CITY

BASIC TERMS AND CONDITIONS

BETWEEN

SNOHOMISH COUNTY

AND

CITY OF EVERETT

RETURN TO
EVERETT CITY CLERK
2930 Wetmore
Everett, WA 98201

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BASIC TERMS AND CONDITIONS

THIS DOCUMENT of Basic Terms and Conditions, hereinafter referred to as the "Agreement," is entered into by and between Snohomish County, a political subdivision of the State of Washington, on behalf of its Human Services Department, hereinafter referred to as "County," and City of Everett, hereinafter referred to as "Agency."

I. PURPOSE

It is the purpose of this document to establish appropriate basic terms and conditions which may be incorporated by reference into subsequent contracts between the County and the Agency for social and health services funded in whole or in part by or through the County. This document has no independent force or effect.

II. DEFINITIONS

As used throughout this Agreement and any Contract incorporating this Agreement, unless specified otherwise, the following terms shall have the meanings set forth below:

A. "Acquisition costs" shall mean that amount expended for property, excluding interest, plus, in the case of property acquired with a trade-in, the book value (acquisition cost less the amount depreciated through the date of trade-in) of the property traded in. Property which was expended when acquired has a book value of zero when traded in.

B. "Agency" shall mean the entity that is a party to this Agreement, and includes the Agency's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, neither the Agency nor its officers, directors, trustees, employees or agents shall be considered an employee of the County.

C. "Assignment" shall mean the act of transferring the rights and obligations of a party under this Agreement or any Contract to another not party to this Agreement or any Contract.

D. "BARS" shall mean the "Budgeting, Accounting, and Reporting System for Counties and Cities and Other Local Governments," as now or hereafter amended, issued by the Office of the State Auditor, State of Washington, and the BARS Manual Supplements issued by state agencies.

E. "CFR" shall mean the Code of Federal Regulations. All references in this Agreement or any Contract to the CFR shall include any successor, amended, or replacement regulation.

F. "Client" shall mean an individual who is eligible for or receiving services provided by the Agency in connection with any Contract.

G. "Contract" shall mean any agreement between the County and the Agency that incorporates this Agreement by reference.

H. "Contractor" shall mean an entity that agrees to provide the amount and kind of services requested; provides services only for those determined to be eligible; and

provides services on a fee-for-service or per-unit basis with contractual penalties if it fails to meet program performance standards.

I. "Debarment" shall mean an action taken by a federal official to exclude a person or business entity from participating in transactions involving certain federal funds.

J. "Director" shall mean the Director of the Snohomish County Human Services Department and/or the delegate authorized in writing to act on the Director's behalf.

K. "Equipment" shall mean an article of nonexpendable, tangible personal property or information technology systems and software having a useful life of more than one (1) year and an acquisition cost of $5,000 or more per unit.

L. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 79 Stat. 1936), as codified at 42 U.S.C. §§ 1320d-d8, and its implementing regulations set forth at 45 CFR Parts 160 and 164.

M. "Nonexpendable personal property" shall mean tangible personal property having a useful life of more than one (1) year and an acquisition cost of $500 or more per unit.

N. "OMB" shall mean the federal Office of Management and Budget.

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

P. "Personal property" shall mean property of any kind except real property.

Q. "RCW" shall mean the Revised Code of Washington. All references to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters and sections can be accessed at http://slc.leg.wa.gov/.

R. "Real property" shall mean any interest in land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

S. "Regulation" shall mean any federal, state, or local regulation, rule, or ordinance.

T. "Secure Area" shall mean an area to which only authorized representatives of the entity possessing the Personal Information have access. Secured Areas may include buildings, rooms, or locked storage containers (such as filing cabinets) within a room, as long as access to the Personal Information is not available to unauthorized personnel.

U. "Subcontract" shall mean any separate agreement or contract between the Agency and a Subagency to perform all or a portion of the duties and obligations that the Agency is obligated to perform pursuant to this Agreement or any Contract.

V. "Subagency" shall mean any person, partnership, corporation, association, or organization, not in the employment of the Agency, who is performing under contract with the Agency in any tier, all or part of any services under any Contract incorporating this Agreement.

W. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual who is a beneficiary of such a program. A Subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

X. "Supplies" shall mean all tangible personal property other than equipment.

Y. "Trusted System" includes only the following methods of physical delivery:

1. Hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt;
2. United States Postal Service (USPS) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; and
3. Commercial delivery services (e.g., FedEx, UPS, DHL) which offer tracking and receipt confirmation.

Z. "Useful life" of property shall mean its useful life as based on the U.S. Department of Treasury, Internal Revenue Service, policies and regulations on depreciation for federal tax purposes, unless the Agency can document to the written satisfaction of the County some different period.

AA. "WAC" shall mean the Washington Administrative Code. All references to WAC chapters or sections shall include any successor, amended or replacement regulation. Pertinent WAC chapters or sections can be accessed at http://slc.leg.wa.gov/.

III. ASSIGNMENT AND DELEGATION

The Agency shall not subcontract, assign, or delegate any rights or obligations under this Agreement or any Contract, either in whole or in part, without the prior express written approval of the County and the written assumption of the Agency's obligations by the third party.

IV. SUBCONTRACTING

A. The Agency shall not subcontract work or services provided under any Contract without obtaining the prior express written authorization of the County.

B. Subagencies are prohibited from subcontracting for direct client services without the prior express written approval of the County.

C. The Agency shall be responsible for the acts and omissions of its Subagencies.

D. At the County's request, the Agency will forward to the County copies of Subcontracts and fiscal, programmatic, and other material pertaining to Subcontracts.

E. Every Subcontract entered into by the Agency under any Contract shall be in writing and incorporate the following clauses of this Agreement, with word changes where appropriate to properly identify the parties to the Subcontract:

1. Definitions;
2. Assignment and delegation;

3. Subcontracting;
4. Duplication of effort;
5. Relationship of parties;
6. Debarment and suspension;
7. Conflicts of interest and kickbacks;
8. Covenant against contingent fees;
9. Performance standards and licensing;
10. Services provided in accordance with law;
11. Compliance with funding source requirements;
12. Compliance with Snohomish County Human Rights Ordinance;
13. Nondiscrimination and affirmative action;
14. Noncompliance with nondiscrimination plan;
15. Client grievances;
16. Confidentiality;
17. Background checks;
18. Treatment of client assets;
19. Reports;
20. Maintenance of records;
21. Rights in data;
22. Ownership of material;
23. Ownership of real property, equipment and supplies;
24. Right of inspection and access;
25. Treatment of assets;
26. Procurement standards;
27. Fiscal accountability standards;
28. Audit requirements;
29. Insurance;
30. Indemnification;
31. Responsibility;
32. Drug-free workplace; and
33. Lobbying and certification.

