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TO: ARCH Member Councils

FROM: Arthur Sullivan, Program Manager, ARCH

SUBJECT Streamlining ARCH Trust Fund Process / ARCH Sphere of Influence  
ARCH Interlocal Agreement Amendments

DATE: January 20, 2010

**Introduction**

For over a year, the ARCH Executive Board has been examining alternatives to streamline the housing trust fund process in order to simplify that process for both ARCH member jurisdictions and housing developers seeking funding. Working with a consultant and legal team including city attorneys for several ARCH members, the Board is finishing its work and expects to forward its formal recommendation to ARCH member jurisdictions in February.

It may be recalled that at this time last year, an initial update was provided to Council on this topic, and at that time the Executive Board was considering a recommendation to change the legal status of ARCH to a non-profit corporation, similar to some other existing interlocal agencies (e.g. Norcom, Cascade Water Alliance). Upon further review and based on comments from some Councils, the final recommendation will be to maintain the basic existing structure of ARCH, and to expand the role of the administrating agency of ARCH (currently Bellevue), to allow it to administer trust funds as directed by member cities councils.

The key action item for jurisdictions will be consideration of a set of amendments to the ARCH Interlocal Agreement that would facilitate the proposed streamlining. Drafts of the proposed Interlocal Agreement changes have been forwarded to legal counsel of all member jurisdictions for review and comment. This memo provides an overview of the anticipated recommendations. The amendments will not go into effect unless approved by all parties.

**Issue Statement**

There are three main objectives with the updated Interlocal Agreement:

- A. Streamline the administrative process for contracting and tracking Housing Trust Fund dollars;
- B. Maintain the same role for Councils / governance structure for ARCH;
- C. Expand the ARCH Sphere of Influence to allow cities in the Snoqualmie Valley to join ARCH.

A. Streamlining administration of Trust Fund. The core issue that the Board seeks to address by the proposed set of Interlocal Agreement amendments arises from the current housing trust fund process in which each ARCH member funding a project separately contracts with the project developer to provide funds to that developer. As a result it is not uncommon for individual

projects to have four to eight contracts. The contracts are all largely identical and are separately administered by each jurisdiction. The current process is thus paper intensive, time intensive overall, and duplicative. In addition, currently ARCH staff needs to work directly with each city's finance staff to coordinate and track each city's funds made available for affordable housing.

B. Council Role. Last year, Councils consistently commented that the overall existing structure of ARCH continues to work well and the Executive Board agrees. In the Board's view, key among these are that the ARCH structure is based on a partnership model of governance; ARCH uses direct engagement of the Chief Executive Officers of member jurisdictions in the oversight and management of ARCH; and key policy and funding decisions are approved by Councils. This applies not only to ARCH's administrative budget and the Trust Fund, but other areas ARCH provides assistance to cities such as developing local plans and regulations for housing, and assisting with implementation of local programs.

The amendments to the Interlocal Agreement would retain the current governance structure and role of councils. Annual Work Program and Budgets are still subject to Council approvals. Also Councils still determine how much funds to be made available to allocate through the ARCH Trust Fund, and must approve allocations for individual projects, using the same current process. In sum, the Board wishes to keep intact the current governance arrangement between the parties, feeling that it has worked well for many years.

C. ARCH Sphere of Influence. The Board also is recommending taking this opportunity to expand the ARCH Sphere of Influence in order to allow the cities in the Snoqualmie Valley to join ARCH *if they choose*. To accomplish this, the "ARCH Sphere of Influence" would be expanded to add the urban growth areas (as amended from time to time) in the Snoqualmie Valley. This could result in as many as 4 new ARCH members (Carnation, Duvall, North Bend, Snoqualmie). *The Board is still evaluating Executive Board representation related to this potential expanded membership.*

### **Recommended New Trust Fund Process**

After considering several options, the ARCH Executive Board has determined that the simplest approach to accomplish the desired streamlining will be to **retain ARCH's structure as a joint board** and to expand the role one of the members of ARCH can serve as the "administrating agency" to include administration of the Housing Trust Fund.

As a joint board, ARCH is not a separate legal entity. Rather, it is a cooperative undertaking of all the members. ARCH cannot enter into contracts nor have its own employees. Historically and continuing today, these legal functions and staffing functions have been fulfilled by the City of Bellevue as ARCH's administering agency. ARCH members share a greater degree of direct responsibility and potential liability for the actions of the joint board than they would as members of a separate legal entity, but the structure and function of ARCH is fairly simple and thus does not compel separate legal status.

To accomplish the streamlining project, the "administering agency"—historically Bellevue – will have an expanded role. The City of Bellevue has, at the staff level, agreed to serve in this

expanded capacity assuming the proposed Interlocal Agreement changes are approved by the members, including the Bellevue Council. Reasons Bellevue staff have concurred with this expanded role as administering agency include: it has been determined that ARCH staff, since they are already involved with managing ARCH's operating fund, can manage most of the day to day fiscal reporting associated with the Housing Trust Fund account; Bellevue has provided funding to the vast majority of projects funded through the Trust Fund, so are already involved with preparing contracts for most of the projects; and if needed, ARCH will use its administrative reserves to help with the initial set-up of the Trust Fund Account and help Bellevue pay for any extraneous legal costs involved with developing and enforcing funding agreements.

