

**CONTRACT BETWEEN THE CITY OF YAKIMA  
OFFICE OF NEIGHBORHOOD DEVELOPMENT SERVICES  
AND DEVELOPER – YAKIMA VALLEY PARTNERS HABITAT FOR HUMANITY  
(2906 W. Arlington Ave.)**

1. CFDA: 14.239 HOME INVESTMENT PARTNERSHIP PROGRAM
2. DEVELOPER/AWARDEE: Yakima Valley Partners Habitat for Humanity
3. HUD Entity Type: DEVELOPER
4. Address: 21 W. Mead Ave. Ste 110, Yakima, WA. 98902
5. Phone: (509) 453-8077
6. Contact Person: Meloney Rosen, Director of Yakima Valley Partners Habitat for Humanity
7. Title of Service or Program being funded: New Construction of single-family homes located at: 2906 W. Arlington Ave., Yakima, WA 98902.
8. Awarding Federal Agency: U.S. Department of Housing and Urban Development.
9. Unique Entity Identifier Number: HU9AXMBCSDA2
10. Federal Award Year and Federal Award Number: 2020, 2021, & 2022; M20-MC530203; M21-MC530203; M22-MC530203.
11. Amount of Contract Award: \$\$\$87,500 (HOME) CFDA Contract # 14.239
12. The term of this Contract shall commence upon the execution date of the Developer's receipt of "Letter to Proceed" from the City of Yakima Office or Neighborhood Development Services, and the project will begin construction within twelve months of entering this Contract and will be completed by **April 2, 2025**, at midnight, unless sooner terminated by either party in accordance with **Section XV of Exhibit "A,"** attached hereto and incorporated herein by this reference.
13. This contract award and the rights and obligations of both parties hereto shall be subject to and governed by the following:
  - (a) "Terms and Conditions" attached hereto as **Exhibit "A"** and incorporated herein by this reference; and
  - (b) Operating budget, including the funding sources and uses statement and the work plan, attached hereto as **Exhibit "B"** and incorporated herein by this reference.
  - (c) City of Yakima Resolution No. **R-2024-**\_\_\_\_\_, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference.
14. Final Contract payment shall be subject to the satisfactory completion of the project described in **Exhibit "B"**, and satisfaction of all contract terms and conditions, including, but not limited to, the submission of the final report and billing invoice information within thirty (30) days of the contract closing date, and

as stated in **Exhibit “A”, Exhibit “B” and Exhibit “C”**.

This written document, together with all of the incorporated exhibits hereto, constitutes the entire Contract and terms of agreement between the parties hereto.

IN WITNESS THEREOF the parties have executed this Contract as of the day and year stated below.

**CITY OF YAKIMA**

**DEVELOPER: Habitat for Humanity**

\_\_\_\_\_  
Dave Zabell, Interim City Manager

By: \_\_\_\_\_  
Meloney Rosen

Date: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Rosalinda Ibarra, City Clerk

City Contract No.:

## EXHIBIT "A"

### TERMS AND CONDITIONS

This Contract is to provide HOME Investment Partnerships Program (HOME) funding for the construction of 1 new affordable homeownership units in the City of Yakima. All housing developed with funding provided by this Contract shall be pursuant to the HOME Program's and this Contract's regulations. The term of this Contract and the provisions herein shall be extended to cover the affordability period hereby designated as fifteen (15) years. The affordability period in this Project will be activated on the date after the Developer has provided the City staff with a project completion report upon initial occupancy of the units, and this information will be entered into H.U.D.'s Integrated Disbursement Information System (IDIS) System.

All terms used in this Contract shall be consistent with the HOME Program and its implementing regulations at 24 C.F.R. Part 92. Developer agrees to comply with all requirements related to this Project as outlined in the Code for Federal Regulations listed in 24 C.F.R. Part 92 and 24 C.F.R. Part 58 (as amended). In any instance where the City requirements are more restrictive than the Code for Federal Regulations, the City requirements shall take precedence over the Federal Regulations. The Developer, with this Contract, intends, declares, and covenants that the regulatory and restrictive covenants set forth herein governing the use, income, occupancy, sale, lease, or transfer of the assisted HOME units shall be binding upon the Developer for such term, and are not merely personal covenants of the Developer, but are contractual in nature.

**WHEREAS**, the City is the recipient of a U.S. Department of Housing and Urban Development (H.U.D.) grant under the HOME Investment Partnership Provisions of the Cranston-Gonzales National Affordable Housing Act (42 U.S. C 12742) and will administer said grant; and

**WHEREAS**, the City of Yakima, as a recipient of HOME Investment Partnerships Program Funds from the U.S. Department of Housing and Urban Development (HUD), including funds that are reserved for the use of Community Housing Development Organizations (CHDOs); and

WHEREAS, the DEVELOPER has been certified with the CITY as an eligible CHDO, that maintains, develops, and constructs affordable housing in the State of Washington and is eligible to participate in the City's service area(s) under the provisions of Section 212 of the Cranston-Gonzales Act (42 U.S. C 14742) as amended by the Housing and Community Development Act of 1992; and

NOW, THEREFORE the AWARDEE/DEVELOPER hereby agrees to undertake, that certain community development or housing assistance project described in **Exhibit "B"**, **Project Summary** (hereinafter sometimes referred to as "the Project") for the following locations:

#### **1. 2906 W Arlington Avenue**

pursuant to the terms and conditions of the Contract and its Exhibits.

## Section I – Definitions

A. **AGENCY** – is hereby defined as the Office of Neighborhood Development Services, the HOME Program administering agency of the City of Yakima. For the purpose of this Contract and all administration of HOME funds, the AGENCY shall act on behalf of the CITY in the execution and fiscal and programmatic control of this contract. The term “Approval by the CITY” or like term used in this Contract shall in no way relieve the DEVELOPER from any duties or responsibilities under the terms of this Contract, or obligation State or local law or regulation.

B. **FEE** – is hereby defined as the amount of money the CITY agrees to pay and the DEVELOPER agrees to accept as payment in full for all the professional, technical and construction services rendered pursuant to this Contract to complete the WORK as further defined in **Section III - SCOPE OF WORK**, hereof.

C. **WORK** – is hereby defined as all the professional, technical and construction services to be rendered or provided by the DEVELOPER as described here.

D. **PROJECT** – is defined in **Section II - Project and Exhibit B** Attached hereto and fully incorporated herein.

E. **HOME** – is hereby defined as the HOME Investment Partnerships Program as described in 24 CFR Part 92, under the authority of 42 U.S.C. 3535 (d) and 12701 - 12839.

## Section II- Project

DEVELOPER’s Project will develop one (1) single-family home that will be sold to low-income, qualified first-time homebuyers.

## Section III – Term

### A. GENERAL

The DEVELOPER expressly agrees to complete all work required by this Contract in accordance with the timetable set forth as follows:

#### ***Milestone Deadline***

Project Start Date: Date of signature.

Project Completion Date: **April 2, 2025**

Duration of Contract: Through the end of the Affordability Period (see Section B)

The amount of grant funding that the City hereby sub-grants to the DEVELOPER is **Eighty Seven Thousand Five Hundred (\$87,500.00)** for the Project.

**This Exhibit A** consists of one (1) undeveloped lots in the City of Yakima owned by the Developer. Public water and sewer are provided to the unit(s) and available from the City of Yakima. Electrical service is also available at the sites.

The new affordable housing units will be designated HOME homeownership units and, as such, shall only be sold to income-eligible buyers for the affordability period. The buyer shall have an income at or below 80% A.M.I. (area median income) based on the current H.U.D. limits at the time of execution of the sale. Income eligibility shall be determined

using the "**Technical Guide for Determining Income and Allowance for the HOME Program**" provided by the U.S. Department of Housing and Urban Development (H.U.D.) and shall include source documentation.

The sales price of each unit may not exceed 95 percent of the maximum purchase prices for the area. The HOME-assisted unit(s) shall remain in compliance with the HOME Program (24 C.F.R. Part 92.252(e)) for FIFTEEN (15) years after the Project is officially completed. The Project is officially completed when the property construction is completed, the property passes ongoing and final construction inspections by City staff, a Certificate of Occupancy is issued by the jurisdictional building inspections department, HOME-assisted units are occupied, and the required beneficiary data is submitted to the City staff to enter into H.U.D.'s Integrated Disbursement Information System (IDIS) System.

## **B. AFFORDABILITY**

In addition, this project is subject to ongoing compliance requirements of HOME for FIFTEEN (15) years from the date the project is completed. The project is considered completed when the City draws the final drawdown of HOME funds. During this compliance period, the DEVELOPER will ensure continued compliance with HOME requirements. For homebuyer units, this includes monitoring units for principal residency and recapture of funds at the time of resale. A restrictive covenant shall be executed for the total amount of assistance and will include the applicable HOME requirements, including resale/recapture provisions and property use restrictions, to ensure the enforcement of the HOME requirements. These requirements, which pertain to occupancy, income, and an affordability period, are required in order to maintain the development subsidy investment as a forgivable loan in the affordable housing units for the compliance period. The covenant shall be executed and attached to the property prior to final payment being made with transfer of the property from DEVELOPER to a third party.