F. If the Agency delegates responsibility for determining service recipient eligibility to the Subagency, the Subcontract shall include:

1. A provision acceptable to the County that specifies how eligibility will be determined;
2. A provision acceptable to the County that specifies how service applicants and recipients will be informed of their right to a hearing in the case of:
   a. Denial or termination of service; and/or
   b. Failure to act upon a request for service with reasonable promptness; and
3. A provision acceptable to the County that states Subcontract termination shall not be grounds for a fair hearing for the service applicant or recipient under the terms of this section if:
   a. Similar services are immediately available in the County; or
   b. Termination was the result of termination under the clause of this Agreement captioned "Termination for Lack of Funding."

G. The obligations, which shall be set forth in any Subcontract, include:
1. Performance of the Agency's obligations under the Subcontract;
2. Only subcontracting with entities or persons that maintain appropriate license, certification or government approvals when required;
3. Responsibility for Subagency compliance with the Subcontract terms, including reporting procedures; and
4. Seeking appropriate administrative, contractual, or legal remedies for Subagency breach of Contract terms.

V. DUPLICATION OF EFFORT

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

VI. RELATIONSHIPS OF PARTIES

The Agency will perform the services under this Agreement and any Contract as an independent contractor and not as an agent, employee, or servant of the County or any state or federal agency. The Agency, its agents and employees are not entitled to any benefits or rights enjoyed by employees of the County or any state or federal agency. The Agency shall direct and control Agency's own activities in providing services under this Agreement, any Contract, and any Subcontract approved by the County. The County shall only have the right to ensure performance. Nothing in this Agreement or any Contract shall be construed to render the parties partners or joint ventures.

VII. DEBARMENT AND SUSPENSION

All Contracts awarding federal resources are subject to the provisions of federal Executive Order 12549 and federal Executive Order 12689, "Debarment and Suspension," including any amendments, as follows:

A. Agencies and Subagencies must not make any award or permit any award (contract or subcontract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs

under federal Executive Order 12549 and federal Executive Order 12689, "Debarment and Suspension." Agencies shall consult and require their Subagencies at any tier, when charged as direct cost, to consult the consolidated list of "Parties Excluded from Federal Procurement and/or Nonprocurement Programs" to assure that they do not award federal grant funds to listed parties in violation of the federal Executive Orders.

B. If an Agency believes that there are compelling reasons for making an award to a debarred, suspended, or voluntarily excluded person in a particular case, the Agency may apply for a waiver from this requirement, pursuant to federal Executive Order 12549. Such waivers will be granted only in unusual circumstances upon the written determination, by an authorized federal agency official, of the compelling reasons justifying the participation.

C. The Agency, by signature to this Agreement and to each Contract into which this Agreement is incorporated, certifies that the Agency is not now or then presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in any Contract by any federal department or agency.

D. The Agency also agrees to include the following required language in all Subcontracts into which it enters, resulting directly from the Agency's duty to provide services under any Contract:

LOWER TIER COVERED TRANSACTIONS

1. The lower tier subagency 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.

2. When the lower tier subagency is unable to certify to any of the statements in the contract, such subagency shall attach an explanation to the contract.

E. The Agency shall notify the County within one (1) business day of any debarment proceedings brought against it or any of its Subcontractors.

VIII. CONFLICTS OF INTEREST AND KICKBACKS

A. The Agency's employees, subagencies, and board or committee members shall not use, or give the appearance of using, their positions for the personal gain of themselves or those with whom they have family, business, or other ties.

B. The Agency's employees, subagencies, and board or committee members shall not have or acquire any interest, direct or indirect, which would conflict with the performance of services under any Contract. The Agency shall not employ or subcontract with persons who have conflicts of interest, nor appoint them as members of its governing board or advisory committee(s).

C. Personnel and governing board or advisory committee policies of the Agency shall include written standards of conduct governing conflict of interest and kickbacks.

D. Gratuities in the form of entertainment, gifts, or otherwise offered by the Agency or an agent or representative of the Agency to any officer or employee of the County, with a view towards securing any Contract or securing favorable treatment with

respect to the awarding, amending, or the making of any determination, will render any Contract voidable at the option of the County.

E. The County may, by written notice to the Agency, suspend or terminate any Contract in whole or in part if it is found that any of the following laws, or their successors, have been violated in obtaining this Agreement or any Contract, or in securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to this Agreement, any Contract or any Contracts or Subcontracts entered by the Agency or agencies contracting with the Agency under authority of this Agreement:

1. Misconduct of Public Officers, Chapter 42.20 RCW;
2. Ethics in Public Service, Chapter 42.52 RCW;
3. Kickbacks from Public Works Employees, 18 U.S.C. § 874.

F. Additionally, the County may, by written notice, suspend or terminate any Contract in whole or in part with an Agency that is a local governmental entity if it is found that the Agency has violated the Code of Ethics for Municipal Officers – Contract Interests, Chapter 42.23 RCW.

IX. COVENANT AGAINST CONTINGENT FEES

The Agency warrants that no person or agency has been employed or retained on a contingent fee for the purpose of seeking or obtaining this Agreement or any Contract. This does not apply to legitimate employees or an established commercial or selling agency maintained by the Agency for the purpose of securing business. In the event of breach of this clause by the Agency, the County may at its discretion:

A. Terminate this Agreement and any Contract under the procedures discussed in Section XLIII without any liability;

B. Deduct from the Contract price or consideration, or otherwise recover, the full amount of any such contingent fee; and

C. Seek such other remedies as are legally available.

X. NONWAIVER OF COUNTY RIGHTS

The County's failure to insist upon the strict performance of any provision of this Agreement or any Contract, its failure to exercise any right based upon a breach thereof, or its acceptance of any defective performance shall not constitute a waiver of any rights under this Agreement or any Contract, unless stated to be such in writing signed by an authorized representative of the County and attached to the original Agreement or Contract.

XI. PERFORMANCE STANDARDS AND LICENSING

The Agency shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards and any other standards or criteria established by the County to assure the quality of services necessary for the performance of any Contract.

XII. SERVICES PROVIDED IN ACCORDANCE WITH LAW

The Agency and the County shall comply with all applicable laws, rules, ordinances, codes, and regulations of local, state, and federal governments, as now existing or hereafter enacted or amended in the performance of any Contract.

XIII. COMPLIANCE WITH FUNDING SOURCE REQUIREMENTS

The Agency shall comply with all conditions, terms and requirements of any funding source that wholly or partially funds the Agency's work under any Contract.

XIV. PROPRIETARY SOFTWARE APPLICATIONS

In the event the Agency accesses the County's proprietary software applications to perform any work under any Contract, the Agency shall read and agree to the terms and conditions of the software license agreement, and shall not violate the terms and conditions of the software license agreement including, but not limited to:

A. Restricting the use of the software application to employees or subcontractors;

B. Not "pirating" or reverse engineering the software application; and/or

C. Otherwise using the application in any way that may harm the County or violate the terms and conditions of the software license agreement.