### **How the Proposed Streamlining Would Work**

In terms of the process for streamlining project funding, the goal is to retain maximum control by individual member city over use of their housing trust fund monies but shift and consolidate administrative responsibilities for those funds.

As proposed, the current **ARCH Operating Fund** (held by Bellevue, where ARCH operating budget contributions from members are deposited), will be divided into two accounts: an **Operating Account** (for the operating budget) and a **Housing Trust Funds Account**.

Each ARCH member will have established within the Housing Trust Funds Account an individual subaccount (the "**Individual Accounts**"). Whatever funding (if any) a jurisdiction decides to set aside for its Housing Trust Fund each year will be placed in this Individual Account. The Individual Account is administered *at the direction of the contributing jurisdiction*. Each project funded by a jurisdiction will be separately tracked by the Administering Agency by "**project accounts**" within each Individual Account.

There is no obligation on the part of any party to contribute funds to its Individual Account within the housing trust fund in any given year. Uncommitted funds within an Individual Account can be returned to the jurisdiction within 45 days of a request. Funds in individual accounts will be invested and any interest earnings credited to each member's individual account.

An ARCH member could elect to fund projects through individual contracts rather than by participating in the new consolidated ARCH contract process. Presumably, the benefits of having the Administering Agency and ARCH Program Manager track projects and contracts would be an incentive for members to participate in the new process.

There will be one set of project financing documents for each project. These documents will be very similar to the contracts used by jurisdictions today but will be *entered into by the Administering Agency on behalf of all parties choosing to contribute funds* to a project. As is true today, each city must individually consent (by its Council) to any application of its housing trust fund monies to that Project. That consent will include review of the key funding terms and conditions (e.g. basic finance terms, purpose of project, affordability levels, etc., (similar to materials currently provided to Councils for individual projects)). Staff will work with member city staffs to develop the new standard form of agreements.

The Administering Agency will disburse funds to the developer from Individual Accounts per the project financing documents and ARCH staff will monitor projects for compliance with funding conditions. The Administering Agency will also track remittances, loan repayments, etc, if any, and deposit into each funding city's individual account on a pro rata basis (based on original funding contributions of the Parties). Regular status reports on the Housing Trust Fund Account will be presented to ARCH members.

If there is a problem with a project (for example, developer non-compliance), a default or termination or other similar action will be pursued upon the approval in writing of the Chief Executive Officer of funding parties which together have contributed not less than 51% of the total ARCH member funding to the project. All funding Parties will then have a say in how the default action is pursued, will be obligated to pay their pro rata share (based on their contributions to the project) of the reasonable costs of pursuing the default action, and will share pro rata in any recovery of funds.

Assuming the proposal is approved by ARCH members, the ARCH Board would by resolution appoint Bellevue the administering agency. The Board will also review and approve the unified formats for project financing documents.

*Attachment A* provides a single-page matrix comparing the proposed streamlined housing trust fund process to the current process.

### **What doesn't change?**

Under the proposal, ARCH's purposes and powers remain essentially unchanged—except to expressly authorize the new streamlined project funding approach. The proposal does not change the way day-to-day operations of ARCH are funded. ARCH staffing does not change. The budget process (and allocation of costs between members) remains the same. The annual process for approving ARCH's Work Program remains the same. The basic collaborative partnership philosophy and approach, with each jurisdiction making its own decisions about which projects to fund, remains unchanged. And, ARCH will still have the capacity to provide specialized services and administer programs for individual member agencies as provided in the Work Program.

### **Revised Interlocal Agreement**

The key changes to the Interlocal Agreement are summarized below. In all, there are five types of changes to the Interlocal Agreement:

1. Establish accounts within the ARCH Operating Fund necessary to administer the streamlined project approach: As described above, separate Operating Account and Housing Trust Funds Accounts are created. Individual Accounts and Project Accounts are created within the Housing Trust Funds Account. All accounts will be held by the Administering Agency. Money in an Individual Account that is not committed to a project can be returned to the contributing jurisdiction at any time.

2. Confirm the duties and means of appointing the Administering Agency. The Administering Agency is selected by action of the Executive Board (so, in the future, another ARCH member could assume this responsibility without amending the Agreement). The Administering Agency serves (as is true today) as ARCH's fiscal agent. The Administering Agency establishes and oversees the new account structure and the new project financing document.
3. Outline the new process for contracting of Housing Trust Fund Monies to developers, as described above and in Attachment A.
4. Housekeeping and Boilerplate Sections. References to ARCH "entering into contracts" or having "employees" are deleted to reflect the legal realities of the current joint board structure. Several sections are added that are useful "boilerplate", including a simple conflict resolution clause, venue, notice and assignment, etc. The most important of these sections is a new expanded indemnification clause which includes cross indemnification of all parties, including the party acting as Administering Agency. The agreement is presented as a restatement and amendment, and so incorporates amendments previously approved to the original 1993 document.
5. Governance Changes. The agreement will propose an expansion of potential membership in ARCH to include the Snoqualmie Valley Cities. The Board is currently considering whether any changes to the ARCH Board membership structure should accompany this potential expanded membership. In consideration of the new duties of the administering agency, and the potential expansion of number of member agencies, the Board is also recommending that: (1) future amendments to the Agreement could be accomplished by approval of a supermajority (by number of agency) of member agencies (rather than unanimous consent); and (2) the appointment of the administering agency will require a supermajority vote of the Board (currently, Board actions only require a simple majority).

