JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

CONSENT AGENDA REQUEST

TO: **Board of County Commissioners**

FROM: **Mark McCauley, County Administrator**

DATE: **November 21, 2022**

RE: **ARPA Grant Agreement: City of Port Townsend: Evans Vista**

STATEMENT OF ISSUE:

The City of Port Townsend recently acquired 14.4 acres of land near the west end of Port Townsend for the purpose of creating an affordable and workforce housing project. The City approached the County seeking financial support for the project using ARPA funds. At an ARPA workshop in December 2021 the Board of County Commissioners made a preliminary commitment to the City for $500,000 in ARPA funds for the project. Subsequently, the City gave an Evans Vista presentation to the Board after which the Board made a firm commitment for the $500,000 and directed the County Administrator to bring forth a grant agreement making the committed funds available to the City.

ANALYSIS:

The ARPA grant agreement for the Evans Vista project is attached.

FISCAL IMPACT:

Funding for the $500,000 will come from revenue sharing ARPA in Fund 123, the Grant Management Fund.

RECOMMENDATION:

That the Board of County Commissioners approve the attached grant agreement.

REVIEWED BY:

Mark McCauley, County Administrator

11/16/22
Date

GRANTEE AGREEMENT WITH THE CITY OF PORT TOWNSEND, WASHINGTON

This Grantee Agreement ("Agreement") is by and between Jefferson County, a Washington political subdivision ("County") and the City of Port Townsend, a Washington municipal corporation, ("Grantee").

WHEREAS, on March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law; and

WHEREAS, the ARPA has allocated funds to revenue sharing counties, of which Jefferson County is one; and

WHEREAS, revenue sharing ARPA funds may be used for any governmental purpose; and

WHEREAS, Grantee wishes to develop 14.4 acres of land at the west end of Port Townsend for an affordable and workforce housing project (project): and

WHEREAS, The Grantee is seeking ARPA funds to help advance the project: and

WHEREAS, Jefferson County agrees that affordable and workforce housing are high priorities for this community: and

WHEREAS, the Jefferson County Board of Commissioners committed to provide $500,000 in ARPA funds to this project and directed the County Administrator to bring forth a grant agreement to make said funds available to the Grantee:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

Grant Amount and Grantee's Use of Grant Funds. The Grant amount is $500,000. The Grant is to be used for the purposes outlined in Exhibit A.

Reporting Requirements. Grantee will submit a report to the County following the completion of the project. The report will include information regarding the usage of the $500,000 grant amount and the completed project.

Effective Date and Term. This Agreement shall commence on the date when last executed by the parties and remain in effect until the Grant is exhausted.

Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Grantee.

Independent Grantee. Each party under this Agreement shall be for all purposes an independent Grantee. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Grantee shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

Indemnification. The Grantee agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Grantee, its officers, directors, employees, and/or agents relating to the Grantees' performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

Required Liability Coverages. Prior to commencing work, the Grantee shall obtain at its own cost and expense the following coverage specified below either by a policy of insurance or by an agreement with a "Risk Pool" created pursuant to Ch. 48.62 RCW such as the Washington Cities Insurance Authority and shall keep such coverage in force during the terms of the Agreement.

Commercial Automobile Liability coverage providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than $500,000 each occurrence in connection with the Consultant's performance of his Agreement. This coverage shall indicate on the certificate the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.

Commercial General Liability. Coverage in an amount not less than a single limit of $1,000,000 per occurrence and an aggregate of not less than two (2) times the occurrence amount ($2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications.

The commercial general liability coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

a. Broad Form Property Damage, with no employee exclusion;

b. Personal Injury Liability, including extended bodily injury;

c. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;

d. Premises – Operations Liability (M&C);

e. Blanket Contractual Liability.

Such coverage shall be evidenced by one of the following methods: (a) Certificate of Coverage; or, (b) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

The Grantee shall furnish the County with properly executed certificates of coverage that, at a minimum, shall include: (a) The limits of overage; (b) The project name to which it applies; (c) The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and, (d) A statement that the coverage shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

Failure of the Grantee to take out or maintain any required coverage shall not relieve the Grantee from any liability under this Agreement, nor shall the coverage requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.

The Grantee's insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the coverage, with the exception of Professional Liability coverage, so affected shall protect all the parties and shall be primary coverage for all losses covered by the above described insurance.

Insurance companies or risk pools issuing the Grantee's coverages shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of agreement providing coverage.

All deductibles in the Grantee's coverages shall be assumed by and be at the sole risk of the Grantee.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the County. At the option of the County, the insurer or risk pool shall reduce or eliminate deductibles or self-insured retention, or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Grantee until the Grantee shall furnish additional security covering such judgment as may be determined by the County.

Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any coverage the Grantee shall provide to comply with this Agreement.

The County may, upon the Grantee's failure to comply with all provisions of this Agreement relating to coverage, withhold payment or compensation that would otherwise be due to the Grantee.

The Grantee shall provide a copy of all agreements providing any coverage specified in this Agreement.

Written notice of cancellation or change in the Grantee's coverage required by this Agreement shall reference the project name and agreement number and shall be mailed to the County at the following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.

The Grantee's liability coverage shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.

Any failure to comply with reporting provisions of any agreement providing covererat shall not affect coverage provided to the County, its officers, officials, employees, or agents.

The Grantee's coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of liability.

The Grantee shall include all Sub-Grantees as persons covered under its coverages or shall furnish separate certificates and endorsements for each Sub-Grantee. All coverage for Sub-Grantees shall be subject to all the requirements stated in this Agreement.