## **C. TIME IS OF THE ESSENCE**

Timely completion of the work specified in this contract is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and could result in the loss of the Federal funds. By the acceptance and execution of this contract, it is understood and agreed by the DEVELOPER that the PROJECT will be completed as expeditiously as possible and that the DEVELOPER will make every effort to ensure that the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and the revocation of HOME funds. Since it is mutually agreed that time is of the essence as regards this contract, the DEVELOPER shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this Contract in order to ensure that the PROJECT will be completed according to the timetable set forth. It is intended that such provisions inserted in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the CITY and enforceable by the CITY against the DEVELOPER and its successors and assigns to the project or any part thereof or any interest therein. The aforementioned document will be considered to be a part and portion of this Contract by reference. The DEVELOPER will complete the construction of the one (1) unit **by April 2, 2025**, including the sale of the units.

The DEVELOPER is required to submit performance reports on program/project status and activities through project completion as requested by the City staff. The Developer will allow and help facilitate required inspections and monitoring of the Project by City

staff. The DEVELOPER agrees to execute the covenant and attach it the property prior to final payment being made with transfer from DEVELOPER to a third party. Termination of the Contract will occur automatically upon the expiration of the Contract period. Project Extension Request must be approved by the CITY.

In the event the DEVELOPER is unable to meet the above schedule or complete the above services because of delays resulting from Acts of God, untimely review and approval by the CITY and other governmental authorities having jurisdiction over the PROJECT, or other delays that are not caused by the DEVELOPER, the CITY shall grant a reasonable extension of time for completion of the WORK. It shall be the responsibility of the DEVELOPER to notify the CITY promptly in writing whenever a delay is anticipated or experienced and to inform the CITY of all facts and details related to the delay.

#### **D. COMMENCEMENT OF WORK**

The City of Yakima, through ONDS, shall furnish the DEVELOPER with written notice to proceed upon release of funds from HUD related to the Project pursuant to 24 CFR Part 58. No work on the Project shall occur prior to the notice to proceed without written approval from the City of Yakima.

#### **Section IV – Scope of Work**

The DEVELOPER, in close coordination with the CITY, shall perform all professional services (the “WORK”) necessary to complete the development and occupancy of the following project in full compliance with the terms of this Contract, including, but not limited to, **Exhibit “B”**. (*Use of HOME funds, property location, budget, completion schedule & compliance term*):

From the contract execution date to continue until the termination date as specified within this contract, building and constructing a new home and will be monitored for a FIFTEEN (15) year affordability period per HUD regulations governing HOME Investment funded projects.

It is understood that the DEVELOPER will provide a specific working budget and realistic timetable as relates to: acquisition, construction/rehabilitation, soft costs, development fees and other allowable costs/activities prior to any fund usage. Said budget shall identify all sources and uses of funds, and allocate HOME and non-HOME funds to activities or line items. The aforementioned Work tasks will be performed in essentially the manner proposed in the DEVELOPER’s proposal as received by the AGENCY on **November 2, 2022**. The aforementioned document will be considered to be a part and portion of this Contract fully incorporated herein.

1. **Eligible Use of Funds.** HOME funds available under this Contract will be used for the construction of the property. Other eligible costs include the cost of construction, legal and recording fees, environmental review costs, and survey costs or associated costs for site review. Other eligible costs will be paid by the DEVELOPER of the local match: *Project Soft Costs* must be "reasonable and necessary." These costs may include the following:

Professional Related Costs:

- Loan origination fees
- Credit reports fees

- Title report and update fees
- Recordation fees
- Preparation and filing of legal document fees
- Appraisal Report fees
- Market Study Report fees
- Attorney's fees
- Loan processing fees
- Developer fees

Construction Related Costs:

- Architectural fees
- Engineering fees
- Preparation of work write-ups/cost estimate fees
- Builder's fees

Other Costs:

- Project audit costs
- Affirmative marketing and fair housing costs
- Relocation costs

*Eligible Hard Costs* must be "reasonable and necessary." These costs may include the following:

- Costs to meet the applicable building standards in effect at the time a building permit is obtained from the locality
- Costs to make essential improvements, including the actual costs of construction or rehabilitation
- Energy-related repairs or improvements
- Improvements necessary to permit use by handicapped persons
- Abatement of lead-based paint hazards
- Costs to repair or replace major housing systems in danger of failure in existing structures
- Costs to demolish existing structures
- Costs for improvements to the project site and utility connections
- Costs to acquiring optioned improved or unimproved land for new construction or rehabilitation projects
- Incipient repairs and general property improvements of a non-luxury nature

2. **Funded Amount and Other Funding Sources.** The CITY is hereby providing from the F.Y. 2020, F.Y. 2021, and F.Y. 2022 CHDO set aside funding in the amount of up to **eighty-seven thousand, five hundred dollars and 00/100 (\$87,500)**, for activities identified in this Contract and listed in the Project Budget. The funds are granted to the Developer for the construction of **one (1)** new affordable homeownership units in the City of Yakima. The Developer will provide any additional funding necessary over and above the financial commitment to complete the Project as approved in the application for HOME assistance. If the Project comes in under budget, the Developer will only be reimbursed for actual eligible costs. Also, volunteer hours and additional funding beyond HOME funds will be counted as local matches.
3. **Maximum HOME Subsidy.** H.U.D. requires that the maximum HOME per-unit subsidy not be increased above 240 percent of the base limits authorized by

§211(d)(3)(ii) of the National Housing Act. HOME subsidy under this Contract is **\$87,500 for 2906 W Arlington Avenue**, and does not exceed this regulation. The property is located within the City of Yakima limits.

## **Section V – Reimbursement of Expenses & Developer Fees**

### **A. GENERAL.**

Project expenses (excluding developer fees) shall be paid based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by the DEVELOPER on forms specified by the CITY, with adequate and proper documentation of eligible costs incurred in compliance with 24 CFR 92.206 and necessary for HUD IDIS disbursement requirements. All such expenses shall be in conformance with the approved project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the approved project budget.

The City reserves the right to hold payment until adequate documentation has been provided by the Developer and reviewed by the City. The Developer agrees to the following provisions in satisfying the terms and conditions of this contract:

### **B. PAYMENT AND DISBURSEMENTS:**

Disbursements by the City of Yakima from this contract/grant award shall be on a reimbursement basis covering actual expenditures by the Developer or obligations of the Developer currently due and owing but not paid. Disbursements shall be limited to allowable eligible costs and so shall be made upon the occurrence of all the following, in addition to any other conditions contained herein or in the special conditions:

1. Receipt by the City of Yakima ONDS of a written reimbursement request on forms provided by the City of Yakima ONDS supported by copies of vouchers, invoices, salary and wage summaries, or other acceptable documentation; and
2. Determination by the City of Yakima ONDS that the expenditures or obligations for which reimbursement is sought constitute allowable eligible costs under the HOME Program and also fall within the applicable Project Budget.

The Developer shall submit written claims for reimbursement of services performed under this Contract. Pay requests with documentation/invoices for requested costs may be submitted monthly during the Project. Exceptions to this practice may be made based on the amount and frequency of requests based on the financial needs of the contractors. The DEVELOPER may not request disbursement of funds under this Contract until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

The Developer **must** notify the City's Staff at the same time notification is made to the local government for the following inspections (if applicable):

- a) Foundation Inspection
- b) Slab Inspection

- c) Rough-In Inspection
- d) Insulation Inspection
- e) Final Inspection

**Note: Failure to notify the City staff for inspections may result in work having to be redone at the Developer's cost so that the inspection can be completed.**

**C. CHANGE ORDERS**

No payment shall be made for any service rendered by the Developer except for services within the scope of a category set forth in the budget in **Exhibit "B"** of this Contract, and all funds received must be used for service as identified in **Exhibit "B"** of this Contract.

Change orders may occur during the course of construction, either initiated by the Developer. All change orders must be submitted for review to the City staff **prior** to approval to ensure that the scope of the Project is not altered.

1. The Developer shall submit to the City of Yakima ONDS a written request for approval of budget revision when a proposed revision would result in an increase or decrease of ten percent (10%) or more per home from what has been set forth in the approved budget subject category. The City's written budget revision approval must be received by the Developer prior to the Developer incurring any expenditures against the revised budget subject categories.
2. When the revision of the Developer budget does not exceed ten percent (10%) of an approved budget subject category, the Developer must submit a revised budget to the City of Yakima ONDS prior to the submittal of claims against the budget.

**Section VI – Roles and Responsibilities**

A. **Incur Costs.** The Developer will not incur costs, make any commitments, or take any physical action on a property to be assisted with HOME funds until approved by City staff. Environmental clearance of the sites and a Removal of Grant Conditions and Authority of Use H.U.D. Funds must be in place prior to any physical activity on the project site.

B. **Eligible Applicant.** The DEVELOPER commits to providing an eligible applicant according to the recognized HOME guidelines for any HOME-assisted unit. The occupant's/applicant's income will fall within the required H.U.D. guidelines for L.M.I. persons to qualify for assistance. The DEVELOPER shall provide the CITY's Office of Neighborhood Development Services staff with a copy of the application and income verification of the proposed renters/occupants prior to the occupancy of the units. Verification includes all third-party verification in order to ensure that the low-to-moderate income requirements are met. All units funded by this Contract are subject to the income guidelines.

The DEVELOPER shall provide the CITY copies of recorded mortgages, deeds, and any other instruments executed related to the HOME-assisted property. DEVELOPER agrees to provide the necessary personnel and equipment to oversee, manage, and maintain any units for which HOME funds are provided.