### **Next Steps**

The next steps are for the Board to finalize its proposal and complete legal review by each member jurisdiction. This is expected to occur in early February. At that point, the proposal will be forwarded to ARCH member councils for consideration and action.

**ARCH Housing Project Selection and Administration Process: Comparison of Current and Proposed Streamlined Processes**

	<i><b>Project Recommendation</b></i>	<i><b>City/County Decision to Fund Project</b></i>	<i><b>Housing Trust Fund</b></i>	<i><b>Loan/Grant Agreement Documentation</b></i>	<i><b>Project Oversight</b></i>
<i><b>Existing Process</b></i>	<ul style="list-style-type: none"> <li>• Developers apply to ARCH.</li> <li>• Citizen Advisory Board reviews applications and makes recommendations to Exec Board as to which projects should be funded.</li> <li>• Exec Board makes recommendations to ARCH Members.</li> </ul>	<ul style="list-style-type: none"> <li>• Councils individually determine which projects to fund, and level of funding to provide.</li> <li>• Council resolutions approving specific terms and conditions associated with funding: affordability, general repayment terms, etc.</li> </ul>	Each City/the County maintains its own housing trust fund and approves and tracks any/all disbursements from same.	<ul style="list-style-type: none"> <li>• Each funding city develops and executes separate forms of funding agreement, deed of trust, promissory note and regulatory agreement with Developer.</li> <li>• ARCH Program Staff provide assistance in drafting, finalizing terms.</li> <li>• <i>City staff</i> approve various administrative items in finalizing and implementing loan/grant.</li> <li>• ‘Boilerplate’ terms of city legal agreements may differ slightly.</li> <li>• Individual Parties legal counsel reviews/approves documentation.</li> </ul>	<ul style="list-style-type: none"> <li>• ARCH program staff tracks compliance with requirements and works with participating jurisdictions’ staff and Administering Agency to address any problems.</li> <li>• Each Party approves the disbursal of funds to a developer and keeps track of same on its books, as well as tracking any remittance of funds.</li> <li>• Each Party must individually determine whether/when to declare a developer in default, whether to waive claims against the developer, or pursue other actions against the developer.</li> </ul>
<i><b>Proposed Streamlined Process</b></i>	No change	<p>No change—<i>except</i></p> <ul style="list-style-type: none"> <li>• Councils <i>direct Administering Agency</i> to develop and execute the associated agreements.</li> <li>• Need to <i>develop</i> single form of legal agreement for all funds.</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Each jurisdiction decides how much to contribute to the ARCH Housing Trust Fund and transfers any such amounts to Administering Agency.</li> <li>• Each jurisdiction has an “Individual Account” within the ARCH Housing Trust Fund Account to which its contributions are applied.</li> <li>• Each jurisdiction council must approve any disbursements from its Individual Account (as part of decision to fund a specific project).</li> <li>• Each jurisdiction can get all uncommitted funds in its Individual Account back at any time, within 45 days of written request.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Administering Agency on behalf of all funding jurisdictions</i> develops and executes a <i>single set of documents</i> securing the interests of <i>all funders</i>.</li> <li>• ARCH Program Staff provide assistance in drafting, finalizing terms.</li> <li>• <i>ARCH Program staff</i> authorized to approve various administrative items in finalizing and implementing loan/grant, <i>in consultation with city staff</i>.</li> <li>• Terms as between funders do not differ.</li> <li>• Individual funding Parties’ legal counsel have opportunity to review documentation.</li> </ul>	<ul style="list-style-type: none"> <li>• ARCH program staff tracks compliance with requirements and works with participating jurisdictions’ staff and Administering Agency to address any problems.</li> <li>• Administering Agency tracks disbursements from each jurisdiction’s Individual Account as well as any repayments of funds (credited on a pro-rata basis per project between participating funders).</li> <li>• Participating funders to be notified by Administering Agency of defaults by Developers. <b>TBD:</b> <i>Majority vote (by dollars contributed) required to pursue action against Developer. Individual jurisdictions may [may not] opt out of any claims.</i></li> </ul>

DRAFT 1-21-10

**First Amended and Restated Interlocal Agreement for ARCH**  
**A Regional Coalition for Housing**  
**(January, 1993 \_\_\_\_\_ 2010)**

(Effective Date: July 1, 2010)

This Interlocal Agreement ("Agreement") is entered into by and between the Cities of Bellevue, Kirkland, ~~and Redmond, Bothell, Woodinville, Issaquah, Mercer Island, Newcastle, Beaux Arts, Clyde Hill, Hunts Point, Medina, Yarrow Point, Kenmore and Sammamish,~~ municipal corporations organized under the laws of the State of Washington, and King County, a subdivision of state government (collectively, the "Parties"). This Agreement amends and restates the prior agreements by and between the Parties relating to the creation and operation of the joint board known as "ARCH." This Agreement is made pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, and has been authorized by the legislative body of each jurisdiction.