XV. COMPLIANCE WITH SNOHOMISH COUNTY HUMAN RIGHTS ORDINANCE

It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Agency shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Agency of the Agency's compliance with the requirements of Chapter 2.460 SCC. If the Agency is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Agency's obligations under other federal, state, or local laws against discrimination.

XVI. NONDISCRIMINATION AND AFFIRMATIVE ACTION

During the performance of any Contract, the Agency and its Subagencies, if any, shall comply with federal and state laws against discrimination including, where applicable, the state funding agency's nondiscrimination plan. Nondiscrimination requirements include, but are not limited to:

A. Nondiscrimination in Employment:

1. The Agency and its Subagencies, if any, shall not discriminate against any employee or applicant for employment on the basis of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or other veterans' status, or mental or physical handicap.
2. The Agency and its Subagencies, if any, shall take affirmative action to ensure that employees are treated without discrimination on the basis of race, color, sex, sexual orientation, religion or national origin, creed, marital status, age, Vietnam era or other veterans' status, or mental or physical handicap. Such action shall include, but not be limited to, the following: promotion, demotion, transfer, termination, recruitment, advertising, training, apprenticeships, and rates of pay or other forms of compensation and benefits.
3. The Agency and its Subagencies, if any, shall agree to post in a conspicuous place available to employees and applicants, employment notices provided by the County setting forth the provisions of this nondiscrimination clause.
4. All solicitations, advertisements, or announcements for employees, volunteers, and board or advisory committee members will include reference to the Agency's policy of nondiscrimination and affirmative action. Classified advertisements shall include the initials "EEOC/AA". All other solicitations, advertisements, or announcements shall include the following statement:

   All qualified applicants will receive consideration without regard to race, color, sex, sexual orientation, religion or national origin, creed, marital status, age, Vietnam era or other veterans' status, or mental or physical handicap.
5. All Subcontracts awarded in excess of $10,000 by the Agency or any Subagency shall contain a provision requiring compliance with federal Executive Order 11246 entitled "Equal Employment Opportunity," as amended by federal Executive Order 11375, and supplemented by 41 CFR Chapter 60.
6. Agencies with fifty (50) or more employees and government contracts of $50,000 or more in federal funds are required by Executive Order 11246 to develop and implement a written affirmative action program.

B. Nondiscrimination in Client Services:

1. The Agency and its Subagencies, if any, shall not on the grounds of race, color, sex, sexual orientation, religion, creed, national origin, marital status, age, Vietnam era or other veterans' status, or mental or physical handicap:

   a. Deny, restrict, limit, or treat differently qualified individuals for the purposes of the participation in and the delivery of services and/or benefits made available to others; or

   b. Employ criteria or methods of selection of recipients, individually or as a class, or administering services and/or benefits that have the effect of subjecting qualified individuals to discrimination or unequal treatment.
2. The Agency and its Subagencies, if any, shall abide by all provisions of Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 355) (the "Rehabilitation Act"), and the Americans with Disabilities Act of 1990 (Pub. L.

101-336, 104 Stat. 327, codified at 42 U.S.C. § 12101 et seq.) (the "ADA"), and any amendments, prohibiting discrimination against handicapped persons.

3. If subcontracting has been authorized by the County, the terms required in this Agreement and any additional appropriate safeguards against discrimination shall be included in the Subcontract and shall be binding upon the Subagency in order to prohibit discrimination or unequal treatment. The Agency shall ensure full compliance with the provisions of this clause.

XVII. NONCOMPLIANCE WITH NONDISCRIMINATION PLAN

In the event of the Agency's noncompliance or refusal to comply with the nondiscrimination provisions in this Agreement, the County may rescind, cancel, suspend, or terminate any Contract, as described in Section XLIII of this Agreement, in whole or in part, and declare the Agency ineligible for further Contracts with the County. The County may, however, give the Agency a reasonable time to cure the noncompliance, at the County's discretion.

XVIII. CLIENT GRIEVANCES

A. The Agency shall establish procedures through which applicants for and recipients of services under any Contract may present grievances concerning the activities of the Agency or any Subagencies related to service delivery. The procedures shall be written and submitted to the County for approval. The Agency shall record and maintain in writing all grievances and actions taken to resolve them.

B. The grievance procedures shall provide applicants and recipients with a review of the Agency's decision before representatives of the Agency. Applicants for, and recipients of, services described in the Statement of Work in any Contract shall be informed of these grievance procedures and their right to seek reconsideration from the Agency or the Division Manager for the Snohomish County Human Services Department in the case of denial or termination of services and/or failure to act upon a request for services with reasonable promptness.

C. If an applicant or recipient is dissatisfied with a response to a complaint by the Agency or Division Manager for the Snohomish County Human Services Department, the applicant or recipient may request a review by the Director of the Snohomish County Human Services Department.

XIX. CONFIDENTIALITY

A. The parties may use Personal Information and other information gained by reason of any Contract only for the purpose of the Contract. The County and Agency shall not disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information, with the prior written consent of the person or personal representative of the person to whom the Personal Information pertains.

B. The Agency shall protect and maintain all Confidential Information gained by reason of any Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Agency to employ reasonable security measures, which include restricting access to the Confidential Information by:

1. Allowing access only to staff that have an authorized business requirement to view the Confidential Information;
2. Physically securing any computers, documents, or other media containing the Confidential Information;
3. Ensuring the security of Confidential Information transmitted via fax (facsimile) by verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons;
4. When transporting records containing Confidential Information outside of a Secure Area, do one or more of the following as appropriate:
   a. Use a Trusted System; and
   b. Encrypt the Confidential Information, including:
      (i) Email and/or email attachments; and
      (ii) Confidential Information when it is stored on portable devices or media, including, but not limited to laptop computers and flash memory devices; and
5. Sending paper documents containing Confidential Information via a Trusted System.

B. To the extent allowed by law, at the end of any Contract term, or when no longer needed, the parties shall return Confidential Information or certify in writing the destruction of Confidential Information upon written request by the other party.

C. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the Confidential Information destroyed through the recycling process. Paper documents containing Confidential Information require special handling (e.g., protected health information) must be destroyed through shredding, pulping or incinerations.

D. The compromise or potential compromise of Confidential Information must be reported to the County contact designated on any Contract within five (5) business days of discovery for breaches of less than 500 persons' protected data, and three (3) business days of discovery for breaches of 500 or more persons' protected data. The parties must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.

F. The Agency may be required to provide additional safeguards and acknowledgment of recipient rights under HIPAA, in accordance with the Agency's independent HIPAA obligations or those required by any Contract.

XX. BACKGROUND CHECKS

A. Any Agency which has a Contract to provide services, housing, or otherwise care for vulnerable adults, developmentally disabled persons, juveniles, or children, or provide child day care, early learning, or early childhood education services shall ensure all staff and volunteers have a background check on file as per RCW 43.43.830-43.43.845.