The HOME units shall be inspected by the jurisdictional building inspector and shall meet all local and state building codes as applicable for the City and/or City of Yakima prior to occupancy. A copy of the permit to occupy the unit for each structure will be submitted to the CITY prior to final payment. The City staff shall provide guidance on HOME compliance and assist the Developer as needed in the review of the applicant's application and verifications to ensure eligibility within HOME income limits, providing a suggested language for inclusion of HOME requirements in sales documents if applicable; and applicable procurement of construction, materials, small purchases, and contract labor. The staff will review and approve requests for payment and conduct site visits to confirm construction progress. Payment will be made within twenty days of approved invoices/pay requests.

- C. **Participating Jurisdiction.** As a HOME Participating Jurisdiction, the CITY will be primarily responsible for implementing this Contract and for day-to-day communications with the Developer. As such, references to the "City HOME staff" or "City Staff" within this Contract should be construed to indicate that the Office of Neighborhood Development Services (ONDS) will communicate with the DEVELOPER on behalf of the CITY and as its administrative agent relative to the HOME program. In the event the CITY replaces or terminates ONDS as its administrative agent for the HOME program, it will provide notice to the DEVELOPER as provided for herein. The DEVELOPER further agrees to fully cooperate with the ONDS staff or with any future administrative agent designated by the CITY as the City's authorized agent for purposes of administering its HOME Program.
- D. **Inspection of Records.** The CITY reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. The CITY also reserves the right to hold payment until adequate documentation has been provided and reviewed.
- E. **Audit of Records.** The CITY shall have the right to review and audit all records of the DEVELOPER pertaining to any payment by the CITY. Said records shall be maintained for a period of the HOME-required affordability period.
- H. **Unauthorized Use.** This grant shall not be utilized to substantially reduce the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.
- I. **Return of Funds** The DEVELOPER shall return to the City all monies provided by the City if any of the following occur: the DEVELOPER materially changes the primary purpose and scope of the Project as described in **Exhibit B**, or the DEVELOPER is unable to continue and/or provide services as described in **Exhibit B**.

## **Section VI – Project Requirements**

The DEVELOPER agrees to comply with all requirements of the HOME Program as stated in 24 CFR Part 92, including but not limited to the following.

### **A. Environmental Review**

No HOME project funds will be advanced, and no costs can be incurred, until the

City has conducted an environmental review of the proposed project site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the project. Notwithstanding any provision of this Contract, the parties hereto agree and acknowledge that this Contract does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a release of funds from the U.S. Department of Housing and Urban Development [or the State of Washington] under 24 CFR Part 58. Further, the DEVELOPER will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under the contract. The DEVELOPER shall comply with all Federal, State, and Local Laws and Regulations for the duration of this Project, including but not limited to the Cranston-Gonzales Act, as amended by the Housing and Community Development Act of 1992; regulations continued in 24 C.F.R. Part 92; Federal O.M.B. Circular A-110 Attachments B, F, H (paragraph 2) and O, O.M.B. Circular A-122, zoning, building, housing and other codes and regulations of the jurisdiction where Project is located; and such other Federal, State, and Local Laws, rules and regulations as may apply to the Project including Nondiscrimination and Fair Housing Laws.

The City of Yakima, through the AGENCY retains environmental review responsibility for purposes of fulfilling requirements of the National Environmental Policy Act, under which the City of Yakima may require the DEVELOPER to furnish data, information and assistance for the City's review and assessment in determining whether the City must prepare an Environmental Impact Statement.

The Environmental Review was completed on **2906 W Arlington Avenue – 04/28/2023**. All mitigation if required in the Environmental Review shall be completed by DEVELOPER as part of the Project.

The DEVELOPER retains responsibility for fulfilling the requirements of the State Environmental Policy Act (SEPA) and regulations and ordinances adopted thereunder.

In addition to the requirements of Section XIV below, in the event DEVELOPER fails to furnish any data, information, forms, or documents requested by the City to fulfill its obligations under the National Environmental Policy Act or any other federal or state environmental policy, law, or regulation, Failure to furnish data, information, forms or documents shall result in a withholding of funds for payment and, if funds have been disbursed, a requirement to repay all funds associated with this Contract to the City and may result in termination of this Contract. The DEVELOPER expressly agrees to do all things necessary and take all necessary steps to facilitate the environmental review of the Project.

## **B. Property Standards.**

According to 24 CFR 92.251 Property Standards, Housing that is purchased, constructed, or rehabilitated with HOME funds must meet all applicable local, state, and/or CITY construction standards, ordinances, and zoning ordinances at the time of project completion and throughout the period of affordability. In the absence of a local code for new construction or rehabilitation, HOME-assisted

new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (M.P.S.) in 24 CFR 200.925 or 200.926 and/or minimum property standards established by the CITY on behalf of the HOME Program. All construction will be inspected by the City staff prior to receipt of final payments.

The housing must meet the accessibility requirements at 24 C.F.R. part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619). The Fair Housing Act requires that all multi-family dwellings must meet the design and construction requirements at 24 CFR 100.205. Refer to CABO/ANSI section A117.1 for specific requirements. A Section 504 Physically handicapped person is defined as an individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, that results in a function limitation in gaining access to and using a building or facility. The housing provides accessibility, adaptability, and accessible routes.

1. **504 Requirements for New Construction Projects:** Projects with (5) or more units will have at least 5% of the units accessible to individuals with mobility impairments AND at least 2% of the units accessible to individuals with sensory impairments. As this Project only consists of **one (1)** units, 504 requirements do not apply.
2. **Fair Housing Act:** The Fair Housing Act requires seven basic requirements that must be met to comply with the access requirements, which are:
  - An accessible building entrance on an accessible route
  - Accessible common and public use areas
  - Usable doors (usable by a person in a wheelchair)
  - Accessible route into and through the dwelling unit
  - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
  - Reinforced walls in bathrooms for later installation of grab bars
  - Usable kitchens and bathrooms

An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements, and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401, for the entire length of the affordability period.

### **C. Property Restrictions**

1. **Restrictions on the Sale or Transfer of Land and Improvements.** Developer agrees that throughout the term of this Contract, and in order to satisfy the requirements of the HOME Program, the Developer will not sell or transfer any part of the project premises or any interest in it without the City's prior written consent, including a transfer of all or part of the project premises to any person that does not use the project premises for "affordable housing" within the meaning of the HOME Program. Upon the occurrence of any of the above, the Developer will provide immediate payment in full of the entire principal under this Contract.

2. **Covenants to Run with Land.** The Developer agrees to execute and record a restrictive covenant instrument that is secondary to all other financing and/or security instruments, any other use restrictions, easements, liens, or other encumbrances of record, except for those previously disclosed on a commitment for title insurance issued to the City or those explicitly approved by the City and the City Attorney. Developer intends, declares, and covenants, on its behalf and on behalf of all future holders of any interest in and to the project premises described in "**Exhibit A**" during the term of this Contract, that this Contract and the covenants and restrictions set forth in this Contract regulating and restricting the use, occupancy, sale, lease or transfer of the Premises (i) shall be and are covenants running with the land, encumbering the land for the term of this Contract, binding upon the Grantee's successors in title and all subsequent Grantees and tenants or transferee of the premises, (ii) are not merely personal covenants of the Grantee, but are contractual in nature and condition precedent to the Grantee obtaining the HOME Grant, and (iii) shall bind the Grantee and the Grantee's grantees, lessees, heirs, assigns, personal representatives for transferee during the term of this Contract. The Grantee hereby agrees that any and all requirements of the laws of the State of Washington to be satisfied in order for the provisions of this Contract to constitute property use restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of the estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to ensure that these restrictions run with the land. For the Term of this Contract, each and every contract, deed, or other instruments hereafter executed conveying the project premises described in "**Exhibit A**," or a portion thereof, shall expressly provide that such conveyance is subject to this Contract provided; however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instruments hereafter executed conveying the project premises, or a portion thereof, specifically provides that such contract, lease or conveyance is subject to this Contract.
3. **Affordability Restrictions.** Any unit constructed on this property assisted with HOME funds must remain occupied by a low to moderate-income family/person for a period of FIFTEEN (15) years to meet the affordability required by the HOME investment in the Project. The Developer agrees to enforce the affordability requirements under 24 CFR 92.252(e) as applicable and agrees to repay the HOME funds if the housing does not meet the affordability requirements for the specified time period.

For new construction homeownership projects, the period of affordability is FIFTEEN (15) years. The affordability period in homeownership projects will be activated on the date after the Developer provides the City with a project completion report, and this form has been entered into H.U.D.'s Integrated Disbursement Information System (IDIS) detailing the following:

- Household size
- Gross annual household income
- Racial and ethnic characteristics
- 1. Property owner's name
- 2. Whether any household member is disabled
- 3. Designation as a mobility or sensory-handicapped unit

4. Sales date
5. Bedroom Size
  - o Purchase Price
  - o Date of Certificate of Occupancy

Project completion reports are to be submitted by the Developer when the HOME-assisted unit is purchased and occupied, no later than 90 days after the issue of the Certificate of Occupancy. Developer agrees to execute the Restrictive Covenant at or before the completion of the Project. If Developer does not comply with providing project completion reports within the 90-day period following the issuance of the Certificate of Occupancy, the organization will be ineligible to apply for additional HOME funding, and any current awards will be revoked.

The affordability period **does not** end upon early payoff of the HOME assistance, if applicable.

4. **Maintaining Homeownership Housing Affordability: CFR 92.254.** The income of each unit must be determined initially using Section 8 (Part 5) definition of annual (gross) income.
5. **Income Determinations.** The Developer agrees to perform the income determination requirements of 24 CFR 92.203.