WHEREAS, ~~Eastside communities~~ the Parties have a common goal to ensure the availability of housing that meets the needs of all income levels; and

WHEREAS, ~~Eastside communities~~ the Parties desire to provide a sound base of housing policies and programs ~~on the Eastside in East King County~~ and to complement the efforts of existing organizations to address ~~Eastside housing needs in East King County;~~ and

~~WHEREAS, citizen housing task forces were formed by the City of Bellevue and the City of Kirkland to make recommendations concerning how local governments could better meet affordable housing needs on the Eastside; and~~

~~WHEREAS, the City of Redmond adopted policies supporting an active approach to increasing the supply of affordable housing for Redmond residents; and~~

~~WHEREAS, staff from Bellevue, Kirkland, Redmond and King County formed a study group to review the recommendations of the Housing Task Force and to review the feasibility of addressing such affordable housing needs on a cooperative basis; and~~

WHEREAS, the Parties desire to act cooperatively to formulate affordable housing goals and policies, to foster efforts to provide affordable housing by combining public funding with private-sector resources, to support implementation of the goals of the state Growth Management Act and related Countywide Planning Policies relating to affordable housing, and to do so efficiently and expeditiously; and

WHEREAS, the Parties have determined that the most efficient and expeditious way for the parties to address Eastside affordable housing needs in East King County is through cooperative action by the Parties; and

WHEREAS, the intent of this cooperative undertaking is not to duplicate efforts of non-profit corporations and other entities already providing affordable-housing-related services; now therefore,

IT IS HEREBY AGREED AS FOLLOWS:

1. PURPOSE. All Parties to this Agreement (~~hereinafter referred to as "Parties"~~) have responsibility for local and regional planning for the provision of housing affordable to citizens that work and/or live ~~on the Eastside~~ in East King County. ~~The Parties desire to act cooperatively to formulate affordable housing goals and policies and to foster efforts to provide affordable housing by combining public funding with private-sector resources. The Parties further intend that this interlocal agreement serve as the legal basis for all Eastside communities within the ARCH sphere of influence (See Exhibit A) to cooperate in planning for and providing affordable housing; the Parties therefore encourage other Eastside communities~~ cities in East King County to join the ~~initial~~ Parties in this endeavor.

2. STRUCTURE. To accomplish the purposes of this Agreement, the Parties hereby create a joint and cooperative undertaking an administrative entity responsible for administering the activities described herein, to be called A Regional Coalition for Housing ("ARCH). ARCH shall be governed by an Executive Board ~~composed of the chief executive officer of each Party.~~ composed of members as provided for in section 4.a of the this Agreement. The Executive Board shall constitute a "joint board" as that term is used in RCW 39.34.030(4). The Executive Board shall be assisted by an administrative staff and by a Citizen Advisory Board. ~~The organizational structure of ARCH shall be generally as set forth in the diagram attached hereto as Exhibit B.~~ [amendment approved 11/99]

3. RESPONSIBILITIES AND AUTHORITY. In order to carry out the purposes of this Agreement, ARCH shall have the following responsibilities and authority:

a. To provide recommendations to the Parties regarding the allocation of public funding for affordable housing purposes.

b. Through its Administering Agency (defined in Section 5), to enter into agreements with third parties for the use and application of public funds contributed by individual Parties to

the ARCH Housing Trust Funds Account established in Section 12, under such terms and conditions as may be agreed by the individual contributing Parties, as further described in Section 12. ~~These parties which request that ARCH make allocation recommendations concerning the use of housing funds either individually or jointly with any other party(s), may place conditions on the use of those funds.~~ ARCH shall, at least annually, report to the Parties on the geographic distribution of all housing trust funds as recommended by ARCH.

cb. To provide recommendations to the Parties regarding local and regional affordable housing policies. ARCH will assist the Parties in developing strategies and programs to achieve Growth Management Act housing goals. ARCH will provide technical assistance to any Party adopting land use incentives or affordable housing programs. ARCH staff will research model programs, develop draft legislation, prepare briefing materials and make presentations to planning commissions and councils upon request by a Party. ARCH will assist Parties in developing strategies and programs to implement county-wide affordable housing policies to meet the Growth Management Act objective for an equitable and rational distribution of low- and moderate-income housing.

de. To facilitate cooperation between the private and public sector with regard to the provision of affordable housing. ARCH will work directly with private developers, financial institutions, non-profit corporations and other public entities to assist in the implementation of affordable housing projects. ARCH will work directly with any Party to provide technical assistance with regard to the public funding of affordable housing projects and the implementation of affordable housing regulatory agreements for private developments. ARCH will also provide assistance in making surplus sites available for affordable housing and in developing affordable housing alternatives for such sites.

de. To develop standard regulatory agreements acceptable to private and public financial institutions to facilitate the availability of funding for private and public projects containing affordable housing.

ef. To provide other technical advice to any Party upon request and to enter into agreements to provide technical assistance to other public entities on a reimbursable basis.

fg. To provide support and educational activities and to monitor legislative and regulatory activities related to affordable housing at the state and federal levels.

gh. To develop and to carry out procedures for monitoring of affordable units and to administer direct service housing programs on behalf of any Party. Such direct service

housing programs may include but are not limited to relocation assistance programs, rent voucher and/or deposit loan programs, etc.

hi. To work directly with other public and private entities for the development of affordable housing policies and to encourage the provision of affordable housing.

ij. Pursuant to the direction of the Executive Board, to take other appropriate and necessary action to carry out the purposes of this Agreement.

