

# **AGREEMENT BETWEEN THE CITY OF TACOMA AND TACOMA COMMUNITY REDEVELOPMENT AUTHORITY**

## **HOME Subrecipient Agreement**

This contractual agreement, referred to as this "Agreement", is comprised of these General Terms and Conditions, any attached Exhibits, and subsequent Amendments. The Agreement is a contract between the **CITY OF TACOMA**, subsequently referred to as the "City", and **TACOMA COMMUNITY REDEVELOPMENT AUTHORITY (TCRA)**, subsequently referred to as the "Subrecipient". Subrecipient agrees to the terms and conditions set forth in this Agreement, including the following Exhibits:

- Exhibit A** Applicable Definitions
- Exhibit B** Scope of Work
- Exhibit C** Compensation and Financial Requirements
- Exhibit D** Contract Compliance; and

### **1. PERIOD OF PERFORMANCE**

The period of performance for this Agreement begins **July 1, 2015** and terminates **June 30, 2018**. Per HOME regulations funding under this Agreement must be committed to projects no later than June 30, 2017. Funding under this Agreement must be disbursed for committed projects no later than July 31, 2018. The City reserves the right to extend this Agreement for additional periods, and may be done without City Council approval. The decision to extend this Agreement is subject to the availability of funding, the continued priority of need for a specific service, and satisfactory performance by the Subrecipient during the period specified in this Agreement. Notification of intent to contract for additional periods with the Subrecipient will occur prior to the expiration of this Agreement.

### **2. CONSIDERATION**

The maximum consideration for this Agreement shall not exceed **\$943,877.00 (Nine Hundred Forty-three Thousand Eight Hundred Seventy-seven and No/100 Dollars)**.

### **3. SCOPE OF WORK AND REIMBURSEMENT**

- B. The City agrees to pay the Subrecipient for services outlined in Exhibit B, Scope of Work, and in accordance with Exhibit C, Compensation and Financial Requirements. Payment by the City is subject to receipt of such funds by the City from the funding source.
- C. Total funds provided under this Agreement cannot be modified and administrative costs cannot be increased without the express prior written approval of the City.
- D. If the City cannot make payment to the Subrecipient due to non-payment by the funding source, the failure to pay by the City shall not constitute a breach of contract.

### **4. AMENDMENTS**

- A. All Amendments to this Agreement shall be in writing and approved by both parties to this Agreement.

- B. No Amendments to this Agreement shall be implemented without prior written approval by the City, provided that the City may administratively extend the time for performance under this contract without needing City Council approval.
- C. Changes to the general scope of the services to be performed under this Agreement or to any other provisions of this Agreement shall be made by written Amendment.

**5. NON-DISCRIMINATION IN EMPLOYMENT AND CLIENT SERVICES**

- A. During the performance of this Agreement, the Subrecipient shall comply with federal, state, and local laws including, but not limited to:
    - Section 703, Titles VI and VII of the Civil Rights Act of 1964 [42 U.S.C. 2000d and e], the Civil Rights Act of 1991 [42 U.S.C. 1981],
    - The Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. 12101 *et seq.*],
    - Sections 503 and 504 of the Rehabilitation Act of 1973 [29 U.S.C. 793 and 794], the Age Discrimination in Employment Act of 1967 [29 U.S.C. 62'1],
    - The Age Discrimination Act of 1975 [42 U.S.C. 6102],
    - The Vietnam Era Veterans Readjustment Assistance Act of 1974 [38 U.S.C. 2011],
    - Any relevant Executive Order (E.O.) issued by the President of the United States
    - The Washington State Law Against Discrimination [Chapter 49.60 RCW], and
    - Any related provisions of the Code of Federal Regulations (CFR), Washington Administrative Code (WAC) and Revised Code of Washington (RCW), or any subsequent amendments to these provisions.
  - B. Requirements of the City's Non-discrimination Plan are incorporated by reference to this Agreement and include, but are not limited to paragraphs listed below.
  - C. The Subrecipient shall not discriminate against any employee or applicant for employment, nor conduct any unlawful employment practices because of race, color, religion, creed, national origin, sex, sexual orientation, age, marital status, veteran status, or the presence of
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any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a disabled person. This requirement does not apply, however, to a religious corporation, association, or educational institution with respect to the employment of individuals of a particular religion to perform work connected with the operation of such corporation, association, or educational institution, in pursuit of its activities.

