

**INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF BENTON, AND: THE CITY OF BENTON CITY, THE CITY OF PROSSER, THE CITY OF RICHLAND, AND THE CITY OF WEST RICHLAND REGARDING ADMINISTERING FUNDS GENERATED AS A RESULT OF STATE OF THE AFFORDABLE HOUSING FOR ALL SURCHARGE, RCW 36.22.178**

This Interlocal Agreement, hereafter referred to as "AGREEMENT", is entered into between Benton County, a political subdivision of the State of Washington, hereinafter referred to as "COUNTY", with its principal offices located at Post Office Box 150, Prosser, Washington, 99350; the City of Benton City, a municipal corporation with its principal offices located at 708 Ninth Street, Benton City, Washington, 99320; the City of Prosser, a municipal corporation with its principal offices located at 601 Seventh, Prosser, Washington, 99350; the City of Richland, a municipal corporation with its principle offices located at 505 Swift Boulevard, Richland, Washington, 99352; and the City of West Richland, a municipal corporation with its principal offices located at 3801 Van Giesen Street, West Richland, Washington, 9953; hereinafter collectively referred to as "CITIES".

WHEREAS, the Washington State Legislature passed Substitute House Bill 2060 (SBH 2060) during the 57<sup>th</sup> Legislative session which became effective on June 13, 2002 and was codified as RCW 36.22.178;

WHEREAS, RCW 36.22.178 directs a ten dollar surcharge, named the "Affordable Housing for All Surcharge," (hereinafter "the Surcharge") on certain documents recorded with the County Auditors office for the purpose of providing funds for affordable low-income housing;

WHEREAS, RCW 36.22.178 directs that of the funds collected under the Surcharge, five percent (5%) may be retained by the COUNTY to compensate for the collection, administration and local distribution of the funds, forty percent (40%) of the remaining shall be remitted to the State Department of Community, Trade and Economic Development and the remaining 60 percent (60%) be retained by the COUNTY;

WHEREAS, the portion of the Surcharge retained by the COUNTY shall be allocated to eligible housing activities that serve extremely low and very low-income households in the COUNTY and the CITIES according to an Interlocal Agreement between the COUNTY and the CITIES consistent with county wide and local housing needs and policies;

WHEREAS, the parties are authorized to enter into such agreements by virtue of Chapter 39.34 RCW, the Interlocal Cooperation Act;

WHEREAS, this Agreement is entered into by the COUNTY under the authority of RCW 36.32.120, RCW 36.22.178, and Chapter 43.185C RCW; and

WHEREAS this Agreement is entered into by the CITIES under authority of RCW 36.22.178 and Chapter 43.185C RCW.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the COUNTY and CITIES as follows:

**Sec. 1. Purpose:**

The purpose of this Agreement shall be to provide for the collection, administration, and allocation of the COUNTY retained portions of the Affordable Housing for All Surcharge, RCW 36.22.178.

**Sec. 2. Parties:**

The parties to this Agreement shall be Benton County, the City of Benton City, the City of Prosser, the City of Richland, and the City of West Richland.

**Sec. 3. Term:**

This Agreement shall be for five (5) years from the date of execution unless any party elects to terminate the Agreement pursuant to the termination clause of this Agreement. Renewal of this Agreement shall be by separate written agreement of the parties.

**Sec 4. Administration:**

Recommendations for the allocation of COUNTY retained portions of the Surcharge shall be made by the Surcharge Steering Committee (hereinafter "Committee"). The Committee shall be composed of the following members: one (1) representative appointed by each of the City Councils to represent the CITIES; the director of Benton Franklin Department of Human Services (hereinafter "DHS") or designee participating as a non-voting member ex officio; and the County Administrator for Benton County or designee. All Committee members shall be elected or appointed officials, directors or employees of the respective government entity which they represent. Each member shall serve at the pleasure of the legislative body appointing them to the position, and their terms shall not be limited or restricted in any other fashion. The Committee shall discharge its duties pursuant to the terms of the Operating Bylaws attached as Exhibit A and hereby adopted by reference. The members of the Committee may change provisions of the Operating Bylaws by majority vote so long as such changes are not contrary to law or to this Interlocal Agreement. All recommendations of the Committee shall be presented by the director of the DHS to the Benton County Board of Commissioners, who shall, by majority vote, make final funding decisions. If the Benton County Board of Commissioners votes in a manner contrary to recommendations by the Committee, then findings, on the record, shall be made to support such a contrary vote.