4. EXECUTIVE BOARD.

a. Membership. ARCH shall be governed by an Executive Board composed of the chief executive officer of each Party of the chief executive officer of each Party, with the following exception. There will not be more than two members on the Executive Board representing cities with population less than 5,000 persons, unless approved by the Executive Board. In the event that there are more than two parties that are members of ARCH with population less than 5,000 persons, then those parties will propose to the Executive Board for the Executive Board's approval, a method for shared membership on the Executive Board by those Parties. Any member of the Executive Board representing more than one Party must be approved by the chief executive officer of those Parties being represented by the shared Executive Board member. The Executive Board shall administer this cooperative undertaking pursuant to the terms of this Agreement and pursuant to any procedures adopted by the Executive Board. *[amendment approved 11/99][Note: This section is still under review by the Board for possible amendment relating to the recommended expansion of the sphere of influence]*

b. Chair. The Chair of the Executive Board shall be elected by the members of the Board from the Board membership; shall preside over all meetings of the Executive Board; and shall, in the absence of a Program Manager, process issues, organize meetings and provide for administrative support as required by the Executive Board.

c. Alternate Member. Each member of the Executive Board shall be entitled to designate one alternate member who shall serve in the place of the member on the Executive Board during the member's absence or inability to serve.

d. Powers. The Executive Board shall have the power to (1) develop and recommend a budget and work program to the Parties; (2) adopt procedures for the administration of ARCH and for the conduct of meetings; (3) make recommendations to the Parties concerning planning, policy and the funding of affordable housing projects; (4) establish policies for the expenditure of budgeted

items; (5) appoint one of the Parties to serve as "Administering Agency" to carry out administrative functions as further described in this Agreement; ~~(56)~~ establish a special fund with one of the participating cities ~~the Administering Agency~~ as authorized by RCW 39.34.030, to be known as the "Operating Fund of the ARCH Joint Board" ("ARCH Fund") within which Fund may be established various accounts and subaccounts including but not limited to an "ARCH Operating Account," and an "Housing Trust Funds Account"; ~~(67)~~ hold regular meetings on such dates and at such places as the Executive Board may designate; ~~(78)~~ through its Administering Agency, enter into contracts and agreements for the provision of personnel and other necessary services to ARCH, including accounting and legal services and the purchase of insurance, and authorize the ~~Administering Agency Chair or Program Manager of ARCH, if any,~~ to execute any such other contracts, agreements or other legal documents necessary for ARCH to carry out its purposes; ~~(89)~~ establish the responsibilities and direct and oversee the activities of the Program Manager; ~~(910)~~ appoint Citizen Advisory Board Members; and ~~(9)-(1011)~~ take whatever other action is necessary to carry out the purposes of this Agreement. [2/99]

5. ADMINISTRATION AND OVERSIGHT. The Executive Board shall have final decision-making authority over all legislative and administrative matters within the scope of this Agreement. The Executive Board may delegate responsibility for general oversight of the operations of ARCH to a Program Manager. The Program Manager shall submit quarterly budget performance and progress reports on the status of the work program elements to the Executive Board and the governing body of each Party. Such reports and contents thereof shall be in a form acceptable to the Executive Board.

~~The Executive Board may shall, with the consent of the parties,~~ designate one of the parties ~~the Administering Agency~~ to provide administrative support services on behalf of ARCH. The Administering Agency shall be the Fiscal Agent for ARCH in accordance with the requirements of Chapter 39.34 RCW. ARCH shall be staffed with personnel provided by the Parties and/or independent contractors contracting directly with ARCH through its Administering Agency.

Any Party providing personnel to ARCH shall remain solely responsible for the continued payment of any and all compensation and benefits to such personnel as well as for any worker's compensation claims or any other claims arising from the negligence or omissions of such personnel ~~the employee~~ in performing his or her duties for ARCH. ~~In the case of personnel directly contracting with ARCH, the Parties shall be jointly and severally responsible for any claims, not otherwise covered by insurance, arising as a result of the negligence or omissions of such personnel.~~ All Parties

shall cooperate fully in assisting ARCH to provide the services authorized herein.

6. MEETINGS OF EXECUTIVE BOARD.

a. Frequency. The Executive Board shall meet as often as it deems necessary, but not less often than quarterly.

b. Quorum. A quorum at any meeting of the Executive Board shall consist of the Board members (or alternates) who represent a simple majority of the Board's membership.

c. Action. No action may be taken except at a meeting where a quorum exists. Action by the Executive Board requires an affirmative vote by a majority of the Board's membership. No action shall be taken except at a meeting open to the public. [Policy question: The Board is still considering whether to recommend a supermajority approval requirement for the Board selection of the Administering Agency]

7. CITIZEN ADVISORY BOARD. A Citizen Advisory Board is hereby created to provide advice and recommendation to the Executive Board on land and/or money resource allocation for affordable housing projects and to provide public relations and educational outreach services. The Citizen Advisory Board shall consist of not more than fifteen (15) and not less than twelve (12) citizen members. The Executive Board shall appoint members to the Citizen Advisory Board. ~~recommend a list of citizens to the Parties for their confirmation. In the event a citizen(s) recommended by the Executive Board is not confirmed by each Party, the Executive Board shall recommend additional citizens for confirmation by the Parties.~~ Citizen members appointed to the Citizen Advisory Board must have a knowledge and understanding of affordable housing and be committed to the furtherance of affordable housing on the Eastside. Appointments shall be for a four-year term with service limited to a total of two consecutive terms. The Executive Board shall adopt procedures for the convening and administration of the Citizen Advisory Board. A citizen member may be removed from the Citizen Advisory Board by the Executive Board with or without cause upon a majority vote of membership of the Executive Board. [amendment approved 2/99]

8. MEETINGS OF CITIZEN ADVISORY BOARD.

a. Frequency. The Citizen Advisory Board shall meet as often as it deems necessary, but not less often than quarterly.

b. Quorum. A quorum at any meeting of the Citizen Advisory Board shall consist of the Board members who represent a simple majority of the Board's membership.

c. Action. No action may be taken except at a meeting where a quorum exists. Action by the Citizen Advisory Board requires an affirmative vote by a majority of those members attending a Board meeting where a quorum exists. No action shall be taken except at a meeting open to the public.