Eligible Incomes: the Developer must determine that each family or individual is income-eligible. The Developer is required to use third-party source documents to evidence annual income (e.g., wage statement, interest statement, and unemployment compensation statement) for the family or individual. Owners must use the Part 5 definition as defined in the "**Technical Guide for Determining Income and Allowance for the HOME Program**" provided by the U.S. Department of Housing and Urban Development (H.U.D.).

#### D. CHDO Responsibilities

1. **Expenditure Requirements.** The DEVELOPER will ensure that any expenditure of HOME funds will be in compliance with the requirements at 24 CFR 92.206, *Eligible Costs*, and acknowledges that HOME funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed.
2. **Owner-Occupied Qualifications.** The DEVELOPER will ensure that all HOME assisted units will be in compliance with 24 CFR 92.254 (*Qualification as affordable housing, Homeownership*), including documenting that the property is eligible under 24 CFR 92.254(a)(1) – (2), and will maintain compliance during the minimum compliance period.
3. **Project Beneficiary Information.** The designated HOME-assisted units of this PROJECT will meet the affordability requirements as found in 24 CFR 92.254 (*Qualification as affordable housing, Homeownership*) as applicable. The DEVELOPER shall collect and maintain Project beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of Female-Headed Households in order to determine low and moderate-income benefits in a cumulative and individual manner. Income documentation shall be in a form consistent

with HOME requirements as stated in the H.U.D. **Technical Guide for Determining Income and Allowances Under the HOME Program.**

4. **Notes & Mortgages.** If the Project is to be owner-occupied, the DEVELOPER shall ensure that any NOTES and MORTGAGES recorded for homebuyers shall be in compliance with 24 CFR 92.254 and that the DEVELOPER will monitor each unit for principal residency (under 92.254 (a)(3)) and resale/recapture (under 92.254 (a)(4) – (5)).
5. **HOME Match.** DEVELOPER will provide any documentation required by the AGENCY regarding match as may be required to document match for purposes of the HOME program.
6. **Lease Purchase Option.** If the property is sold through a lease-purchase contract, the DEVELOPER will ensure compliance with 24 CFR 92.254(a)(7), as modified by the 1999 Appropriations Act, Section 599B.
7. **Monitoring.** DEVELOPER will be monitored by the AGENCY for compliance with the regulations of 24 CFR 92 for the compliance period specified above. The DEVELOPER will provide reports and access to project files as requested by the AGENCY during the PROJECT and for Five (5) years after completion and closeout of the CONTRACT.

#### **E. Other Federal Requirements**

1. **H.U.D. Generally Applicable Definitions & Requirements; Waivers.** The Developer agrees to conform to all Federal and State regulatory requirements, including the Federal requirements set forth in 24 C.F.R. Part 5, Subpart A, those described in 24 C.F.R. Part 92, Subpart H, Section 350-359, as well as the City's Housing and Property Standards and the applicable Yakima Municipal Code sections. The Federal and City requirements include nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.
2. **Nondiscrimination & Equal Opportunity:** The Contract is made available in conformity with the non-discrimination and equal opportunity requirements set forth in 24 C.F.R. Part 511.10(m), as follows: The requirements of Executive Order 11063, and with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d as amended by Executive Order 12259 (3 C.F.R., 1959- 1963 Comp., p. 652 and 3 C.F.R., 1980 Comp., p. 307). The Act prohibits discrimination against individuals on the basis of race, color, religion, sex, or national origin in the sale, rental, leasing, or other disposition of residential property or in the use or occupancy of housing assisted with Federal funds. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, 42 USC 6101-07, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973, 29 USC 794. The nondiscrimination requirements in Section 282 of the Act are applicable.
3. **Fair Housing:** *The Fair Housing Act* (42 U.S.C. 3601-19) and implementing regulations at 24 C.F.R. part 100 *et seq.*; The Act prohibits discrimination in the sale of housing, the financing of housing, or the

provisions of brokerage servers against any person on the basis of race, color, religion, sex, national origin, handicap, or familial status.

4. **Disclosure & Anti-Lobbying Requirements:** The Developer assures that no Federal funds have been or will be paid by or on behalf of the Developer to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any Contract or any modification of any Federal contract, grant loan, or Contract. If any other funds other than Federal funds have been paid or will be paid to persons for influencing any above-named persons in connection with this Project, the Developer shall complete and submit the "Disclosure Form to Report Lobbying" in accordance with its instructions.
  
5. **Affirmative Marketing (required for projects with five or more HOME-assisted units):** The Developer will follow an affirmative marketing plan approved by the City. This affirmative marketing plan consists of the steps of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. (The affirmative marketing procedures do not apply to families with Section 8 Tenant-Based Rental Housing assistance or families with Tenant-Based Rental Assistance provided with HOME funds.) The Affirmative Marketing Plan will include:
  - Methods for informing the public, owners, and potential tenants about Federal Fair Housing Laws and the County's Affirmative Marketing Policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners and written communication to fair housing and other groups);
  - Requirements and practices each owner must adhere to in order to carry out the Affirmative Marketing Procedures and Requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogans, and display of Fair Housing poster);
  - Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, Fair Housing groups, or housing counseling agencies);
  - Records that will be kept describing actions taken by the owners to affirmatively market units and records to assess the results of these actions; and
  - A description of how the Developer will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
  
6. **Minority outreach:** The Developer will take necessary affirmative steps to ensure that minority firms and women's business enterprises are used whenever possible. Because this is a certified Community Housing Development Organization, Procurement does not apply. Procurement regulations at 24 C.F.R. Part 85.36(e) specify that MBE/WBE outreach

activities apply to all contracting opportunities facilitated by HOME-funded activities, including contracts related to construction, rental assistance, and HOME program administration. There are no monetary thresholds that trigger MBE/WBE outreach requirements. They apply to all contracts awarded in conjunction with HOME-assisted projects. The HOME Construction Performance Standards Manual provides complete details of the requirements that will be followed. HOME regulations require that the following minimum affirmative steps are taken to ensure MBE/WBE are afforded every opportunity to participate in HOME-generated contracts.

- Placing minorities and women on solicitation lists;
- Assuring that M.B.E. and WBE firms are solicited whenever they are potential sources;
- Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business enterprises and women business enterprises;
- Where the requirement permits, establishing delivery schedules that encourage participation by small and minority business enterprises and women business enterprises;
- Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce and
- Requiring the prime contractor, if subcontractors are to be let, to take all the same actions.

**7. Religious Activities:** The Developer agrees, as directly funded under the HOME program, not to engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under the HOME program. The Developer also agrees that religious activities such as worship, religious instruction, or proselytization will be offered separately, in time and location, and it is the beneficiary's voluntary decision to participate. These separate religious activities cannot be funded by the HOME program. Religious organizations providing HOME assistance will not discriminate against program beneficiaries based on religious character, belief, or affiliation. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities.

**8. Davis Bacon.** If any project under this Contract involves the construction or rehabilitation of 12 or more HOME-assisted units, the DEVELOPER shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. 276 a to a - 7) as supplemented by AGENCY of Labor regulations (29 C.F.R., Part 5), as amended.

## **Section VII – Repayment of Loan**

A. **Repayment.** All HOME funds are subject to repayment in the event the PROJECT does not meet the Project Requirements as outlined above or if DEVELOPER violates any provisions of this Contract with regards to HOME and/or HUD requirements.

- B. **Reversion.** It is understood that upon the completion of the PROJECT, any HOME funds reserved but not expended under this contract will revert to the CITY.
- C. **Owner Occupancy.** If the PROJECT is for owner-occupancy, the DEVELOPER shall lend the HOME funds to the individual buyers in an amount sufficient to make the purchase affordable. Any HOME funds that reduce the price of the property below the fair market value of the property shall be secured by a HOME note and mortgage as required in 24 CFR 92.254(a)(5)(ii), using the note and mortgage prescribed or approved by the AGENCY (and consistent with the method of recapture identified in the CITY's "Consolidated Plan").
- D. **Program, CHDO Proceeds.** No program income or CHDO proceeds are anticipated for this Project. However, if CHDO proceeds are determined by H.U.D. and/or the City to have been received, all net sales proceeds from the sale of units are considered to be CHDO proceeds that may be retained by the DEVELOPER and used in conformance with 24 CFR 92.300(a)(2), to be retained by the CHDO and used to further affordable housing for qualified first-time home buyers within the City of Yakima. The Developer must submit a CHDO Program Income Plan to the City for approval. Program Income must be used for HOME-eligible activities or other approved affordable housing activities. Income from the sale, rental, or use of real estate by the project owner, Developer, or sponsor is not treated as program income.

## **Section VIII – CHDO Provisions**

It is understood that the DEVELOPER has certified that it is and will maintain CHDO (Community Housing Development Organization) status for the term of the PROJECT in accordance with 24 CFR 92. The DEVELOPER agrees to provide information as may be requested by the AGENCY to document its continued compliance, including but not limited to an annual board roster and certification of continued compliance. Any funds advanced as CHDO pre-development funds must be in compliance with 24 CFR 92.301, and are forgivable only under the terms in 24 CFR 92.301.

Any funds advanced to the CHDO as CHDO Operating Expenses must be expended in compliance with 24 CFR 92.208. Any funds that the CHDO is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR 92.300(a)(2) or as specified in this Contract.