B. A background check must be completed at the time of employment or commencement of volunteer duties.

C. If circumstances arise that cause a provider to question the need for another background check, they are encouraged to implement another check. All persons convicted of crimes listed in RCW 43.43.830 and RCW 43.43.842 are prohibited from having access to program participants.

XXI. TREATMENT OF CLIENT ASSETS

Unless otherwise provided in any Contract, the Agency shall ensure that any adult client receiving services from the Agency under any Contract has unrestricted access to the client's personal property. The Agency shall not interfere with any adult client's ownership, possession, or use of the client's property. The Agency shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or expiration of any Contract, the Agency shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property. This section does not prohibit the Agency from implementing such lawful and reasonable policies, procedures and practices as the Agency deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).

XXII. REPORTS

The Agency shall timely provide to the County and to any state or federal funding agency such financial, program, and other reports, in such formats as required by this Agreement or any Contract.

XXIII. MAINTENANCE OF RECORDS

A. The Agency shall retain for a period of six (6) years from the termination of any Contract unless required otherwise by law:

1. All financial, statistical, participant, and other records (including medical and treatment records) and supporting documentation;
2. All records for nonexpendable personal property;
3. All records to document performance of all acts required by law, regulation, this Agreement or that Contract;
4. All records to demonstrate accounting procedures and practices that sufficiently and properly document the Agency's invoices to the County under that Contract; and
5. All records sufficient to substantiate the Agency's statement of its organization's structure, tax status, capabilities, and performance.

B. If any litigation or audit is initiated, or if a claim is instituted involving this Agreement or any Contract, or a Subcontract entered pursuant to any Contract, the Agency shall retain all related records until the litigation, audit, or claim has been finally resolved.

XXIV. RIGHTS IN DATA

All documents, program materials, books, manuals, films, reports, fiscal, and other data developed by the Agency under any Contract shall be for the common use of the Agency, the County, and the entity providing the funds for any Contract, subject to the limitations herein or by further agreement of the parties, including the following:

A. The Agency shall not seek patent rights, or produce inventions, original books, manuals, films, or other patentable or copyrighted materials created or developed with funds provided by any Contract without the approval of the County. As to the latter, the Agency acknowledges the County's rights to ownership and protection of the public interest in such intellectual property and to negotiate agreements for reasonable royalty fees, administration, and protection of existing and future rights. The Agency shall not affix any restrictive markings upon any data produced with funds from any Contract, and if such markings are affixed, the County shall have the right to modify, remove, or ignore such markings.

B. The County may duplicate, use, and disclose in any manner and for any purposes whatsoever, and have others so do, all data delivered under a Contract. If a Contract results in any copyrightable material or inventions, the County and the entity providing the funds for that Contract reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials covered by copyright for governmental purposes, PROVIDED, that with respect to data not originated in the performance of the Contract, such license shall be only to the extent that the Agency has the right to grant such license without becoming liable to pay compensation to others because of such grant. The Agency shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under a Contract, of all invasions of right or privacy contained therein and of all portions of such data copied from work not composed or produced in the performance of the Contract and not licensed under this clause. The Agency shall report to the County promptly and in written detail each notice or claim of copyright infringement received by the Agency with respect to all data delivered under a Contract.

C. All books, informational pamphlets, press releases, research reports, articles, and similar public notices prepared and released by the Agency for the services provided by any Contract shall include the statement, "This project receives funding from the Snohomish County Department of Human Services." In addition, all such notices will contain a statement acceptable to the County that the aforementioned project complies with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., the ADA, and the Rehabilitation Act.

XXV. OWNERSHIP OF MATERIAL

Material created by the Agency and paid for by the County as a part of this Agreement or any Contract shall be owned by the County and shall be "work made for hire" as defined by 17 U.S.C. § 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Agency uses to perform this Agreement or any Contract, but is not created for or paid for by the County is owned by the Agency and is not "work made for hire"; however, the County shall have

a perpetual license to use this material for the County's internal purposes at no charge to the County, provided that such license shall be limited to the extent which the Agency has a right to grant such a license.

XXVI. OWNERSHIP OF REAL PROPERTY, EQUIPMENT AND SUPPLIES

A. Purchased by the Agency:

1. Title to all property, equipment and supplies purchased by the Agency with funds from any Contract shall vest in the Agency. When real property, or equipment with a per unit fair market value over $5,000, is no longer needed for the purpose of carrying out any Contract, or any Contract is terminated or expired and will not be renewed, the Agency shall request disposition instructions from the County. If the per unit fair market value of equipment is under $5,000, the Agency may retain, sell, or dispose of it with no further obligation.

2. When supplies with a total aggregate fair market value over $5,000 are no longer needed for the purpose of carrying out any Contract, or any Contract is terminated or expired and will not be renewed, the Agency shall request disposition instructions from the County. If the total aggregate fair market value of supplies is under $5,000, the Agency may retain, sell, or dispose of them with no further obligation.

3. Disposition and maintenance of property shall be in accordance with 45 CFR Parts 74 and 92.

B. Purchased by the County:

Title to property, equipment or supplies purchased by the County and provided to the Agency to carry out the activities of any Contract shall remain with the County. When real property, equipment or supplies are no longer needed for the purpose of carrying out any Contract, or any Contract is terminated or expired and will not be renewed, the Agency shall request disposition instructions from the County.

XXVII. RIGHT OF INSPECTION AND ACCESS

The Agency shall provide access to its records, facilities, and personnel at all reasonable times in order to monitor and/or evaluate performance, compliance, and quality assurance under this Agreement or any Contract. Access and assistance shall be given to the County, any state, federal, or other funding agency, the State Auditor, and to any other person authorized by law.

XXVIII. TREATMENT OF ASSETS

A. To secure the financial interest of the County in items purchased or developed with funds awarded through cost reimbursement under this Agreement or any Contract, the parties agree that:

1. Title shall remain in the County; and

2. Title to such nonexpendable personal property, which is purchased, developed, or acquired by the Agency and which is claimed as an acquisition cost, shall pass to and vest in the County upon delivery of such property by the Agency and shall

not be rented, loaned, or transferred without the prior express written approval of the County.

B. Unless provided otherwise by agreement of the parties, if the Agency elects to capitalize and depreciate such nonexpendable personal property in lieu of claiming the acquisition cost, title to such property shall remain with the Agency. An election to capitalize and depreciate or claim acquisition cost as a direct cost shall be irrevocable and must be made at the time the asset is purchased, developed, or acquired.

C. Such nonexpendable personal property shall only be used by the Agency or its Subagencies in the performance of this Agreement or any Contract, unless otherwise provided herein or approved by the County.

D. As a condition precedent to reimbursement for the purchase or acquisition of nonexpendable personal property, the Agency agrees to execute security instruments and other documents that are necessary for the County, state, federal, or other funding agency to protect its interest in such property in accordance with Article 9A of the Uniform Commercial Code, as codified in Title 62A RCW, including, but not limited to, completion of UCC-1, UCC-2, and UCC-3 forms. The Agency also agrees to name the County (or funding agency) as lien holder(s) on certificates of title for all motor vehicles in accordance with Title 46 RCW, unless otherwise approved by the County.