9. DURATION AND TERMINATION. This Agreement shall be of ~~ten~~ five years' duration ~~but—and~~ shall continue in effect for subsequent five-year periods upon affirmative vote of a majority of the membership of the Executive Board. Any vote to continue the Agreement shall be taken not sooner than six months before, nor later than three months before, the end of the ~~initial ten-year term or any subsequent five-year term~~. This Agreement may be terminated at any time by affirmative vote of a majority of the legislative bodies of the Parties to this Agreement.

Upon termination of this Agreement, all property acquired during the life of the Agreement shall be disposed of in the following manner:

- (i) all property contributed without charge by any Party shall revert to the contributing Party;
- (ii) all property purchased by ARCH after the effective date of this Agreement shall be distributed to the Parties based on each Party's pro rata contribution to the overall budget at the time the property was purchased;
- (iii) except as provided in subsection (iv) below, all unexpended or reserve funds shall be distributed to the Parties based on each Party's pro rata contribution to the overall budget in effect at the time the Agreement is terminated.
- (iv) all uncommitted monies in the Housing Trust Funds Account shall be distributed to the Parties by remitting the total uncommitted amounts remaining in each Party's Individual Account(as described in Section 12) to that Party.
- (v) each Party that has funded a project shall be substituted for the Administering Agency with regard to all project financing documents, and the Administering Agency released from further obligations with respect thereto.

10. WITHDRAWAL. Any Party may withdraw from this Agreement by giving one year's written notice to the Executive Board, by December 31 in any year, of its intention to terminate, effective December 31 of the following year. Any Party withdrawing from this Agreement shall remain legally and financially responsible for any obligation incurred by the Party pursuant to the terms of this Agreement, including by not limited to any project financing documents executed by the Administering Agency on behalf of that Party, during the time the withdrawing Party was a member of ARCH.

11. BUDGET. The budget year for ARCH shall be January 1 to December 31 of any year. On or before June 1st of each year, a recommended operating budget and work plan for ARCH for the next budget year shall be prepared, reviewed and recommended by the Executive Board and transmitted to each Party; ~~provided that, for budget years 1992-93, a single budget and work plan shall be prepared for review and approval by each Party.~~ The recommended operating budget shall contain an itemization of all categories of budgeted expenses and shall contain an itemization of the amount of each Party's contribution, including in-kind services, toward that budget.

a. No recommended budget or work plan shall become effective unless and until approved by the legislative body of each Party and finally adopted by the Executive Board. Approval of the budget by a Party shall obligate that Party to make whatever contribution(s) is budgeted for that Party.

b. Such contribution(s) shall be transmitted to ARCH on a quarterly basis at the beginning of each quarter unless otherwise provided in the budget document. Each Party shall specify the amount of its contribution to be deposited by the Administering Agency into to the ARCH Operating Account, as well as the amount, if any, to be deposited into the Party's Individual Account within the ARCH Housing Trust Funds Account established by Section 12.

c. In the event that any Party is delinquent by more than three months in the payment of its ~~budgeted~~ approved operating budget contribution, such Party shall not be entitled to vote on matters before the Executive Board until such delinquency has been paid; provided however, that a Party's decision not to contribute funds to its Individual Account, or its delinquency in funding same shall not affect that Party's voting rights on the Executive Board.

12. HOUSING TRUST FUNDS ACCOUNT ESTABLISHED; PROCEDURES FOR ADMINISTERING TRUST FUNDS ACCOUNT CONTRIBUTIONS. Upon direction of the Executive Board, the Administering Agency shall establish and maintain an account within the ARCH Fund for the purpose of administering the contributions of Parties to affordable housing projects and programs, to be known as the ARCH Housing Trust Funds Account. The amounts in the Housing Trust Funds Account shall be held and disbursed by the Administering Agency as described herein.

a. Within the Housing Trust Funds Account, a sub-account shall be established for each Party to this agreement. Such sub-accounts are collectively referred to as the "Individual Accounts". Contributions to an Individual Account from a Party may be released only upon, and in accordance with, the written direction of that Party.

b. A subaccount shall be established within each Individual Account for each project or program funded in whole or part by a Party from its Individual Account. Such sub-accounts are referred to as "Project Accounts".

c. The Administering Agency shall maintain records sufficient to separately track the deposits, withdrawals and interest earnings, within each Individual Account and each Project Account, and shall provide quarterly reports to all Parties as to the status of funds in each Individual Account and Project Account. The Administering Agency's responsibilities under this section may be delegated to the ARCH Program Manager to the extent consistent with applicable law and as the Administering Agency and Executive Board may agree.