The DHS shall be responsible for the administrative aspects of managing the COUNTY retained portions of the Surcharge. These responsibilities include, but is not limited to, managing the Notifications of Fund Availability (NOFA) process, providing administrative support to the Committee during the process of applicant screening and selection, administration of contracts necessary for selected projects, and contract compliance oversight and monitoring for selected projects. The initial 5% of the surcharge permitted to be retained by COUNTY for administrative purposes shall be

allocated to DHS to help defray its expenses, including salaries of employees, necessary in carrying out its responsibilities under this paragraph.

All awarded funds shall be disbursed pursuant to an appropriate contract between the award recipient and COUNTY. Such a contract shall ensure that the awarded funds are used solely for purposes permitted by RCW 36.22.178 and shall provide mechanisms for COUNTY to recover the awarded funds if they are misused.

**Sec. 5. No Separate entity or Joint Property:** This Agreement does not provide for or authorize any of the following:

- a. the acquisition, holding, or disposal of property other than the funds collected hereunder;
- b. the financing of any joint or cooperative undertaking;
- c. the creation of any separate legal entity;
- d. the creation of any right or privilege which may be claimed by any third party not party this agreement;

**Sec. 6. Hold Harmless/Indemnification:** Each party agrees to be responsible for, and assume liability for, its own wrongful and negligent acts or omissions, or those of its officers, agents or employees to the fullest extent allowed by law, and agrees to hold harmless, indemnify, and defend the other parties from any such liability. In the case of negligence of more than one party, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party; and each party shall have the right to seek contribution from each of the other parties in proportion to the percentage of negligence attributable to each of the other parties.

**Sec 7. Governing Law and Venue:** This agreement has been and shall be construed as having been entered into and delivered within the State of Washington, and it is mutually understood and agree by each signatory party hereto that this agreement shall be governed by the laws of the State of Washington and any applicable Federal laws and regulations both as to interpretation and performance. Any action hereunder must be brought in the Superior Court of Washington in and for the County of Benton unless either party determines that a Federal forum is appropriate to the issues raised.

**Sec. 8. Termination:** Notwithstanding any other provision of this Agreement, any party may terminate this Agreement effective January 1st of any given year by giving written notice of intent to terminate by July 1st of the preceding year, with the termination to become effective no earlier than January 1st of the following year. Such notice of termination shall be by appropriate action of the elected governing body of the terminating party and shall be provided to all parties subject to this Agreement. A party may not terminate this Agreement if doing so will be contrary to State law at the time of the intended termination, or if terminating will cause the signatories to this agreement, or any one of them, to be in violation of State law.

**Sec. 9. Notice:** Any formal notice or communication to be given under this Agreement shall be deemed properly given, if personally delivered, or if mailed postage prepaid and addressed:

To: Benton County  
Attn: County Administrator  
Post Office Box 150  
Prosser, Washington 99350

To: City of Prosser  
601 Seventh  
Post Office Box 271  
Prosser, Washington 99350

To: City of Benton City  
708 Ninth Street  
Post Office Box 70  
Benton City, Washington 99320

To: City of Richland  
505 Swift Boulevard  
Post Office Box 190  
Richland, Washington 99350

To: City of West Richland  
3801 Van Giesen Street  
West Richland, Washington 99353

**Sec. 10. No Agency:** The parties and their employees or agents performing under this Agreement are not deemed to be employees, officers, or agents of the other parties to this Agreement.

**Sec. 11. Record Keeping:** Records shall be kept by the Benton and Franklin Counties Department of Human Services, sufficient to document all activities, actions and decisions made by the parties pursuant to this agreement. This agreement does not impose any obligation on individual parties to keep any records beyond what they are required to keep by law.

**Sec. 12. Assignment:** No parties to this Agreement shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder.

**Sec. 13. Amendments or Modifications:** This Agreement may be amended, altered, or changed in any manner by the mutual written consent of all parties. If any proposed amendment cannot be agreed to by all of the parties, then the proposed amendment shall not be made and the parties shall conduct their business pursuant to this agreement as if such proposed amendment was not proposed.

**Sec. 14. Waiver:** No waiver by any party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

**Sec. 15. Severability:** If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall continue in full force and effect.

**Sec. 16. Filing:** Copies of this Agreement shall be filed with the Benton County Auditor and the Secretary of State after execution of this Agreement by all parties.