- D. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, sex, sexual orientation, age, marital status, veteran status, or the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a disabled person. For newspaper advertisements, the Subrecipient may state that the Subrecipient is an Equal Opportunity Employer, instead of using the longer qualification.
- E. The Subrecipient will not, on the basis of race, color, religion, creed, national origin, sex, age, disability, sexual orientation, marital status, or veteran status:
1. Deny an eligible individual any services or other benefits provided under this Agreement or any subcontracts awarded pursuant to this Agreement;
  2. Provide any services or other benefits to an individual which are different, or are provided in a different manner from those provided to others under this Agreement or any subcontracts awarded pursuant to this Agreement;
  3. Subject an individual to unlawful segregation or separate treatment, or unlawful discriminatory treatment in any manner related to the receipt of any services and/or the use of the Subrecipient's facilities, or other benefits provided under this Agreement; nor
  4. Deny any individual an opportunity to participate in any service provided by this Agreement, or afford an opportunity to do so which is different from that afforded others under this Agreement. In determining: (i) the types of service or the benefits to be provided; (ii) the class of individuals to whom, or the situation in which, such services or other benefits will be provided; or (iii) the class of individuals to be afforded an opportunity to participate in any service or other benefits; the Subrecipient will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, religion, creed, national origin, sex, sexual orientation, age, marital status, veteran status, or the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a disabled person.
- F. As required by Title III of the ADA regarding places of public accommodation, the Subrecipient will ensure equal opportunity for individuals with disabilities to receive services. The Subrecipient will make reasonable modifications to policies, practices, and procedures that deny equal access to individuals with disabilities.

## **6. DRUG-FREE WORKPLACE**

The Subrecipient shall maintain a written drug-free workplace policy, notifying employees that the possession or use of a controlled substance is prohibited in the workplace, and specifying the actions which will be taken against employees for any violation of the policy. The policy shall be developed as soon as practically possible, but no later than sixty (60) calendar days after the effective date of this Agreement.

## 7. RECORDS AND REPORTS

- A. The Subrecipient shall retain all books, records (including medical and treatment records), documents, reports, and other data relevant to this Agreement, for a minimum of six (6) years after expiration or termination of this Agreement, unless longer and otherwise provided or required by law. If any audit, claim, litigation, or other legal action involving the records is started before applicable retention dates expire, the records shall be maintained until completion and resolution of all issues arising there from or until the end of applicable retention dates, whichever is later.
  - B. An adequate audit trail shall be maintained. All transactions are to be clearly documented. The documentation is to be readily available for examination.
  - C. The Subrecipient shall clearly separate allowable costs from unallowable costs, in accordance with the regulations and restrictions normally associated with federal programs including OMB Circular A-21, A-87 (2 CFR 225), A-110, A-122 (2 CFR 230) and A-133, A-102 or A-110 (2 CFR 215) (as appropriate), OMB's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and other such uniform administrative requirements for grants-in-aid now in effect or which hereafter may be made applicable by local, state or federal laws or regulations. All of the above are incorporated in this Agreement by reference.
  - D. The Subrecipient shall maintain written policy and procedural manuals for all services, information systems, personnel, and loan servicing in sufficient detail such that operations can continue should staff changes or absences occur.
  - E. On behalf of the Subrecipient, the City's Finance Department must establish and maintain an accounting system which adequately and separately identifies all funding sources and all application of funds associated with providing the required services including, but not limited to, local, state and federal grants, fees, donations, federal funds, and all other funds, public or private. All costs incurred by the Subrecipient must be accurately identified and recorded even when no revenue is received for services. This accounting system provides the means to gather fiscal data necessary to determine: a) the cost of a unit of service; b) the bid price, as applicable; and c) if funds were generated in excess of allowable costs.
    - 1. These records shall contain information pertaining to projects, contracts, grants, or sub-grant awards, and all authorizations, obligations, non-obligated balances, assets, outlays, liabilities, expenditures, and revenue.
    - 2. The Subrecipient shall maintain all books, records, documents, reports, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in performance of this Agreement. Subrecipients shall maintain their fiscal books, records, documents, and other data in a manner consistent with generally accepted accounting principles.
  - F. All records required to be maintained by this Agreement or by state and federal regulations, except for exempt medical and treatment records, are public records and shall be maintained and released, when requested, in accordance with applicable laws.
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## **8. RIGHT TO INSPECTION AND USE OF MATERIALS**