E. The Agency shall submit completed certificates of title and applicable UCC forms for equipment and fixtures to the County with the claim for reimbursement on which they are claimed. The security interest shall be retained beyond the term of any Contract for the serviceable life of the property, beginning on the date of purchase, to ensure its continued use for the purpose intended.

F. The Agency shall maintain records, perform inventories, and maintain control systems to prevent loss, damage, or theft of County property. The Agency shall be responsible for:

   1. Performing an annual physical inventory of all nonexpendable personal property of the County in its possession or control and requiring such inventories of any Subagency that is in possession of such property provided under a Subcontract to any Contract, at the end of the Agency's fiscal year during any Contract;

   2. Loss, damage and expenses, which result from negligence, willful misconduct, or lack of good faith on the part of the Agency or Subagencies or failure on the part of the Agency or Subagencies to maintain and administer the property in accordance with sound management practices;

   3. Ensuring that the property will be returned to the County in like condition as furnished to or acquired by the Agency, reasonable wear and tear excepted; and

   4. Notifying the County of loss, destruction, or damage to any County property and taking all reasonable steps to protect that property from further damage.

G. The Agency and any Subagency shall surrender to the County all property of the County within thirty (30) calendar days after rescission, termination, cancellation, or

expiration of this Agreement, or any Contract, unless otherwise mutually agreed between the Agency or Subagency and the County.

H. County approval is required prior to all purchases of non-expendable personal property.

XXIX. PROCUREMENT STANDARDS

Agencies under a cost reimbursement Contract must establish policies and procedures for all purchases of nonexpendable property with an acquisition cost in excess of $500 per unit unless stated differently in the specific terms of the Contract. The procurement system should include, but is not limited to, the following:

A. A code or standard of conduct that shall govern the performance of its officers, employees, and/or agents engaged in the awarding of contracts using awarded funding.

B. Provisions that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

C. Procedural requirements are as follows:

1. A procedure to assure the avoidance of purchasing unnecessary or duplicative items;
2. Solicitations based upon a clear and accurate description of the technical requirements of the procured items;
3. Positive efforts to utilize small and minority owned businesses;
4. A procuring instrument appropriate for the particular procurement and for promoting the best interest of the program involved;
5. Contracts made only with reasonable vendors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement;
6. Some form of price or cost analysis performed in connection with every procurement action; and
7. A system for Contract administration to ensure vendor conformance with terms, conditions, and specifications of the Contract and to ensure adequate and timely follow-up of all purchases.

D. Procurement records and files for purchases shall include:

1. Evidence of vendor selection or rejection;
2. The basis for the cost or price; and
3. Justification for lack of competitive bids if not obtained.

E. Agencies and Subagencies under this Agreement, or any Contract, must obtain prior approval from the County to enter into sole source contracts or contracts where only one bid or proposal is received when the acquisition cost exceeds $5,000. Requests for prior approval must include a copy of the proposed contract(s) and any related

procurement documents and justifications for noncompetitive procurement, if applicable.

F. Agencies shall procure all materials, property, supplies or services in a manner that balances fiscal and environmental stewardship in accordance with the requirements of the Snohomish County Environmentally Preferable Purchasing and Utilization Policy Statement available for review and download on the County website.

XXX. FISCAL ACCOUNTABILITY STANDARDS

A. During the Contract period, the Agency agrees to maintain financial systems which will assure the following for this Agreement and any Contract:

1. Accurate, current, and complete disclosure of all direct and indirect costs;
2. Records that identify all sources and application of funds;
3. Control and accountability for all funds, property, and other assets;
4. Procedures that ensure comparison of actual costs with approved budgets;
5. Procedures to assure timely disbursement of funds received by the Agency from the County;
6. Procedures to assure all costs are allowable, reasonable, and are properly allocated to each funding source;
7. Source documentation that supports all accounting records; and
8. Procedures for timely and appropriate resolution of audit findings and recommendations.

B. All fiscal books, records, documents, reports, and other data relating to this Agreement and any Contract shall be maintained and reported in a manner consistent with BARS.

C. The Agency agrees that any County, state, federal, or other funding agency; any local, state, or federal regulatory body; and the Office of State Auditor shall have full access to and right to examine any fiscal books, records, documents, and other materials relevant to this Agreement and any Contract at all reasonable times.

XXXI. REIMBURSEMENT PROCEDURES

A. No payment shall be made for any goods, materials, or services purchased unless the goods, materials, or services are expressly detailed within the approved Budget and Statement of Work set forth under any Contract.

B. The Agency will submit monthly written claims for reimbursement for services rendered under any Contract by the tenth calendar day of the month following the month services were provided. Written claims for reimbursement received after the tenth calendar day of the month may not be processed until the following month. The County will process claims after all supporting documentation is provided in correct and proper form.

C. If written claims for reimbursement are not submitted within ninety (90) calendar days of the close of the month of service provision, those claims may not be processed or paid.

D. The County reserves the right to withhold payment for services required to be performed under any Contract until required reports and/or other documents have been received.

E. The Agency shall not bill the County, and the County shall not pay the Agency, if the Agency has charged or will charge the County or any other party under any other contract or agreement for the same services.

XXXII. BUDGET REVISIONS

The Agency may request budget revisions which shall be in writing in a format prescribed by the County.

A. Line item shifts less than ten percent (10%) of the total Contract budget do not require prior County approval.

B. The following revisions require prior written approval by the County:

1. Line item shifts greater than ten percent (10%) of the total Contract budget; and

2. Line items shifts that occur during the Contract period that are cumulatively greater than ten percent (10%) of the total Contract budget.

C. Budget revisions that increase Administration categories are not allowable.

D. Proposed changes to the Contact budget that increase or decrease the total Contract amount or change the Statement of Work shall necessitate a written amendment to the Contract.

XXXIII. AUDIT REQUIREMENTS

A. Agencies are to procure audit services based on the following guidelines:

1. The Agency shall maintain its records and accounts so as to facilitate the County's audit requirement and shall ensure that Subagencies also maintain auditable records.

2. The Agency is responsible for any audit exceptions incurred by its own organization or that of its Subagencies.

3. The County reserves the right to recover from the Agency all disallowed costs resulting from the audit.

4. As applicable, the Agency required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS), Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General, and the OMB Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations.

5. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Agency must

respond to County requests for information or corrective action concerning audit issues within thirty (30) calendar days of the date of request.