**Sec. 17. Counterparts:** This Agreement may be executed by facsimile and in any number of current parts and signature pages hereof with the same affect as if all parties to this Agreement had all signed the same document. All executed current parts shall be construed together, and shall, together with the text of this Agreement, constitute one and the same instrument.

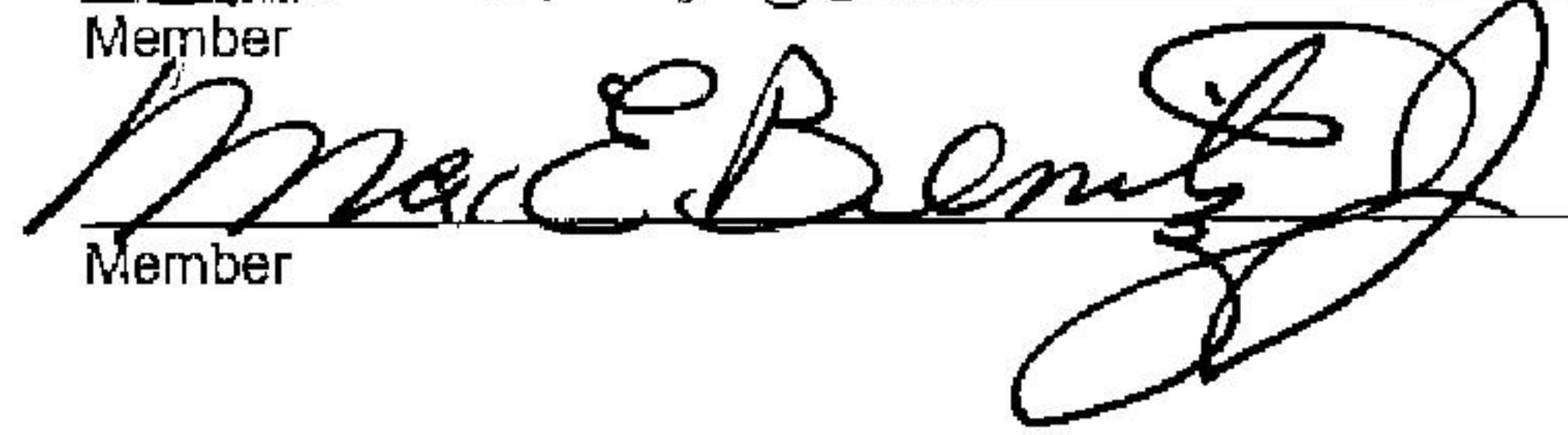
**Sec. 18. Effective:** This Agreement shall become effective upon approval by all of the parties and recording with the Benton County Auditor.

Dated this 14 day of June, 2010.

BOARD OF COMMISSIONERS, BENTON COUNTY, WASHINGTON

  
Chair

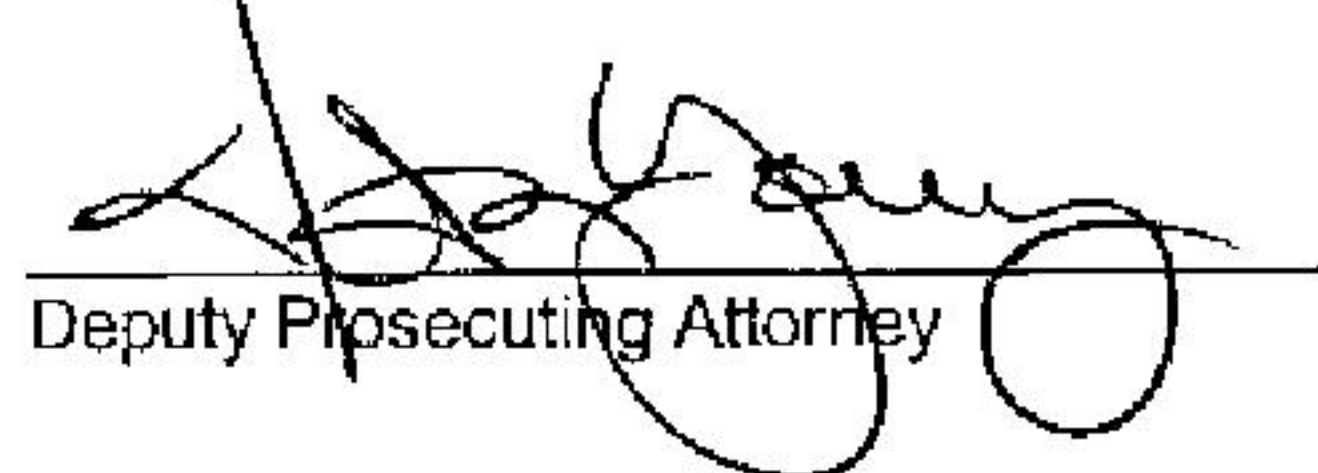
  
Member

  
Member


Attest:

