBLIGATIONS. ASSIGNEE acknowledges the receipt of a copy of the Grant Agreement. ASSIGNEE hereby assumes all of CITY’s interests, rights, duties, liabilities and obligations in the Grant Agreement. ASSIGNEE agrees to comply with all the terms and perform all conditions and covenants in the Grant Agreement as if ASSIGNEE

were an original party therein. All requirements and contract terms flow to the ASSIGNEE and all references to Grantee shall mean ASSIGNEE.

3. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS.

A. ASSIGNEE certifies by signing this Assignment that to the best of its knowledge and belief that they:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
- iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.

B. Where the ASSIGNEE is unable to certify to any of the statements in this contract, the GRANTEE shall attach an explanation to this contract.

C. The ASSIGNEE agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The ASSIGNEE further agrees by signing this contract that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.

E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

4. CHANGE OF OWNERSHIP OR USE. The ASSIGNEE understands and agrees that any and all real property or facilities owned or leased by the ASSIGNEE that are acquired, constructed, or otherwise improved by the ASSIGNEE using funds awarded under the Grant Agreement shall be held and used by the ASSIGNEE for the purposes stated in the Grant Agreement for a period of at least twenty-five (25) years from the date the final payment is made under the Grant Agreement. In the event the ASSIGNEE is found to be out of compliance with the section, the ASSIGNEE shall repay the principal amount as stated on the Face Sheet of the Grant Agreement plus interest as more particularly described in the Grant Agreement.
5. COVENANT. The ASSIGNEE will include a Resale Restriction Covenant with all Purchase and Sale Agreements and all Assignment of Rents to ensure the Tâlicn Tumwater Townhomes project is classified as affordable housing for a period of at least twenty-five (25) years from the date the final payment is made under the Grant Agreement.
6. INDEMNIFICATION. To the fullest extent permitted by law, the ASSIGNEE shall indemnify, defend, and hold harmless the State of Washington, COMMERCE, agencies of the State, the CITY OF TUMWATER and all officials, agents and employees of the State and CITY for, from and against all claims for injuries or death arising out of, or resulting from, the performance of the Grant Agreement. "Claim" as used in this Assignment, 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 ASSIGNEE'S obligation to indemnify, defend, and hold harmless includes any claim by ASSIGNEE'S agents, employees, representatives, or any subcontractor or its employees.

ASSIGNEE expressly agrees to indemnify, defend, and hold harmless the State and CITY for any claim arising out of or incident to ASSIGNEE'S or any subcontractor's performance or failure to perform under the terms of the Grant Agreement. ASSIGNEE'S obligation to indemnify, defend, and hold harmless the State and CITY shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or CITY or its agents, agencies, employees and officials.

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

This section shall survive completion of performance, cancellation or termination.

7. INDEPENDENT CONTRACTOR RELATIONSHIP. The parties intend that an independent contractor relationship will be created by this Assignment. The ASSIGNEE and its employees or agents performing under this Assignment are not employees or agents of the CITY. The ASSIGNEE will not hold itself out as or claim to be an officer or employee of CITY or of the State of Washington by reason hereof, nor will the ASSIGNEE make any claim or right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the ASSIGNEE.
8. RECORDS. The ASSIGNEE shall maintain books, records, documents, data and other evidence relating to this Assignment and performance of the obligations 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 ASSIGNEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by CITY, personnel duly authorized by CITY, 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.

9. RIGHT OF INSPECTION. At no additional cost all records relating to the ASSIGNEE's performance under this Assignment shall be subject at all reasonable times to inspection, review, and audit by CITY, 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 Assignment. The ASSIGNEE shall provide access to its facilities for this purpose.
10. TERMINATION. CITY may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Assignment, in whole or in part.
11. FURTHER ASSURANCES. Each party agrees to execute and deliver any and all such other documents and instruments and take or cause to be taken any and all such other actions as any other party may reasonably request or that are reasonably necessary or appropriate in order to give full effect to the terms of this Assignment.
12. WAIVER. The Failure of either Party to enforce any provisions of this Assignment shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Assignment.
13. GOVERNING LAW. This Assignment shall be governed by and construed 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.
14. SURVIVAL. The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Assignment shall so survive.
15. COUNTERPARTS. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. In the event that any signature hereof is delivered by facsimile transmission or by e-mail as an attached, scanned document such signature shall create a valid and binding obligation of the Party executing the same with the same force and effect as if such e-mailed or facsimile signature page were an original thereof.

IN WITNESS WHEREOF, the authorized representatives of the Parties have

Dated: _____

Notary Public in and for the State of Washington,

My appointment expires: _____