B. OMB Audits

1. Effective for fiscal years beginning prior to December 26, 2014, the Agency shall follow OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.
2. Effective for fiscal years beginning on or after December 26, 2014, the Agency shall follow OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
3. If the Agency is a subrecipient of federal awards as defined by OMB, the Agency shall maintain records that identify all federal funds received and expended by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity. The Agency shall make its records available for review or audit by officials of the federal awarding agency, the General Accounting Office, and the County. The Agency shall incorporate OMB audit requirements into all Contracts between the Agency and its Subagencies that are subrecipients. The Agency shall comply with any future amendments to OMB Uniform Guidance and any successor or replacement circular or regulation.
4. The Agency shall maintain internal controls that provide reasonable assurance that the Agency is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs.
5. The Agency shall comply with the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351, 84 Stat. 197); Title VI of the Civil Rights Act of 1964 (Pub. L. 86-449, 47 Stat. 634); the Rehabilitation Act of 1973; Title II of the ADA; Title IX of the Education Amendments of 1972 (Pub. L. 92-318, 86 Stat. 235); the Age Discrimination Act of 1975 (Pub. L. 94-135, 89 Stat. 728, codified at 42 U.S.C. § 6101 et seq.); and The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G, and 28 CFR Parts 35 and 39.
6. If the subrecipient Agency expends $500,000 or more in federal awards from any and/or all sources in for fiscal years beginning prior to December 26, 2014 ($750,000 or more for fiscal years beginning on or after December 26, 2014), the Agency shall procure and pay for a single or program-specific audit for that year. This requirement also applies when a subrecipient Agency has received a federal loan with continuing compliance requirements, regardless of when the loan originally occurred. Upon completion of each audit, the Agency shall submit to the Federal Audit Clearinghouse the data collection form and reporting package specified in OMB Uniform Guidance. This documentation shall be submitted on the earlier of thirty (30) calendar days after receipt of the auditor's report(s) or nine (9) months after the end of the audit period unless a longer period is agreed to in writing and in advance by the cognizant or oversight agency for audit.

A copy of the audit report (including any management letters) shall also be sent to:

Administrative Services Division Manager
Human Services Department
3000 Rockefeller Avenue, M/S 305
Everett, WA 98201

Or emailed to: HSD.Fiscal@snoco.org

7. The Agency shall follow up on and develop corrective action plans for all audit findings, in accordance with OMB Uniform Guidance, and prepare a "Summary Schedule of Prior Audit Findings."

8. If the Agency is a state or local government entity, the audit shall be conducted by the Office of the State Auditor, or designee of the State Auditor. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Agency in accordance with OMB Uniform Guidance. .

C. Other Audits

1. Agencies that expend less than $500,000 in federal awards ($750,000 for fiscal years beginning on or after December 26, 2014), Agencies that are private for-profit agencies, Agencies that are solely state funded and/or Agencies that are identified as Contractors currently do not fall under the requirements of the Single Audit Act and shall have a financial audit performed by a licensed CPA, as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS).

2. The financial audit requirement may be waived for small Agencies, at the County's sole discretion. For small Agencies, a review engagement by a licensed CPA will be required when the County has waived the financial audit provision. The County reserves the right to require an audit described in C.1 above, should the results of the review engagement be unfavorable.

3. The Agency must send a copy of the audit report/review engagement no later than nine (9) months after the end of the Agency's fiscal year(s) to:

Administrative Services Division Manager
Snohomish County Human Services Department
3000 Rockefeller Avenue, M/S 305
Everett, WA 98201

Or emailed to: HSD.Fiscal@snoco.org

XXXIV. OVERPAYMENTS AND ASSERTION OF LIEN

In the event that the County establishes that overpayments or erroneous payments have been made to the Agency under any Contract, the County may secure repayment, plus interest, if any, through the filing of a lien against the Agency's real property, or by requiring the posting of a bond, assignment of deposit, or some other form of security acceptable to the County, or by doing both.

XXXV. INSURANCE

A. By the date of execution of any Contract, the Agency shall procure and maintain for the duration of any Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Agency, its agents, representatives, employees, and/or subagencies. The costs of such insurance shall be paid by the Agency or subagencies. The Agency may furnish separate certificates of insurance and policy endorsements for each subagency as evidence of compliance with the insurance requirements of this Agreement and any Contract. The Agency is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Agency, its agents, employees, officers, and or subagencies to comply with the insurance requirements stated herein shall constitute a material breach of any Contract.

For all coverages, each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval.

If coverage is approved and purchased on a "claims made" basis, the Agency warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date any Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under any Contract. The Agency shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement or any Contract.

B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. General Liability: Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY.

2. Professional Liability: Professional Liability, Errors, and Omissions coverage. In the event that services delivered pursuant to any Contract, either directly or indirectly, involve or require professional services, Professional Liability, Errors, and Omissions coverage shall be provided. "Professional Services", for the purpose of this section, shall mean any services provided by a licensed professional or those services that require professional standards of care.

3. Automobile Liability: In the event that services delivered pursuant to any Contract require the use of a vehicle or involve the transportation of clients by

Agency personnel in Agency-owned vehicles or non-owned vehicles, the Agency shall provide evidence of the appropriate automobile coverage. Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9.

4. Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law.

5. Stop Gap/Employers Liability: Coverage shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

C. Minimum Limits of Insurance

The Agency shall maintain limits no less than:

1. General Liability: $1,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a $2,000,000 aggregate limit.

2. Professional Liability, Errors, and Omissions: $1,000,000 per claim and in the aggregate.

3. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage. Except if the transport of clients by Agency personnel is involved, then Risk Management will review the appropriate amount of coverage.

4. Workers' Compensation: Statutory requirements of the state of residency.

5. Stop Gap/Employers Liability: $1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Agency's liability to the County and shall be the sole responsibility of the Agency.

E. Other Insurance Provisions

The insurance policies required in this Agreement and any Contract are to contain, or be endorsed to contain, the following provisions:

1. Liability Policies except Professional/Errors and Omissions and Workers Compensation

   a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Agency in connection with any Contract (CG 2010 11/85 or its equivalent).

   b. The Agency's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or

self-insurance maintained by the County, its offices, officials, employees, or agents shall not contribute with the Agency's insurance or benefit the Agency in any way.

c. The Agency's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 45 days prior written notice has been given to the County.

F. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the County.

If, at any time, the foregoing policies shall fail to meet the above minimum requirements, the Agency shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

G. Verification of Coverage

1. The Agency shall furnish the County certificates of insurance and endorsements required by this Agreement and any Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with any Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

2. If the Agency is a public entity and is insured through a State of Washington approved and recognized cooperative or pool, the County will accept a letter of coverage in lieu of a certificate of insurance.

XXXVI. INDEMNIFICATION

A. The Agency shall protect, defend, indemnify and hold harmless Snohomish County, its officers, elected officials, agents, employees, and any state, federal, or other funding agency from and against any and all claims, suits, actions, liability, loss, expenses, damages, and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for damage to any property or business and/or any death, injury, sickness or disability to any person, including without limitation any employee of the Agency or its Subagencies, caused by or arising out of or suffered, directly or indirectly, in connection with the performance of this Agreement or any

Contract or any act, error, or omission of the Agency, Agency's employees, agents, or Subagencies, whether by negligence or otherwise.