  
Clerk of the Board

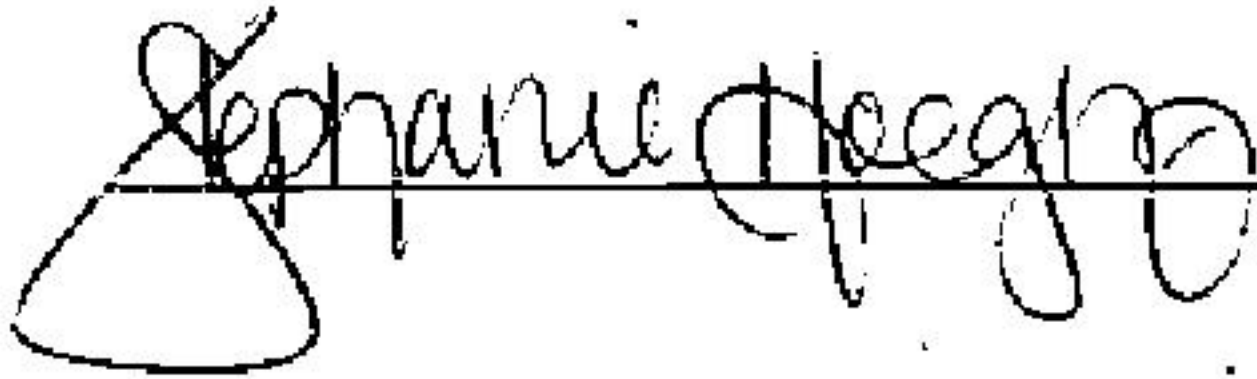
Approved as to Form:

  
Deputy Prosecuting Attorney

CITY OF BENTON CITY

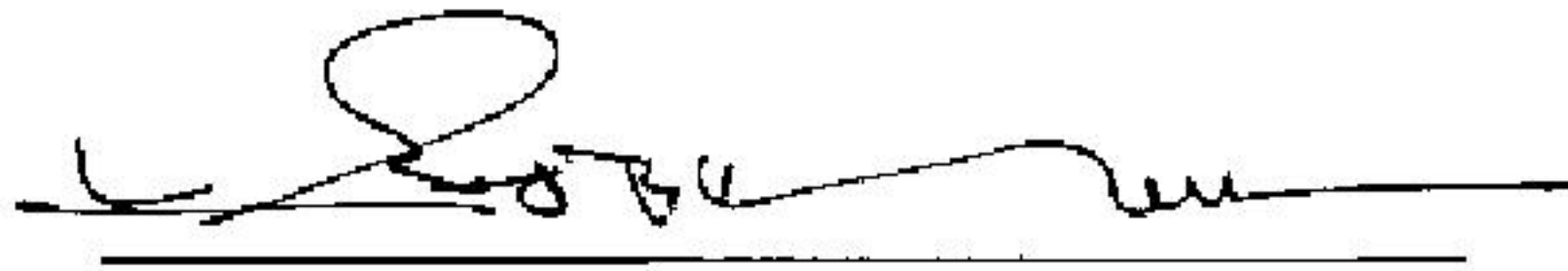
  
Lloyd Carnahan, Mayor

Attest:



Title: City Clerk & Treasurer

Approved as to Form:



Title: City Attorney

CITY OF PROSSER

*Paul Warden*

Paul Warden, Mayor

Attest:

*Sherry Biggs*

Title: *City Clerk*

Approved as to Form:

*[Signature]*

Title: *City Attorney*

CITY OF RICHLAND

*Cynthia D. Johnson*  
Cynthia D. Johnson, City Manager

Attest:

*Debra C. Barkham*

Title: *Chief Deputy City Clerk*

Approved as to Form:

*Thomas E. Sampson*

Title: *City Attorney*



**CITY OF WEST RICHLAND**

*Donna Noski*

Donna Noski, Mayor

Attest:

*Julie Richardson*

Julie Richardson

Title City Clerk

Approved as to Form:

Bronson Brown

Title City Attorney

**EXHIBIT Attachment to SHB 2060 - Interlocal Agreement.**

**Operating Bylaws for Interlocal Agreement  
Benton County**

**AFFORDABLE HOUSING FOR ALL FUND**

**Introduction**

The provisions of Substitute House Bill 2060 became law in Washington State on June 13, 2002 and was amended in 2007 by House Bill 1359. This law, codified as RCW 36.22.178, created a document recording surcharge (hereinafter "Surcharge") on certain documents to be utilized for low-income housing. Administration of the fund is shared between local governments and the State. The local portion of 2060 funds is to be administered pursuant to an Interlocal Agreement between the County and the Cities within the County and is entitled the "Affordable Housing for All Fund" (hereinafter the "Housing Fund").

**A. Statutory Guidelines for Fund Dispersal**

RCW 36.22.178, as amended by House Bill 1359 (2007), provides the following parameters on the allocation of that portion of the Surcharge which is retained by the County:

The funds generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities as described in this subsection that serve very low-income households with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to eligible housing activities that serve extremely low and very low-income households in the county and the cities within the county according to an interlocal agreement between the county and the cities within the county consistent with countywide and local housing needs and policies. A priority must be given to eligible housing activities that serve extremely low-income households with incomes at or below thirty percent of the area median income. Eligible housing activities to be funded by these county funds are limited to:

- (a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farm worker housing units, and single room occupancy units;
- b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;
- (c) Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, to be administered by a local public housing authority or other local organization that has an

existing rental assistance voucher program, consistent with or similar to the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

d) Operating costs for emergency shelters and licensed overnight youth shelters.

## **B. Fund Availability**

- ❖ On an annual basis the Benton and Franklin Counties Department of Human Services (DHS) shall on behalf of the Surcharge Steering Committee (hereinafter "Committee"), publish a Notice Of Funds Availability (NOFA) through its established methods. This notice will set forth the amount of funds available by category; the duration of funds to be awarded or distributed; the deadline for submission of funding applications; and any other pertinent information related to the process and or decisions.
- ❖ Applications will be distributed to all parties requesting them and be collected for consideration of funding awards.
- ❖ The application format for funding from the Housing Fund shall be the same as is used by the State of Washington, Housing Trust Fund or subsequently modified version(s) containing the same detailed information.

## **C. Eligible Recipients**

- ❖ Eligible recipients of the funding from the Housing Fund shall be certified non-profit agencies or providers of affordable housing, Cities, Towns, the County, and for-profit developers.

## **D. Housing Fund Distribution**

- ❖ The funds shall be included in the annual NOFA process addressing the categories of need enumerated herein:
  1. The acquisition, rehabilitation and/or new construction of housing projects or units within housing projects that serve clients who have incomes at or below 50% of the Median income, based on current HUD income guidelines for the Benton County- Metropolitan Statistical Area (MSA).
  2. Operating and maintenance costs for housing that is in compliance with RCW 36.22.178. [Applicants shall be strongly encouraged to apply to the State Department of CTED for these dedicated funds.]
  3. Rental Assistance vouchers for housing projects or units within housing projects that are at or below 50% of median based on the current HUD income guidelines for the Benton County MSA and administered by a local housing authority or other local organization that has an existing or newly created HUD recognized rental assistance voucher program consistent with HUD Section 8.
  4. Operating costs for emergency shelters and licensed overnight

youth shelters that are in compliance with RCW 36.22.178.

**E. Availability of Applications: (Tentative Program Dates)**

Phase	Winter
Applications Available:	October
Applications Due:	November
Application Review :	December
Decisions announced by:	January
Funds Available**:	January
**(After Contracts/Agreements signed).	

**F. Reporting Requirements:**

Recipients of the funding from the Surcharge shall provide quarterly updates and annual reports detailing their use of funds on a format acceptable to the Benton and Franklin Counties Department of Human Services. The Department shall in turn provide a written report detailing the uses to which the funds were put and disseminate the same to members of the Committee on an annual basis, or as requested by Committee members.