d. Funds transmitted to ARCH for deposit in the Housing Trust Funds Account shall be held by ARCH until directed for application to a specific project or program by the contributing Party; provided, that uncommitted funds in an Individual Account shall be remitted to the contributing Party within 45 days of receipt of written request from the Party signed by its Chief Executive Officer, or upon the Party's withdrawal from ARCH in accordance with the terms of Section 10, or upon the dissolution of ARCH per Section 9.

e. Funds within the Housing Trust Funds Account shall be invested by the Administering Agency in investments permitted by state law for investment of public funds. Investment earnings shall be credited to each Individual Account and Subaccount on a *pro rata* basis.

f. The Executive Board shall develop standard forms of approvals and agreements to be used in the application of funds contributed to the Housing Trust Funds Account (collectively referred to as "project financing documents"), consistent with the following goals and procedures:

(i) Each Party choosing to participate in funding a project or program will by action of its legislative body authorize the application of a specified amount of its Individual Account monies to such project or program, and shall authorize and direct ARCH, ARCH Program Manager, and the Administering Agency to take such actions as necessary to accomplish this. The individual legislative body authorizations shall include such terms as the Executive Board shall require, including but not limited to:

1. amount of funds allocated;
2. project description, including minimum affordability requirements, if any;

3. nature of the funding commitment (loan, grant, or other);

4. in the event the funding commitment is provided as a loan, the general repayment terms including but not limited to the term of the loan and applicable, interest rate(s).

5. a general description of the security interests, if any, to be recorded in favor of the Party;

(ii) For each individual housing project or program to be funded, the developer, owner or administrator of such project or program (generally referred to as the "developer"), shall enter into the necessary set of agreements (project financing documents) with the Administering Agency. The project financing documents shall specify that the Administering Agency is acting as administering agency on behalf of each participating funding Party pursuant to this Agreement and RCW 39.34.030(4), and shall identify each participating funding Party. The project financing documents will be consistent with general forms of agreement approved by the Executive Board and the terms and conditions approved by the legislative bodies of the funding Parties. The project financing agreements will incorporate all terms and conditions relative to the use and (if applicable) repayment of such funds, and provide for transfer of the Housing Trust Funds Account monies from all funding Parties to the developer.

(iii) Funding contributions to, and repayments (if any) from, specific projects and programs shall be recorded by the Administering Agency, including recording of monies deposited and withdrawn from each Party's Individual Account and Project Accounts therein. Repayments (if any) under any developer agreement shall be applied pro rata to the funding Parties' Individual Accounts based on the ratio of funding originally contributed to the project by each Party, unless the funding Parties otherwise agree.

(iv) Unless the Parties funding a project or program otherwise agree, a default, termination or other action against a developer or other third party may be declared only after securing approval in writing of the chief executive officers of funding Parties which together have contributed not less than 51% of the total ARCH member funding to the project. The Administering Agency shall provide reasonable notice and information regarding the status of projects as necessary to each Funding Party's Chief Executive Officer to allow him or her to make a timely decision in this regard. Funding parties not

consenting to such default, termination or other action shall be bound by the decision of the majority. All funding Parties shall be obligated on a pro rata basis (based on their contributions to the project) to pay to the Administering Agency its reasonable costs and expenses incurred in furtherance of such actions. Any funds recovered through such actions shall be allocated to the funding Parties Individual Accounts pro rata based on their respective funding contributions to a project.

(v) The Executive Board may from time to time authorize the Administering Agency to administer housing project agreements entered into prior to the effective date of this Amended and Restated Agreement, upon terms consistent with this Agreement and subject to the consent of the Administering Agency.

1213. DUES, ASSESSMENTS AND BUDGET AMENDMENTS. Funding for the activities of ARCH shall be provided solely through the budgetary process. No separate dues or assessments shall be imposed or required of the Parties except upon unanimous vote of the membership of the Executive Board and ratification by the legislative body of each Party to the Agreement. An approved budget shall not be modified unless and until approved by the legislative body of each Party and finally adopted by the Executive Board; provided that, in the event a Party agrees to totally fund an additional task to the work program, not currently approved in the budget, the task may be added to the work plan and the budget amended to reflect the funding of the total cost of such task by the requesting Party, upon approval by a majority of the membership of the Executive Board without approval by the individual Parties. Notwithstanding the foregoing, contributions by a Party to its Individual Account within the Housing Trust Funds Account shall be solely within the discretion of that Party and are not considered "assessments," and obligations of a Party to pay expenses of the Administering Agency as approved or authorized per Subsections 12(iv) and (v) above are not deemed "assessments".

1314. LIABILITY OF MEMBERS. Each Party shall be jointly and severally liable for any claims, damages or other causes of action arising from the activities of ARCH, its officers, employees and agents except as expressly set forth in Section 5 of this Agreement with regard to personnel directly provided to ARCH by such Party; provided that, ARCH shall take all steps reasonably possible to minimize the potential liability of the Parties, including but not limited to the purchase of liability, casualty and errors and omissions insurance and the utilization of sound risk management techniques. To the extent reasonably practicable, all Parties shall be named as additional insured on all insurance

~~olicies.~~ INDEMNIFICATION AND HOLD HARMLESS.

a. Each Party shall defend, indemnify and hold other Parties (including without limitation the Party serving as, and acting in its capacity as, ARCH's Administering Agency), their officers, officials, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of that Party's wrongful acts or omissions in connection with the performance of its obligations under this Agreement, except to the extent the injuries or damages are caused by another Party.