## **Section IX – Procurement Standards**

The DEVELOPER shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring for services to be provided under this contract, the DEVELOPER shall comply at a minimum with the nonprofit procurement standards at 24 CFR 84.40 - .48.

The Developer agrees to conform to all Federal and State regulatory requirements, including the Federal requirements set forth in 24 C.F.R. 5, Subpart A, as well as the City's municipal code, and Housing and Property Standards. The Federal and City requirements include nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.

In addition, the following requirements are imposed on any procurement under this PROJECT:

Any personal property having a useful life of more than one year and purchased wholly or in part with sub-grant funds at a cost of three hundred dollars (\$300) or more per item, shall upon its purchase or receipt become the property of the City of Yakima and/or federal government. Final ownership and disposition of such property shall be determined under the provisions of Attachment N of OMB, A-102. The Developer shall be responsible for all such property, including its care and maintenance, and shall comply with the following procedural requirements:

1. Property records shall be maintained accurately and provide for: A description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of HOME funds used in the purchase of property; location, use, and condition of the property.
2. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.
3. A control system shall be in effect to ensure adequate safeguards to prevent lose, damage, or theft to the property. Any loss, damage, or theft of the property shall be investigated and fully documented.
4. Adequate maintenance procedures shall be implemented to keep the property in good condition.
5. If the Developer elects to capitalize and depreciate such nonexpendable personal property in lieu of claiming the acquisition cost as a direct item of cost, title to such property shall remain with the Developer. An election to capitalize and depreciate or claim acquisition cost as a direct item of cost shall be irrevocable.
6. Nonexpendable personal property purchased by the Developer under the terms of this Contract, in which title is vested in the City of Yakima or Federal Government shall not be rented, loaned, or otherwise passed to any person, partnership, corporation, association or organization without the prior express approval of the City of Yakima ONDS.
7. Any nonexpendable personal property furnished to, or purchased by, the Developer, title to which is vested in the City of Yakima ONDS or federal government shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of activities defined in this Contract.
8. As a condition prerequisite to reimbursement for the purchase of nonexpendable personal property, title to which shall vest in the City of Yakima ONDS or federal government, the Developer agrees to execute such security agreements and other documents as shall be necessary for the City of Yakima ONDS or federal government to perfect its interest in such property in accordance with the "Uniform Commercial Code-Secured Transactions" as codified in Article 9A of RCW Chapter 62A.
9. The Developer shall be responsible for any loss or damage to the property of the City of Yakima ONDS or federal government (including expenses

entered thereunto) which results from negligence, willful misconduct, or lack of good faith on the part of the Developer to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the City of Yakima ONDS or federal government in like condition to that in which condition the property was acquired by purchase, fair wear and tear accepted.

In addition, it is understood that any DEVELOPER that can be considered to be a religious organization shall abide by all portions of 24 CFR 92.257.

## **Section X – Conflict of Interest Provisions**

The DEVELOPER warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. The DEVELOPER further warrants and covenants that in the performance of this contract, no person having such interest shall be employed. HOME conflict of interest provisions, as stated in 24 CFR 92.356, apply to the award of any contracts under the contract and the selection of tenant households to occupy HOME-assisted units. No employee, agent, consultant, elected official, or appointed official of the DEVELOPER may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

- Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the DEVELOPER, or the proceeds thereunder; or
- Any unit benefits or financial assistance associated with HOME projects or programs administered by the DEVELOPER, including:
  - Occupancy of a rental housing unit in a HOME-assisted rental project;
  - Receipt of HOME tenant-based rental assistance;
  - Purchase or occupancy of a homebuyer unit in a HOME-assisted project;
  - Receipt of HOME homebuyer acquisition assistance; or
  - Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of the DEVELOPER who occupies a HOME assisted unit as the on-site project manager or maintenance worker. In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the Participating Jurisdiction shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program. Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by the DEVELOPER in writing to the Participating Jurisdiction. The DEVELOPER must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The Jurisdiction may grant exceptions or forward the requests to HUD as permitted by 24 CFR 92.356, 85.36 and

84.42, as they apply.

## **Section XI – City Responsibilities**

The CITY shall furnish the DEVELOPER with the following services and information from existing CITY records and CITY files:

- A. Requirements.** The CITY shall provide to the DEVELOPER information regarding its requirements for the PROJECT.
- B. Regulation Updates.** The CITY will provide the DEVELOPER with any changes in HOME regulations or program limits that affect the project, including but not limited to income limits, property value limits and rent limits.
- C. Progress Inspections.** The CITY will conduct progress inspections of work completed to protect its interests as lender and regulatory authority for the project, and will provide information to the DEVELOPER regarding any progress inspections or monitoring to assist it in ensuring compliance. CITY's review and approval of the WORK will relate only to overall compliance with the general requirements of this Contract and HOME regulations, and all CITY regulations and ordinances. Nothing contained herein shall relieve the DEVELOPER of any responsibility as provided under this Contract.

## **Section XII – Equal Employment Opportunity**

During the performance of this contract, the DEVELOPER agrees as follows:

- A. Nondiscrimination.** The DEVELOPER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). The DEVELOPER will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the CITY setting forth the provisions of this nondiscrimination clause.
- B. Solicitation/Advertisement.** The DEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of the DEVELOPER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Labor Unions.** The DEVELOPER will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the DEVELOPER's contracting officer, advising the labor union or worker's representative of the DEVELOPER's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**D. Executive Order 11246.** The DEVELOPER will:

- Comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- Furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.
- In the event the DEVELOPER is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the DEVELOPER may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.
- Include the provisions of paragraphs (a) through (g) of this contract in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The DEVELOPER will take such action with respect to any subcontract or purchase order as the AGENCY may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the DEVELOPER becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the AGENCY, the DEVELOPER may request the United States to enter into such litigation to protect the interest of the United States.

### **Section XIII – Labor, Training & Business Opportunity**

The DEVELOPER agrees to comply with the federal regulations governing training, employment and business opportunities as follows:

- A. **Performance.** It is agreed that the WORK to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the US Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u, as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given low- and moderate-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the project area.
- B. **Compliance.** The DEVELOPER shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder as well as any and all applicable amendments thereto prior to

the execution of this contract as well as during the term of this contract. The DEVELOPER certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.

- C. **Subcontract.** The DEVELOPER will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the CITY, take appropriate action pursuant to the subcontractor upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, in 24 Code of Federal Regulations. The DEVELOPER will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 code of Federal Regulations and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.
- D. **Conditions.** Compliance with the provisions of Section 3, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder prior to the execution of the contract shall be a condition precedent to federal financial assistance being provided to the PROJECT as well as a continuing condition, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the DEVELOPER or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations as well as with any and all applicable amendments thereto.

#### **Section XIV – Compliance with Federal, State & Local Laws**

- A. **Civil Rights Act.** The DEVELOPER covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, as well as all requirements set forth in 24 CFR 92 of the HOME INVESTMENT PARTNERSHIP PROGRAM. The DEVELOPER covenants and warrants that it will indemnify and hold the CITY forever free and harmless with respect to any and all damages whether directly or indirectly arising out of the provisions and maintenance of this contract. The DEVELOPER agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of this section in every non-exempt subcontract in excess of \$100,000. The DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.
- B. **Procurement And Construction Or Repair Project Requirements.** The following Federal provisions may apply, among others, to this Contract:
  - 1. Certification Regarding Debarment, Suspension Or Ineligibility And Voluntary Exclusion—Primary And Lower Tier Covered Transactions

a) The DEVELOPER, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- ii. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section;
- iv. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default;
- v. Where the DEVELOPER is unable to certify to any of the statements in this Contract, the DEVELOPER shall attach an explanation to this Contract;
- vi. The DEVELOPER agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction; and
- vii. The DEVELOPER further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

b) LOWER TIER COVERED TRANSACTIONS

- i. Each lower tier contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- ii. Where the lower tier contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.
2. **Affirmative Action & Nondiscrimination Obligations.** Office of Federal Contract Compliance Programs regulations, 41 CFR Part 60, Executive Order 11246 as amended by Executive Order 12086, and 24 CFR 570.601 (Discrimination prohibited).
3. **Lead Based Paint.** The Lead Based Paint Poisoning Prevention Act, 42 USC Section 4831 et seq., and HUD regulations implementing the Act, 24 CFR Part 35, where, residential structures are involved. The Contractor shall provide whatever assistance is necessary to enable the City of Yakima's Building Official to carry out its inspection and certification responsibility under those regulations.
4. **Historic Preservation.** Historic and Archaeological Preservation requirements as set forth in 24 CFR Section 570.604.36 CFR Part 800, RCW 27.44.010 (Native American Burial Law), RCW 27.53.010-.090 (Protection of Archaeological Resources), and RCW 43.51.750-.820 (Preservation of Historic Properties).
5. **Architectural Barriers.** Architectural Barriers Act of 1968 as amended, 42 USC Section 4151 et seq., implementing regulations, and Chapter 70.92 RCW.
6. **Property Standards.** Accessibility Standard as set forth in 24 CFR 92.251(a).
7. **Clean Air & Other Environmental Protections.** Clean Air Act as amended, 42 USC Section 1857 et seq; Water Pollution Control Act, as amended, 33 USC Section 1251 et seq.; and Environmental Protection Agency regulations, 40 CFR Part 15.
8. **Employment & Other Economic Opportunities.** Section 3 of the Housing and Urban Development Act of 1968 (12 USC Section 1701u) and 24 CFR Part 135 (Employment opportunities for project area businesses and low-income persons).
9. **Contract Work Hours & Safety Standards.** Contract Work Hours and Safety Standards Act, 40 USC Chapter 5, Sections 327-333, (Overtime Compensation).
10. **Rate of Wages.** Davis-Bacon Act, as amended, 40 USC Chapter 3, Sections 276a – 276a – 5, and RCW Chapter 3 – 12 (Prevailing Wage Rates).
11. **Procurement.** 2 CFR Part 200 (Procurement Standards) and Federal Management Circular, FMC 74-4.
12. **Relocation & Acquisition.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and regulations contained in 24 CFR Parts 42 and 570.
13. **Nondiscrimination in Federally Assisted Programs.** Title VI of the Civil Rights Act of 1964 (P.L. 88-352) as amended, and HUD regulations with

respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Contract, and Developer shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Developer, the County, and the United States are beneficiaries of and entitled to enforce such covenant. The Developer, in undertaking its obligation in carrying out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