B. The Agency shall assume the risk, liability, and pay all damage, loss, cost, and expense of any party, including its employees, arising out of the performance of this Agreement and any Contract, except that caused by the sole negligence and/or willful misconduct of Snohomish County and/or its employees acting within the scope of their employment.

C. With respect to the Agency's obligations to hold harmless, indemnify and defend provided for herein, but only as such obligations relate to claims, actions or suits filed against the County, the Agency further agrees to waive its immunity under the Industrial Insurance Act, Title 51 RCW, as respects the County only, for any injury or death suffered by the Agency's employee(s) caused by or arising out of the Agency's acts, errors or omissions in the performance of this Agreement and any Contract. This waiver is mutually negotiated by the parties.

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

XXXVII. DISPUTES

A. Except as otherwise provided in this Agreement or any Contract, any dispute concerning a question of fact arising under this Agreement or any Contract, which is not disposed of by consensus, shall be decided by the County through the Director of Human Services upon submission of the dispute for resolution in writing by either party. The Director shall submit his/her decision in writing and mail or otherwise furnish a copy thereof to the Agency. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties.

B. The decision of the County shall be final, but shall not preclude judicial review. Pending resolution of the dispute, the Agency shall proceed diligently with the performance of any Contract.

C. A party's written request for dispute resolution must be mailed to the Human Services Department, 3000 Rockefeller Avenue, M/S 305, Everett, WA 98201 within thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue which it now disputes and must state:

1. The disputed issues;
2. The relative positions of the parties; and
3. The Agency's name, address, and its County contract number.

XXXVIII. RESPONSIBILITY

Each party to this Agreement shall be responsible for the negligence of its officers, employees, agents, and Subagencies in the performance of this Agreement and any Contract. Except to the extent that it meets its obligations to perform this Agreement or any Contract through a Subagency, no party to this Agreement shall be responsible for

the acts and/or omissions of entities or individuals not a party to this Agreement or any Contract. The County and the Agency shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. The County and the Agency agree to notify the attorneys of record in any tort lawsuit where both are parties if either County or the Agency enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

XXXIX. COUNTY AUTHORITY

The County Executive or his/her designee shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement and any Contract on behalf of the County, provided it is in writing and signed by the County Executive or his/her designee and consistent with the requirements for changes and modifications under this Agreement and any Contract.

XL. DRUG-FREE WORKPLACE

The Agency shall maintain a workplace free from alcohol and drug abuse as required by the Drug-Free Workplace Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681, as amended.

XLI. CHANGES AND MODIFICATIONS

A. Either party may request changes, amendments, or additions to any portion of this Agreement or any Contract. Except as provided in Section XLII-B below, no such changes, amendments, or additions to any portion of this Agreement or any Contract shall be valid or binding upon either party unless it is in writing and executed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment. All amendments shall be attached to, and made part of, the amended Agreement or Contract.

B. This Agreement and any Contract may be unilaterally amended by the County Executive or his/her designee to:

1. Reflect changes in state or federal laws, rules, policies, or regulations governing their content; or

2. Extend the end date of any Contract without making any changes to the budget.

XLII. TERMINATION OR SUSPENSION OF ANY CONTRACT

A. Termination for Convenience:

1. The County or Agency may terminate any Contract, in whole or in part, upon thirty (30) calendar days' advance written notice to the other party.

2. In the event of termination under this clause, the County shall be liable only for payment in accordance with the terms of the Contract for services rendered prior to the effective date of termination. The County may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by the County.

B. Termination for Lack of Funding:

1. The County may terminate any Contract, in whole or in part, upon five (5) business days' written notice in the event expected or actual funding from a state, federal, or other source is withdrawn, reduced, or limited in any way prior to Contract expiration. The termination shall be effective on the date specified in the notice of termination.

2. In the event of termination under this clause, the County shall be liable only for payment in accordance with the terms of the Contract for services rendered prior to the effective date of termination. The County may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by the County.

C. Suspension or Termination for Lack of Performance:

1. In the event the County determines the Agency has failed to meet or maintain any requirement for contracting with the County, to comply with the terms or conditions of this Agreement or any Contract in a timely manner, or has otherwise breached any provision or condition of this Agreement or any Contract, the County has the right to suspend or terminate any Contract upon a 24-hour prior written notice.

2. The County may suspend all or any part of any Contract, and withhold further payments or prohibit the Agency from incurring additional obligations thereunder, during investigation of suspected noncompliance. The County may also take these actions pending corrective action by the Agency or pending a decision by the County to terminate any Contract.

3. Before the County may terminate any Contract for lack of performance, the County shall provide the Agency with written notice of the Agency's noncompliance and provide the Agency a reasonable opportunity to correct the Agency's noncompliance. If the Agency does not correct the Agency's noncompliance within the period of time specified in the written notice of noncompliance, the County may then terminate the Contract. The County may terminate the Contract for lack of performance without such written notice and without opportunity for correction if the County has a reasonable basis to believe that a client's health or safety is in jeopardy.

4. The rights and remedies of the County provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

D. Suspension or Termination for Fraud, Abuse, Violation of Law

The County reserves the right to suspend or terminate all or part of any Contract, to withhold further payments, or to prohibit the Agency from incurring additional obligations of funds, if the County has reason to believe that fraud, abuse, or violation of law has occurred on the part of the Agency in the performance of any Contract.

E. Suspension or Termination Procedures

1. Suspension or Termination by County

   Upon receipt of the notice of suspension or termination of any Contract, unless otherwise directed by the County in writing, the Agency shall:

   a. Stop work under the Contract on the date, and to the extent, specified in the notice;

   b. Place no further orders or subcontracts for materials, services, or facilities under that portion of the Contract that has been suspended or terminated;

   c. Complete performance of that part of the Contract, if any, which has not been suspended or terminated;

   d. Take such action as may be necessary for the protection and preservation of the property related to the Contract which is in the possession of the Agency and in which the County has or may acquire an interest; and

   e. Transfer title to the County of any property that was purchased with funds awarded under any Contract or any prior contract involving the same funding source and program purpose.

2. Termination by Agency

   a. The Agency may terminate any Contract for default, in whole or in part, by written notice to the County, if the Agency has a reasonable basis to believe that the County has:

      (i) Failed to meet or maintain any requirement for contracting with the Agency;

      (ii) Failed to perform under any provision of this Agreement or any Contract;

      (iii) Violated any law, regulation, rule, or ordinance applicable to this Agreement or any Contract; or

      (iv) Otherwise breached any provision or condition of this Agreement or any Contract.

   b. Before the Agency may terminate any Contract for lack of County performance, the Agency shall provide the County with written notice of the County's noncompliance with the Agreement or the Contract and provide the County a reasonable opportunity to correct the County's noncompliance. If the County does not correct the County's noncompliance within the period of time specified in the written notice of noncompliance, the Agency may then terminate the Contract.