**G. Terms and Conditions of Funding:**

- ❖ Funding generally should not be awarded for predevelopment funding purposes except where a majority of the committee finds special and compelling reasons why predevelopment funding is of particular benefit in a particular case. In such cases, funding shall not be made unless a majority of the committee enters or adopts specific factual findings that demonstrate the benefits presented by the predevelopment funding. Such factual findings shall be retained in the official records of Committee proceedings kept on behalf of the Committee by DHS, and shall be available for public inspection or copying pursuant to the Public Records Act, RCW 42.56 *et seq*, as then existing.
- ❖ Funding commitments from the Housing Fund can be made but commitments from other sources shall be obtained prior to disbursement of funds from the Housing Fund. Applicants must obtain funding commitments within 2 years, unless the Steering Committee elects to waive this requirement having been petitioned by the applicant due to a financially minor project proposal.
- ❖ Terms and conditions of funding, consistent with state and federal laws shall be implemented into funding contracts which shall, at a minimum, state the allowable purposes for the funding, provide for complete cooperation by the recipient with oversight and audits by the Benton and Franklin Counties DHS, repayment terms, if any, and applicable time lines and time frames for use of funds. Such contracts shall be by and between Benton County and the recipient and no funds may be disbursed prior to the execution of such contracts. For purposes of this provision, the incurring of costs by a potential recipient, with the expectation that such costs will be defrayed by funding, constitutes disbursement of funds.

- ❖ All projects shall be evaluated for the ability to repay the investment of the Surcharge Housing funding. The evaluation shall be based on the information provided in the application.
- ❖ Funding applicants shall be thoroughly reviewed and screened by the Committee with the assistance of DHS, and factors, bearing on the applicant's suitability for funding of this nature, shall be considered in addition to the amount of funding and the nature of the project. Information necessary to consider such factors may be obtained directly from funding applicants by way of application forms or similar documents, or by other such background investigation as Committee members see fit. Such factors shall include, but need not be limited to:
  - ❖ Experience of applicant in affordable housing projects;
  - ❖ Reputation of applicant among the community and amongst affordable housing developers;
  - ❖ Whether or not applicant has defaulted on any provision of affordable housing related loans or grants in the past, including paying "opt out" or "buy out" penalties to avoid a default in any project in order to avoid keeping such project "affordable" for a given period of time. ***Such applicants generally should be disqualified, absent compelling reasons why they are the only appropriate funding recipient for a necessary project.***
  - ❖ The fiscal strength, including creditworthiness of the applicant;
  - ❖ Reputation, experience and fiscal strength of any major partners;
- ❖ Terms and conditions of funding shall be reduced to a written contract, to be executed between Benton and Franklin DHS and the funding recipient. Such written contract shall, at a minimum, address the following:
  - ❖ Minimum period of time which the funding recipient must maintain the anticipated project in "affordable" status. This period of time shall be determined by the Committee on a project by project basis with guidance and recommendations provided by the director of Benton and Franklin DHS or designee;
  - ❖ Time frame for construction/rehabilitation and subsequent occupancy;
  - ❖ Number and type of units to be made available as "affordable" units;
- ❖ On a project-by-project basis, the Committee shall determine the best funding vehicle to utilize so as to conserve the renewability of the funding, discourage misuse of funds, encourage geographic and jurisdictional equality, and abide by the intent of the authorizing statute. These vehicles include, but are not limited to: 0% interest loans, grants, and providing matching funds to qualify an applicant for funding from another government or private source;

**H. Measurement System for Allocating Revenue:**

The funding available in each round shall be determined by the amount collected in the fund on the month ending prior to application availability less any prior funding commitments.

**I. Default by Housing Fund Recipient:**

All funding contracts shall have a mechanism by which Benton County may recover any misappropriated or misused funds, along with an agreed upon amount of liquidated damages to compensate for consequential damages which may include the opportunity cost and time value of the money misappropriated or misused.

**K. Geographic Equity:**

The Committee shall be responsible for making certain that funds are distributed in a manner that provides long-term geographic equity. The overall intent is to insure over time that all areas of Benton County receive appropriate levels of funding through this initiative.

**L. Subsidy Per Unit:**

The amount of funding per housing unit shall be set by the Benton and Franklin County Department of Human Services at a rate consistent with rates employed by other similar fund sources within the surrounding geographic area and best available information from local and federal resources. A unit shall be defined as a single-family home or a single apartment of any size in a multi-family complex. For example, a single-family duplex would be considered two (2) units.

**M. Project Monitoring:**

The Benton and Franklin Counties Department of Human Services shall monitor all projects and associated funding contracts for compliance with the funding terms and conditions