14. **Nondiscrimination Based on Age.** Age Discrimination Act of 1975 (24 CFR 146).
15. **Nondiscrimination in Housing.** Fair Housing Act (24 CFR 100, CFR 107 and 24 CFR 1).
16. **State Housing Standards.** Washington State/Local Building Codes/Housing Quality Standards (24 CFR 882.109).
17. **Minority & Women Owned Businesses.** WBE/MBE (24 CFR 85.36 (e)).

C. **Applicable Licensing & Certifications.** The DEVELOPER agrees to comply with all applicable Federal, State, City and Municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals, and any other standards or criteria as described in the Contract to assure quality of services.

D. **Taxes & Other Insurances.** The DEVELOPER shall be solely responsible for and shall pay all taxes, deductions, and assessments, including but not limited to, sales tax, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury insurance, and other deductions from income which may be required by law or assessed against either party as a result of this Contract. In the event the City is assessed a tax or assessment as a result of this Contract, the DEVELOPER shall pay the same before it becomes due.

## **Section XV – Suspension & Termination**

In accordance with 24 CFR 85.43, suspension or termination may occur if the DEVELOPER materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

If, through any cause, the DEVELOPER shall fail to fulfill in timely and proper manner its obligations under this contract, or if the DEVELOPER shall violate any of the covenants, agreements, or stipulations of this contract, the CITY shall thereupon have the right to terminate this contract by giving written notice to the DEVELOPER of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, the DEVELOPER shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder to the date of said termination. Notwithstanding the above, the DEVELOPER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the DEVELOPER and the CITY may withhold any payments to the

DEVELOPER for the purpose of setoff until such time as the exact amount of damages due the CITY from the DEVELOPER is determined whether by court of competent jurisdiction or otherwise.

### **Section XVI – Termination for Convenience of the CITY**

The CITY may terminate for its convenience this contract at any time by giving at least thirty (30) days notice in writing to the DEVELOPER. If the contract is terminated by the CITY, as provided herein, the City will reimburse for any actual and approved expenses incurred, including those costs involved in terminating the contracts and shutting down the work as of the date of notice, and the DEVELOPER will be paid as a FEE an amount which bears the same ratio to the total compensation as the services actually performed bear to the total service of the DEVELOPER covered by this contract, less payments of compensation previously made.

### **Section XVII – Default-Loss of Grant Funds**

If the DEVELOPER fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the contract, and more particularly if the DEVELOPER refuses or fails to proceed with the work with such diligence as will ensure its completion within the time fixed by the schedule set forth in **Exhibit B** of this contract, the DEVELOPER shall be in default and notice in writing shall be given to the DEVELOPER of such default by the AGENCY or an agent of the AGENCY.

If the DEVELOPER fails to cure such default within such time as may be required by such notice, the CITY, acting by and through the AGENCY, may at its option terminate and cancel the contract. In the event of such termination, all grant funds awarded to the DEVELOPER pursuant to this contract shall be immediately revoked and any approvals related to the PROJECT shall immediately be deemed revoked and canceled. In such event, the DEVELOPER will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this contract, as the grant funds will no longer be available for this project. Such termination shall not affect or terminate any of the rights of the CITY as against the DEVELOPER then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the CITY under the law and the note and mortgage (if in effect), including but not limited to compelling the DEVELOPER to complete the project in accordance with the terms of this contract, in a court of equity. The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

This Contract may further be terminated by the City upon written demand by the City or AGENCY for assurances that the terms of the Project description are not being timely complied with, if such assurances are not made to the City's satisfaction within thirty (30) days of the date of such written demand.

### **Section XVIII—Close Out**

Within thirty (30) days of the contract closing date, the DEVELOPER shall submit a final invoice that includes all unpaid invoices and a final report. Final payment shall be made only after the CITY has determined that all services have been rendered, files and documentation delivered (including the final invoices and final report), covenants are recorded against the property, and units have been placed in service in full compliance

with HOME regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions. If the final invoices and report are not received within thirty (30) days of the contract closing date, DEVELOPER understands and agrees that it will not receive any payment for any final pending unpaid invoices. The CITY will retain ten percent (10%) until City has determined that all services have been rendered.

In the event this Contract is terminated in whole or in part for any reason, the following provisions shall apply:

- A. Upon written request by the DEVELOPER, the CITY shall make or arrange for payment to the DEVELOPER of allowable reimbursable costs not covered by previous payments.
- B. DEVELOPER shall submit within fifteen (15) days after the date of expiration of this Contract, all financial, performance and other reports required by this Contract, and in addition, will cooperate in a program audit by the CITY or its designee.
- C. In the event a financial audit has not been performed prior to close out of this Contract, the CITY and AGENCY retain the right to withhold a just and reasonable sum from the final payment to the DEVELOPER until the final audit is performed, submitted to, and reviewed by the CITY and AGENCY.

### **Section XIX– Reporting Responsibilities**

DEVELOPER agrees to submit any and all quarterly reports required by HUD or the CITY to the AGENCY on the following due dates: October 1, January 1, April 1, and July 1, next following the date of this contract. The AGENCY will send the DEVELOPER one reminder notice if the quarterly report has not been received fourteen (14) days after the due date. If the DEVELOPER has not submitted a report fourteen (14) days after the date on the reminder notice, the CITY will have the option to terminate the contract as described in this contract. In addition, the DEVELOPER agrees to provide the AGENCY information as required to determine program eligibility, in meeting national objectives, and financial records pertinent to the project. Additional reporting requirements are included in **Exhibit B**.

### **Section XX - Inspection, Monitoring & Access to Records**

A. The CITY reserves the right to inspect, monitor, and observe work and services performed by the DEVELOPER at any and all reasonable times. The CITY reserves the right to audit the records of the DEVELOPER any time during the performance of this Contract and for a period of five years after final payment is made under this Contract. If required, the DEVELOPER will provide the AGENCY with a certified audit of the DEVELOPER's records representing the Fiscal Year during which the PROJECT becomes complete whenever the amount listed in SECTION VII is at or exceeds \$300,000, pursuant to the requirements of OMB Circular A-133. Access shall be immediately granted to the CITY, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the DEVELOPER or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

B. The records relating to this Contract shall be promptly furnished to the City upon request. Until the expiration of six (6) years after the termination date of this Contract,

or for a longer period of time if required by law or the Washington State Secretary of State's record retention schedule, DEVELOPER shall retain and provide the City access to all of the DEVELOPER's books, documents, papers and records which are related to this Contract. If any litigation, claim, or audit is started before the expiration of the six-year period or retention schedule time period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

C. All records relating to the DEVELOPER and this Contract must be made available to the City and produced to third parties, if required, pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to this Contract must be retained by DEVELOPER for the minimum period of time required pursuant to the Washington State Secretary of State's records retention schedule.

D. The terms and conditions of this section shall survive any expiration or termination of this Contract.

### **Section XXI – Insurance**

A. **No Insurance.** It is understood that the City does not maintain liability insurance for the DEVELOPER and/or its employees, agents, officers, and subcontractors.

B. **Commercial Liability Insurance.** On or before the effective date of this Contract, the DEVELOPER shall provide the City with a certificate of insurance and additional insured endorsements as proof of liability insurance in the minimum amount of Two Million Dollars (\$2,000,000.00) that clearly states who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect (any statement in the certificate to the effect of "this certificate is issued as a matter of information only and confers no right upon the certificate holder" shall be deleted). Said policy shall be in effect for the duration of this Contract. The certificate of insurance and additional insured endorsements shall name the City of Yakima, its elected officials, officers, agents, employees and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. If DEVELOPER carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements, and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The requirements contained herein, as well as the City of Yakima's review or acceptance of insurance maintained by the DEVELOPER, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the DEVELOPER under this Contract.

C. **Commercial Automobile Liability Insurance.** On or before the date this Contract is fully executed by the parties, DEVELOPER shall provide the CITY with a certificate of insurance and additional insured endorsements as proof of commercial automobile liability insurance with minimum liability limit of Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and be shown on the certificate. The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect (any statement in the certificate to the effect of "this certificate is issued as

a matter of information only and confers no right upon the certificate holder” shall be deleted). Said policy shall be in effect for the duration of this Contract. The certificate of insurance and additional insured endorsements shall name the City of Yakima, its elected officials, officers, agents, employees and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best’s Guide and admitted in the State of Washington. If DEVELOPER carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements, and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The requirements contained herein, as well as the City of Yakima’s review or acceptance of insurance maintained by the DEVELOPER, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the DEVELOPER under this Contract.