3. Delivery and Preservation of County Assets; Recovery of Costs

   Upon termination of a Contract by either party, the Agency shall promptly deliver to the County all County assets (property) in the Agency's possession, including any material created under any Contract. Upon failure to return County property within ten (10) business days of the Contract termination, the Agency shall be charged with all reasonable costs of recovery, including transportation. The

Agency shall take reasonable steps to protect and preserve any property of the County that is in the possession of the Agency pending return to the County.

4. Remedies

   a. If the County terminates any Contract for lack of performance, the County may withhold a sum from the final payment to the Agency that the County determines is necessary to protect the County against loss or additional liability. The County shall be entitled to all remedies available at law, in equity, or under this Agreement.

   b. The Agency shall be entitled to all remedies available at law, in equity, or under this Agreement if either:

      (i) The County terminated a Contract for lack of performance and it is later determined that the Agency was not at default for lack of performance; or

      (ii) If the Agency terminated a Contract for lack of County performance.

XLIII. SEVERABILITY

A. The provisions of this Agreement are severable. If any part, term, or provision of this Agreement or any Contract is determined to be invalid, the remaining provisions shall not be affected thereby, and the rights and obligations of the parties shall be construed and enforced as if this Agreement or any Contract did not contain the particular provision held to be invalid.

B. If it should appear that any part, term, or provision is in conflict with any constitutional or statutory provision of the State of Washington, the part, term, or provision shall be deemed modified to conform to such constitutional or statutory provision.

XLIV. CONTRACT CLOSE-OUT PROCEDURES

A. The Agency shall submit within thirty (30) calendar days after the date of expiration of any Contract all financial, performance, and other reports required by the Contract and, in addition, shall cooperate in a program or other audit by the County or its designee if the County determines that a program or other audit is necessary.

B. If a financial audit of any Contract is conducted, the County retains the right to withhold a just and reasonable sum from the final payment to the Agency after fully considering the results of the final audit.

XLV. LOBBYING AND CERTIFICATION

A. The requirements of 31 U.S.C. § 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and related subsections of the Code of Federal Regulations implemented for funding authorities, apply to federal contracts, grants and cooperative agreements exceeding $100,000 in total costs (see 45 CFR § 93.110(a)(1)), and loans exceeding $150,000 (see 45 CFR § 93.110(a)(2)).

B. No federal funds awarded under any Contract may be used to provide assistance in connection with any election or any voter registration activity. No federal funds may

be used for working for or against ballot measures, or for or against the candidacy of any person for public office.

C. The Agency certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of a federal agency or a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the Agency must file a disclosure form in accordance with 45 CFR § 93.110.

D. The Agency shall include a clause in all Subcontracts restricting Subagencies from lobbying in accordance with this section and requiring Subagencies to certify and disclose accordingly.

XLVI. VENUE STIPULATION

This Agreement and any Contract has been and shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be Snohomish County.

XLVII. NOTICES

A. Unless otherwise directed in writing, notices, reports, and payments to the County shall be delivered to the following address:

Administrative Services Division
Snohomish County Human Services Department
3000 Rockefeller Avenue, M/S 305
Everett, WA 98201

B. Unless otherwise directed in writing, notices, reports, and payments to the Agency shall be delivered to the following address:

City of Everett
2930 Wetmore Avenue, Suite 9E
Everett, WA 98201

C. Notices mailed by the County shall be deemed given on the date mailed. Notices received by the County shall be deemed given on the date received. Either party may change its address for receipt of reports, notices, or payments by giving the other written notice of not less than fifteen (15) calendar days prior to the effective date.

XLVIII. ACCEPTABLE FORM OF SIGNATURE

Both parties agree handwritten signatures executed to electronic records shall be considered equivalent to handwritten signatures executed on paper. Scanned copies of signed contract documents will be considered original signatures, unless specified in a Contract that an original signature is required. Contract documents include, but are not

limited to, contracts, amendments, certifications, budget revision forms, invoices, and reports.

XLIX. SIGNATURE AUTHORIZATION FORMS

The Agency shall submit a Signature Authorization Form annually and upon request from the County. The Signature Authorization Form shall require original signatures and shall reflect the authorized signatory(ies) of the Agency for applications, contracts, amendments, and monthly expenditures reports and requests for reimbursement. The Signature Authorization Form shall also designate the email address for the authorized recipient(s) of contracts and amendments from the County. Changes to signature authority of the Agency shall require that an updated Signature Authorization Form be submitted to the County.

L. SURVIVABILITY

The terms and conditions contained in this Agreement which by their sense and context are intended to survive the expiration or termination of the Agreement or a Contract shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Lack of Performance, Termination Procedure, and Treatment of Assets.

LI. ENTIRE AGREEMENT

These provisions represent the entire and integrated Basic Terms and Conditions of the parties and may not be modified or amended except as provided herein.

LII. ORDER OF PRECEDENCE

In the event of an inconsistency between the terms of this Agreement and any Contract, the conflict shall be resolved by giving precedence to the Specific Terms and Conditions of the Contract.

LIII. WAIVER

Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement or any Contract into which it is incorporated unless amended as set forth in Section XLII, Changes and Modifications.

LIV. EFFECTIVE DATE AND EFFECTIVENESS OF THIS AGREEMENT

This Agreement becomes effective only upon incorporation by reference into a Contract between the County and the Agency. Prior Basic Terms and Conditions between the parties incorporated by reference into contracts existing prior to the execution of these Basic Terms and Conditions shall remain in effect as to those contracts. To that extent, prior Basic Terms and Conditions shall not be superseded by these Basic Terms and Conditions.

SNOHOMISH COUNTY:

By: _____ 3/17/15
Kenneth Stark, Director (Date)
Human Services Department

AGENCY:

By: Ray Stephanson 2/23/15
Signature (Date)

Mayor
Title

Reviewed and approved per
memorandum dated 1/2/2015:
PA File No. HS-14-019G
Deputy Prosecuting Attorney

Reviewed and approved
By Keith Mitchell, County Risk Manager
as of January 2015

APPROVED AS TO FORM

JAMES D. ILES, City Attorney

ATTEST:

City Clerk 2/23/15

RECEIVED

MAR 16 2015

HUMAN SERVICES
DEPARTMENT

agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

#8

PROJECT TITLE:

Basic Terms and Conditions Agreement with Snohomish County Human Services

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Dept.	Senior Center
_____	Consent	Contact Person	Deborah Wright
_____	Action	Phone Number	425-257-7102
_____	First Reading	FOR AGENDA OF	Feb. 4, 2015
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		
_____	Budget Advisory		

Initialed by:
Department Head _____
CAA db
Council President ADD

Location	Preceding Action	Attachments	Department(s) Approval

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Snohomish County Human Services has awarded the Carl Gipson Senior Center grants to improve services and programs. This document is a change in the basic terms due to changes in federal regulations.

Council approved 2/4/15 JM

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Basic Terms and Conditions agreement with Snohomish County Human Services for grants at the Carl Gipson Senior Center.