The coverage limits mandated for any coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

The Grantee shall maintain all required coverages in force from the time services commence until services are completed. Certificates, coverages, and endorsements expiring before completion of services shall be promptly replaced. All the coverages required by this Agreement shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the County Risk Manager by registered mail, return receipt requested.

The Grantee shall place coverages with a "Risk Pool" created pursuant to Ch. 48.62 RCW or with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

The County reserves the right to request additional coverage on an individual basis for extra hazardous contracts and specific service agreements.

Worker's Compensation (Industrial Insurance).

If and only if the Consultant employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Consultant, the Grantee shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Risk Management, upon request.

Worker's compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.

This coverage shall extend to any Sub-Grantee that does not have their own worker's compensation and employer's liability coverage.

The Grantee expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the Grantee.

Compliance with Laws. Guidelines. The Grantee shall comply with all federal, state, and local laws and all requirements (including certifications and audits), to the extent applicable, when seeking Reimbursement.

Maintenance and Audit of Records. The Grantee shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office. If it is determined during the course of the audit that the Grantee was reimbursed for unallowable costs under this Agreement or any, the Grantee agrees to promptly reimburse the County for such payments upon request.

Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received five (5) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Grantee
John Mauro
City Manager
250 Madison Street
Port Townsend, WA 98368

Jefferson County
Mark McCauley
County Administrator
Jefferson County Courthouse
1820 Jefferson Street
Port Townsend, WA 98368

Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

Time. Time is of the essence in this Agreement.

Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of this Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

Amendment. No amendment or modification to this Agreement will be effective without the prior written consent of the authorized representatives of the parties.

Governing Law; Venue. This Agreement will be governed in all respects by the laws of Washington state, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with this Agreement may be instituted and maintained only in a court of competent jurisdiction in Jefferson County, Washington or as provided by RCW 36.01.050.

Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

Assignment. Neither party shall assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the other party.

Entire Agreement. This Agreement constitutes the entire agreement between the County and the Grantee for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either party has to the Washington State Department of Commerce of these grant funds, including the obligation to provide access to records and cooperate with audits as provided in this Agreement.

Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of this Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

Counterparts. This Agreement may be executed in counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Authorization. Each party warrants to the other party, that the person executing this Agreement on its behalf has the full power and authority to do so.

Public Records Act. Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), the Grantee agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law. The Grantee also agrees that upon receipt of any written public record request, Grantee shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

(SIGNATURES APPEAR ON THE NEXT PAGE)

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

JEFFERSON COUNTY BOARD OF COMMISSIONERS

By: ________________________________
Heidi Eisenhour, Chair DATE

CITY OF PORT TOWNSEND

By: ________________________ 11.16.22
John Mauro, City Manager DATE

SEAL:

ATTEST:

____
Carolyn Gallaway DATE
Clerk of the Board

Approved as to form only:

P.C. Hunsucker November 16, 2022
____
Philip C. Hunsucker DATE
Chief Civil Deputy Prosecuting Attorney

EXHIBIT A

PROPOSAL TO FUND THE CITY OF PORT TOWNSEND'S EVANS VISTA AFFORDABLE AND WORKFORCE HOUSING PROJECT

PROJECT SUMMARY

Project Background/Vision:

Diverse, quality, affordable and stable housing in Port Townsend is a critical underpinning success factor for our strong local economy, local sustainability and resilience, and our collective social well-being and quality of life. Housing is paramount to an equitable, healthy and inclusive community, and getting it right helps sustain and strengthen Port Townsend's unique identity with strong historical roots and a creative and intentional approach to the future. The Evans Vista Neighborhood can be a true forerunner in that vision, while harmonizing with the existing vision described in the Rainier Subarea Plan and helping to catalyze momentum at a regional scale. Evans Vista aims to be a place where people live, work and play – a home for young families who can walk or ride to school or individuals who can walk to local employment in the Rainier Subarea, the Port or the Hospital; a destination for those seeking a coffee with friends, services, or childcare; and a community asset that nests into the existing trail and parks network for all to enjoy and be proud of.

Project Goals:

1. Provide long-lasting affordable housing (50-80% AMI) by lowering the cost through government subsidy (land purchase, infrastructure) and exploring models to lock-in affordability indefinitely (cooperative, land trust). Target: 30-50 units.
2. Provide workforce housing (80-120% AMI). Target: 50-100 units.
3. Deliver a mix of housing types to accommodate a range of individual and family sizes (studios, one, two and three bedrooms) and a diversity of income levels.
4. Enable a mixed-use hub of activities in the development itself, including childcare and family services, first-floor retail and commercial and other amenities that make it a destination for others who do not live there.
5. Activate the Evans Vista neighborhood itself by deliberately nesting and connecting the new development into the Larry Scott Trail and active transportation and transit networks and the Rainier Subarea's emerging commercial and business environment.

Funding/Scope of Work:

Item	Funds
Site Studies: Topographic survey, wetlands delineation, tree conservation ordinance compliance study	$50,000
Project vision development and schematic design: Public engagement, development pattern alternatives, schematic design to address needs	$150,000
Financial analysis: Financing plan and income/expense analysis for the alternatives	$50,000
Preliminary engineering: 30% design for onsite utilities and access to compliment alternatives	$100,000
Entitlements: Planned Unit Development of Binding Site Plan for phasing.	$50,000
Project Management	$50,000
Contingency	$50,000
Total	$500,000