b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of a Party hereto (including without limitation the Party serving as, and acting in its capacity as, ARCH's Administering Agency), its officers, officials, employees, and volunteers, the Party's liability hereunder shall be only to the extent of the Party's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Party's waiver of immunity under Industrial Insurance Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

c. Each Party (including without limitation the Party serving as, and acting in its capacity as, ARCH's Administering Agency) shall give the other Parties proper notice of any claim or suit coming within the purview of these indemnities.

d. ARCH's Executive Board, Program Staff and Administering Agency shall take such steps as are reasonably practicable to minimize the liability of the parties associated with their participation in this Agreement, including but not limited to the purchase of liability, errors and omissions, and casualty insurance, and the utilization of sound management practices. To the extent practicable, all Parties shall be named as additional insureds on all such insurance policies.

1415. AMENDMENTS. Any amendments to this Agreement must be in writing. This Agreement may be amended upon approval of at least two thirds (66%) of authorized by the legislative bodies of all Parties to this Agreement, and evidenced by the authorized signatures of all such approving Parties as of the effective date of the amendment; provided that any amendment to this Agreement affecting the terms and conditions of membership on the Executive Board or voting rights of Executive Board members shall require consent of the legislative authorities of all Parties. This

section shall not be construed to require unanimous consent for the addition of a new Party per Section 16 or to amend the structure of the Executive Board as authorized in Section 4.a.

1516. ADDITIONAL PARTIES. Any city or town within the approved ARCH Sphere of Influence Eastside jurisdiction having responsibility for planning or for providing affordable housing may, upon execution of the Agreement and approval of the budget and work plan by its legislative body, become a Party to this Agreement upon affirmative vote of a majority of the membership of the Executive Board. The Executive Board shall determine by a vote of a majority of its membership what, if any, funding obligations such additional Party shall commit to as a condition of becoming a Party to this Agreement.

1617. SEVERABILITY. The invalidity of any clause, sentence, paragraph, subdivision, section or portion thereof, shall not affect the validity of the remaining provisions of the Agreement.

18. CONFLICT RESOLUTION. Whenever any dispute arises between the Parties or between a Party or Parties, the Executive Board, or the Administering Agency (referred to collectively in this section as the "parties" ) under this Agreement which is not resolved by routine meetings or communications, the parties agree to seek resolution of such dispute in good faith by meeting, as soon as feasible. The meeting shall include the Chair of the Executive Board, the Program Manager, and the representative(s) of the Parties involved in the dispute. If the parties do not come to an agreement on the dispute, any party may pursue mediation through a process to be mutually agreed to in good faith between the parties within 30 days, which may include binding or nonbinding decisions or recommendations. The mediator(s) shall be individuals skilled in the legal and business aspects of the subject matter of this Agreement. The parties shall share equally the costs of mediation and assume their own costs.

19. SURVIVABILITY. Notwithstanding any provision in this Agreement to the contrary, the provisions of Section 9 (Duration and Termination), Section 10 (Withdrawal), Section 14 (Indemnification and Hold Harmless) shall remain operative and in full force and effect, regardless of the withdrawal or termination of any Party or the termination of this Agreement.

20. WAIVER. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.

21. SUBSEQUENT BREACH. Waiver of any default shall not be deemed a waiver of any subsequent default. Waiver of breach of

any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval of all Parties.

22. NOTICE. Any notice to the Executive Board shall be in writing and shall be addressed to the Chair of the Executive Board and to the Program Manager. In the absence of a Program Manager, notice shall be given to the Chief Executive Officer of the Administering Agency. Any notice to an Officer or Party shall be sent, respectively, to the address specified by the chief executive officer of the Party.

23. ASSIGNMENT. No Party may sell, transfer or assign any of its rights or benefits under this Agreement without Executive Board approval.

24. VENUE. The Venue for any action related to this Agreement shall be in Superior Court in and for King County, Washington at Seattle.

25. RETAINED RESPONSIBILITY AND AUTHORITY. Parties retain the responsibility and authority for managing and maintaining their own internal systems and programs related to affordable housing activities.

1726. COUNTERPARTS. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated Agreement.

1827. FILING AND EFFECTIVE DATE; PRIOR AGREEMENTS. This Agreement shall become effective July 1, 2010, subject to its prior ~~upon~~ approval by the legislative bodies of ~~at least three cities~~ all jurisdictions who are members of ARCH as of January 1, 2010, and upon ~~filing~~ posting of the Agreement on a Party's web site or other electronically retrievable public source. ~~with the city clerk of each city which is a party to this Agreement, the King County Clerk, and the Secretary of State.~~ Upon the effective date of this Agreement, the prior interlocal agreements relating to ARCH (the "First Amended Interlocal Agreement for ARCH A Regional Coalition for Housing," dated January 1993, the "First Amendment to the First Amended Interlocal Agreement for ARCH A Regional Coalition for Housing," dated February 1999, and the "Second Amendment to the First Amended Interlocal Agreement for ARCH A Regional Coalition for Housing," dated November 1999, are amended and restated by this Agreement.

Approved and executed this \_\_\_\_\_ day of \_\_\_\_\_, ~~200~~ 2010.

[INSERT SIGNATURE BLOCKS]

EXHIBIT A: ARCH SPHERE OF INFLUENCE  
[insert map-expanded]