- D. **Workers’ Compensation.** DEVELOPER and all subcontractor(s) shall at all times comply with all applicable workers’ compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable, and shall maintain Employer’s Liability insurance with a limit of no less than \$1,000,000.00. The City shall not be held responsible in any way for claims filed by DEVELOPER or its employees for services performed under the terms of this Contract. DEVELOPER agrees to assume full liability for all claims arising from this Contract including claims resulting from negligent acts of all subcontractor(s). DEVELOPER is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractors(s) to comply with insurance requirements does not limit DEVELOPER’s liability or responsibility.
- E. **Insurance Provided By Subcontractors.** The DEVELOPER shall ensure that all subcontractors it utilizes for work/services rendered under this Contract shall comply with all of the above insurance requirements.
- F. **Insurance Coverage.** DEVELOPER’s insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Contract. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the DEVELOPER’s insurance and neither the City nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by DEVELOPER’s insurance. All additional insured endorsements required by this Section shall include an explicit waiver of subrogation.
- G. **Maintenance of Insurance.** If at any time during the life of this Contract, or any extension, DEVELOPER fails to maintain the required insurance in full force and effect, all services or requirements under this Contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the Contract.
- H. **Verification of Coverage.** Failure of the City to demand verification of coverage with the insurance requirements outlined in this Section, or failure of the City to identify a deficiency from the insurance documentation provided, shall not be construed as a waiver of DEVELOPER’s obligation to maintain such insurance.

## **Section XXII – General Conditions**

A. **Notice & Communications.** All notices or other communication which shall or may be given pursuant to this Contract shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

City address: City Manager  
Yakima City Hall  
129 North 2<sup>nd</sup> Street  
Yakima, Washington 98901

Copy To: Office of Neighborhood Development Services  
City of Yakima  
129 N 2<sup>nd</sup> Street  
Yakima, Washington 98901

DEVELOPER address: Yakima Valley Partners Habitat for Humanity  
21 W. Mead Ave. Ste # 110  
Yakima, Washington 98902:

B. **Title & Headings.** Title and paragraph headings are for convenient reference and are not a part of this Contract.

C. **Contract Conflict.** In the event of conflict between the terms of this Contract and any terms or conditions contained in any attached documents, a conflict or inconsistency shall be resolved by giving precedence in the following order:

1. Appropriate provisions of state and federal statutes and regulations including HUD regulations governing this Project.
2. Terms and Conditions (**Exhibit A**).
3. Those attachments incorporated by reference herein, including the statement of work and/or project description, and approved HUD grant budget, in the order in which they are attached.
4. City of Yakima Resolution authorizing this Contract.
5. Any other provisions whether incorporated by reference herein or otherwise, provided that nothing herein shall be construed as giving preference to provisions of this Contract and/or grant award over any provisions of law.

D. **Waiver & Breaches.** No waiver or breach of any provision of this Contract shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

E. **Contract Enforcement.** The parties hereto agree that this Contract shall be construed and enforced according to the laws of the State of Washington. The venue for any action to enforce or interpret this Contract shall lie in the Superior Court of Washington for Yakima County.

F. **Modified to the Extent Necessary.** Should any provisions, paragraphs, sentences, words or phrases contained in this Contract be determined by a court

of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Washington or the City of Yakima, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Contract shall remain unmodified and in full force and effect.

- G. **Anti-Kickbacks.** The DEVELOPER shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the AGENCY of Labor Regulations (29 CFR Part 3), as amended.
- H. **Contract Work Hours & Safety Standards.** The DEVELOPER shall comply with the provisions of sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.
- I. **Inclusion of Anti-Kickbacks & Contract Work Hours and Standards – Subcontracts.** The DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of paragraphs (G) through (H) of this section in every nonexempt subcontract. The DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.
- J. **Delegation of Duties.** The obligations undertaken by the DEVELOPER pursuant to this Contract shall not be delegated or assigned to any other person or agency unless CITY shall first consent to the performance or assignment of such service or any part thereof by another person or agency. The City has sole discretion in determining whether to provide its consent.
- K. **Binding & Modifications.** This Contract shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns. Modifications to this Contract shall be in writing and executed by both parties, except for budget adjustments which process is specified above.
- L. **Indemnify & Hold Harmless.** DEVELOPER agrees to release, defend, indemnify and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from any and all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Contract or the acts, failures to act, errors or omissions of the Association, or any of Association's agents, subcontractors, volunteers, or participants in performance of this Contract.

Nothing contained in this Section of this Contract shall be construed to create a liability or a right of indemnification in any third party.

The provisions of this Section regarding indemnification and the Section above regarding insurance coverage shall survive the termination of this Contract.

- M. **Independent Contractors.** The DEVELOPER and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the CITY, and shall not attain any rights or benefits under the civil service or pension ordinances of the CITY, or any rights generally afforded classified or

unclassified employee; further they shall not be deemed entitled to state Compensation benefits as an employee of the CITY.

- N. **Availability of Funds.** Funding for this Contract is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.
- O. **Disclosure of Confidential Information.** The use or disclosure by any party of any confidential information concerning a recipient or client for any purpose not directly connected with the City's or the DEVELOPER'S responsibilities with respect to services provided under this Contract is prohibited except on written consent of the recipient or client, their attorney or their responsible parent or guardian or as otherwise provided by law.
- P. **Reassignment of Services.** The DEVELOPER shall not assign or subcontract any portion of services provided within the terms of this Contract without obtaining prior written approval from the City, at its sole discretion. All terms and conditions of this Contract shall apply to any approved subcontract or assignment related to the Contract.
- Q. **Illegal Provisions.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Contract is held by the courts to be illegal, the validity of the remaining provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If it should appear that any provision hereof is in conflict with any statutory provision of the United States or the State of Washington, said provisions which may conflict therewith shall be deemed modified to conform to such statutory provision.
- R. **Survival.** Any provision of this Contract which imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

## Exhibit "B"

### Yakima Valley Partners Habitat for Humanity

#### A.) PROPOSAL SUMMARY/PROJECT ABSTRACT

Yakima Valley Partners Habitat for Humanity will construct a single-family home located at **2906 W. Arlington Ave.** and sell it to a qualified low-income, first-time homebuyer and monitor the "Affordability Period" for a period of no less than FIFTEEN (15) years, after which all net proceeds shall be granted to Habitat.

#### B.) ASSESSMENT OF NEED/PROBLEM STATEMENT

Yakima Valley Partners Habitat for Humanity will provide the construction of a single-family dwelling to be sold to a qualified low to moderate-income first-time homebuyer and monitor the project for a period of no less than FIFTEEN (15) year affordability period in exchange for all net proceeds redeemed from the sale of the home located at **2906 W. Arlington Ave.**

#### C.) PROGRAM GOAL AND OBJECTIVES

##### Goal

Create another affordable single-family residence within in the City of Yakima.

##### Objectives

1. Prepare the site for construction.
2. Construct a new single-family dwelling.
3. Sell the new single-family home to a qualified low to moderate first-time homebuyer.

#### D.) METHODOLOGY

From the contract execution date to continue until the termination date as specified within this contract, Yakima Valley Partners Habitat for Humanity will construct a new single-family dwelling to be sold to a qualified low to moderate first time homebuyer to be monitored for a FIFTEEN (15) year affordability period per HUD regulations governing HOME Investment funded projects.

#### E.) OUTCOMES & EVALUATION

As a condition of reimbursement, Habitat for Humanity will,

1. Prepare the site for construction.
2. Construct a new Single-family dwelling.
3. Sell the property and dwelling to a qualified low to moderate-income first-time homebuyer.
4. Monitor the property at **290 W. Arlington Ave.** for a period of no less than a FIFTEEN (15) year affordability period as per HOME Investment requirements.

#### F.) BUDGET

Yakima Valley Partners Habitat for Humanity will be **reimbursed up to \$87,500** between the contract execution date and end upon completion of construction, for eligible activities, subject to the terms and conditions of the Contract.

**Exhibit "C"**

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**Exhibit “D”**

**Subrecipient Request for Funding Application**

Is the attached proposal as submitted to the City of Yakima on November 2, 2022.

## EXHIBIT D



**Office of Neighborhood Development Services (ONDS)**



Yakima Valley Partners  
Habitat for Humanity  
Single Family Dwelling Construction  
2906 W Arlington, Yakima WA 98902  
November 2, 2022

## Yakima County Projected Need for New Housing Units – 2015-2040

	2015 Population Estimates	2040 Population Projected	Projected New Residents	Persons Per Household	2040 Projected New Housing Units	Average New Housing Units Needed Annually
Yakima Co	249,970	318,494	68,524	3.0	22,841	914
Yakima City	93,220	117,608	24,388	2.6	9,380	375
Toppenish	8,965	10,377	1,412	3.7	382	15
Sunnyside	16,280	19,578	3,298	3.4	970	39
Granger	3,640	4,816	1,176	4.4	267	11
Grandview	11,200	19,578	8,378	3.4	2,464	99

**Source: Based on OFM Median Population Projections & 2015 OFM Actuals**

Yakima Valley Partners Habitat for Humanity is proposing build sites in 3 locations throughout the city of Yakima in the next 18 months. Our program specifically targets and serves households earning low to very low income according to HUD median annual household income.

Habitat pre-qualifies program applicants based on willingness to partner, need, current living situation, and ability to pay for the Habitat home. Once selected for our program, we provide housing counseling focused on credit management and or repair, budgeting, and pre-purchase education. Applicants are referred to other community non-profit agencies for first time home buyer education & other additional assistance as deemed necessary.

Yakima Valley Partners Habitat for Humanity (YVPHFH) is seeking assistance in building affordable housing on a lot owned by YVPHFH. We are proposing construction of a single-family home on Voelker Ave in Yakima utilizing HOME funds. In partnership with the Office of Neighborhood Development Services (ONDS), YVPHFH will build a 4 bedroom 1-1/2-bathroom 1240 square foot home. The proposed home will serve a low to very low-income family. This family will be pre-qualified, first-time home buyers, whose income is between 30%-80% of the Area Median Income (AMI) for Yakima County.

### **Market Assessment – Housing Needs**

Yakima Valley Partners Habitat for Humanity has identified three Key Factors driving Affordable Housing Needs in Yakima County, specifically within the city of Yakima:

1. Low Wages - The proposed projects target households whose incomes are at or below 80% Area Median Income for Yakima County. These include agricultural workers, service employees, medical clinic employees, school district employees and other professionals. Typically, these households cannot afford full market rate homes and financing for the acquisition of a new home.
2. Aging Housing Stock - There are pre-existing homes in the City and County, available for purchase, however; most of these homes are older and in need of considerable

repair and/or rehabilitation. In addition, the age of the homes may either require additional mitigation costs for asbestos and/or lead-based paint or expose new unsuspecting homebuyers and their households to dangerous toxins should they do the repairs themselves.

3. Housing Shortage - There are semi-new and new construction homes on the market for sale. With the current shortage, the demand for new homes has increased the average market price and limits options for households with fewer resources and lower income.

### **Program Purpose and Projected Outcome**

YVPHFH's intent is to build and provide affordable housing opportunities to low-income households in Yakima County. Our proven partnership over the years shows the value and impact we create when working together.

The project involves development of a single parcel number 181326-23555 at 2906 West Arlington Ave., Yakima to enable construction of a single-family residence. This parcel provides enough land for a single-family construction residence to be constructed by YVPHfH. Actual construction of the home will take place in 2024-2025.

The specific project that this application refers to is typical of the Yakima Valley Partners Habitat for Humanity process detailed below.

Volunteers account for most of all labor needed on a Habitat job site. Volunteers for this project will include students in the Perry Tech Electrical program, Habitat for Humanity households, & friends working to complete their "sweat equity" hours. Volunteers will be involved in all areas of the organization including committee work, job site construction, and office assistants.

Yakima Valley Partners Habitat for Humanity is a non-profit, non-denominational Christian housing organization that builds homes in partnership with qualified low-income households in the Yakima Valley. Our households' incomes are within 30-80% of the median income for households in Yakima County. We offer two funding options for program participants: One - a zero-interest mortgage funding by YVPHfH; Two - for higher AMI applicants we offer 3<sup>rd</sup> party funding through Yakima Federal Savings & Loan, with a low interest mortgage program designed specifically for our participants, which closely mirrors the USDA 502 Loans. This funding approach makes decent, affordable housing a reality for more households than we would be able to serve if we only used in house funding.

Yakima Valley Partners Habitat for Humanity's Affiliate is governed by an Affiliate Board of Directors. This board is comprised with a minimum of 1/3 of the members being representatives of the communities we serve.

Founded in 1984, Yakima Valley Partners Habitat for Humanity has completed 196 new homes, representing nearly 850 individuals whose lives have been changed through our program. These homes represent nearly \$20,000,000 in property value added to the local tax rolls. This is yet another way Habitat for Humanity has aided in stimulating the local

economy. Additionally, we have several hundred volunteers, both locally and from all over the nation, provide thousands of hours of volunteer work for our program each year.

### **How It Works**

Each year our Board of Directors determines where and how many homes we will be able to build the following year. This is based on budget and land availability in the different communities. We seek to build 40% of our homes in Yakima and 60% in the mid and Lower Valley.

We then advertise an application meeting for those who would like to apply for a Habitat for Humanity home. At this meeting we explain the process and the Family Selection Criterion. It is as follows:

#### **1. Ability to Repay:**

YVPHfH's program is a self-help program which requires participants to purchase their home. Our pricing process is layered to achieve maximum affordability for our participants. We set the purchase price at fair market value based on a 3<sup>rd</sup> party appraisal. We then determine the participants affordable mortgage limit. YVPHfH then assists the participants with grants and in most cases a forgivable 2<sup>nd</sup> mortgage to meet the affordability needs and requirements of participants and our funding terms. This process helps us accomplish an affordable mortgage payment (not to exceed 30% of the household's income). Our participants' mortgage payments (include principal, taxes, and insurance) are typically less than their current rent. All funds received from 1<sup>st</sup> mortgages of our homes are used for the construction of future homes. This makes Habitat for Humanity a self-perpetuating home ownership program. Qualified households earn between 30% and 80% of the median area income.

#### **2. Willingness to Partner:**

The chosen households must be willing to invest at least 500 hours of "sweat equity" with YVPHfH. Sweat equity hours must include a minimum of 125 hours of construction on their home or other Habitat homes and 75 hours in approved "Homeowner Education" courses. This includes a financial literacy program, currently using LOVE Inc.'s program and a "First time home buyer" class.

#### **3. Current Living Conditions:**

The current living conditions of a family must create a burden in at least one of the following areas:

- Health and Safety
- Over Crowding
- Financial Hardship

Applications are accepted in person at our administration office. Applicants who meet the above criteria are then reviewed by the Homeowner Selection Committee for verification of the participant selection criteria. When this is complete the households are presented to the Affiliate Board of Directors for approval.

The homeowner selection process is ongoing until all current projected homes are matched with a family.

**Funding**

Most of the funding for YVPHFH projects is from foundations, local businesses, churches, and individuals. Government grants, when available, are used for land acquisition, infrastructure (sewer, water, etc.) development, and administration costs.

Additionally, Yakima Valley Partners will fund the project through income received from Habitat Store profits, general donations, and funds from principal payments being made by current homeowners paying their monthly mortgage payment.

**PROJECT FINANCIAL INFORMATION**

Total Cost:	CHDO request:	Other financing:
\$ 285,750	\$ 87,500	\$ 198,250
CHDO request as % of total cost <u>30.6</u> %		
CHDO request from the City: Loan: \$		Grant: \$ 87,500
Funds to be returned to the City: Yes <input type="checkbox"/>		No <input checked="" type="checkbox"/>
See attached Subsidy Analysis and Cost Estimate		

**PROJECT SCHEDULE**

**ACTION:**

**Target Date in Months from Project Approval:**

**Site:**

Option \_\_\_\_\_ Completed \_\_\_\_\_  
 Acquisition \_\_\_\_\_ February 3, 2021 \_\_\_\_\_

**NON-CHDO Financing:**

Application \_\_\_\_\_ Pre-approved Loan Funding \_\_\_\_\_  
 Conditional Commitment \_\_\_\_\_ January 1, 2022 \_\_\_\_\_  
 Firm Commitment \_\_\_\_\_ June 1, 2022 \_\_\_\_\_

**Design:**

Selection of Architect \_\_\_\_\_ Completed – Yakima Valley \_\_\_\_\_  
 Partners \_\_\_\_\_  
 Preliminary Designs \_\_\_\_\_ April 2018 \_\_\_\_\_  
 Final Designs \_\_\_\_\_ June 2022 \_\_\_\_\_

**Bidding:**

Advertise \_\_\_\_\_ N/A \_\_\_\_\_  
 Open Bids \_\_\_\_\_ N/A \_\_\_\_\_  
 Award Bids \_\_\_\_\_ N/A. All work is done by staff and volunteers \_\_\_\_\_

**Construction:**

Begin Construction \_\_\_\_\_ March 2024 \_\_\_\_\_  
 Complete Construction \_\_\_\_\_ 12/31/2024 \_\_\_\_\_

**Occupancy:**

HomeTransfer to low income family \_\_\_\_\_ January 2025 \_\_\_\_\_

**PROJECT DEVELOPMENT TEAM**

The following companies or individuals constitute the development team. Where individual members have not yet been identified, the City must be notified as they are selected.

Staff Contact Person: Meloney Rosen
Other Financial Sources: Yakima Federal Savings and Loan, Enero Macias
Other Partnerships: Perry Tech Electrical Programs
Other: Building Committee: Chair - Darin Peters, Regional Project Manager for Pontifex, Charlie Eglin – Contractor, Jeff Swan, County Judge, Rip Hollingbery, Retired Architect, Gus Carvajal, Dynamic Solar, Habitat Staff - Greg Rapp, Construction Manager, David Reeder & Gary Green site supervisors.

**CERTIFICATION**

I hereby certify that the above statements are true; that I am authorized to sign this application and to make these statements, on behalf of the applicant organization; and that the organization understands that misrepresentation of any facts which leads to the improper allocation and expenditure of public funds may result in legal action against the organization for retrieval or any such funds and appropriate penalties.

Signed:

  
 \_\_\_\_\_  
 Signature

February 16, 2024  
 \_\_\_\_\_  
 Date

Meloney Rosen  
 \_\_\_\_\_  
 Name

Executive Director  
 \_\_\_\_\_  
 Title

Yakima Valley Partners Habitat for Humanity  
 \_\_\_\_\_  
 Organization