- A. City representatives, the State Auditor, and officials of the federal government shall have the right to review and monitor the financial and service components of this Agreement. The City's review will occur with reasonable notice, and will include, but is not limited to, on-site inspection by City agents or employees, and inspection of all records or other materials which the City deems pertinent to performance, compliance, or quality assurance in conjunction with this Agreement.
- B. During the term of this Agreement and for one calendar year following termination or expiration of this Agreement, the Subrecipient shall, upon receiving reasonable notice, provide the City with access to its place of business and to its records that are relevant to compliance with this Agreement.
- C. The City may duplicate, use, and disclose in any manner, for any purpose whatsoever and authorize others to so do, all material created under this Agreement and paid for by the City.

## **9. DEBARMENT OF SUBRECIPIENT AND CONTRACTORS**

The Subrecipient shall assure that, its officers, agents, subcontractors and consultants shall not fund, contract with, or engage the services of any consultant, subcontractor, supplier, or other party who is debarred, suspended, or otherwise ineligible to receive funds. The names of all contractors, subcontractors, consultants, suppliers, and other parties who will receive funding under this project shall be checked and approved by the City before entering into any agreement with them for the provision of goods and services.

The Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the Agreement by any federal department or agency. If requested by the City, the Subrecipient shall complete a Certification of Debarment, Suspension, Ineligibility, and Voluntary Exclusion form.

## **10. RESOLUTION OF DISPUTES**

- A. A Subrecipient with a complaint involving this Agreement is encouraged to first attempt to resolve the matter with the City informally by telephoning the appropriate City representative or by meeting with that individual in person. If the informal dispute resolution process is unsatisfactory and the Subrecipient elects to register a formal complaint, a Subrecipient shall submit a detailed written description of the issues which form the basis of the complaint to the Housing Division Manager of the Community and Economic Development Department at 747 Market Street, Room 900, Tacoma, WA 98402.
- B. Upon receipt of a formal written complaint, the Housing Division Manager or designee will promptly send a written confirmation to the Subrecipient acknowledging receipt of the complaint. The Housing Division Manager or designee shall also promptly contact the Subrecipient to establish a meeting to discuss and seek agreement and resolution of the formal complaint. The Housing Manager shall issue a written decision regarding the Subrecipient's formal complaint no later than fifteen (15) working days following completion of the meeting.
- C. If agreement and resolution are not reached and the Subrecipient elects to pursue the complaint further, the Subrecipient may, within five (5) working days after receipt of the Housing Division Manager's written decision, file a written appeal to the Director of

Community and Economic Development Department at the address listed in this Agreement. The appeal must state all facts and arguments upon which the appeal is based. The Director or designee will render a written decision within fifteen (15) working days following completion of the meeting.

- D. The Subrecipient may appeal an adverse decision of the Director of the Community and Economic Development Department to the Tacoma City Manager, 747 Market Street, Room 1200, Tacoma, Washington, 98402. The appeal must be received in writing by the Tacoma City Manager within five (5) working days of the Subrecipient's receipt of the Director's decision. Upon receipt of a formal written appeal, the Tacoma City Manager or designee will schedule a meeting with the Subrecipient within fifteen (15) working days of receipt of the appeal. The Tacoma City Manager or designee will issue a written decision within fifteen (15) working days following completion of the meeting.
- E. In the event that any subsequent litigation should arise concerning this Agreement, the venue of such litigation shall be in the courts of Pierce County. This Agreement shall be governed by the laws of the State of Washington.
- F. All mailings by and to the City required in this section of the Agreement shall be by certified mail with return receipt requested to the Subrecipient's address of record.

## 11. LOBBYING CERTIFICATION

The Subrecipient certifies that, to the best of its knowledge and belief:

- A. No appropriated funds have been paid, or will be paid by, or on behalf of the Subrecipient, or officers or employees, to any person for influencing, or attempting to influence an officer or employee of any governmental 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 contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any contract, grant, loan or cooperative agreement.
- B. If federal appropriated funds have been paid, or will be paid, to any person for influencing, or attempting to influence, an officer or employee of any governmental agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded agreement, the Subrecipient shall complete and submit to the City, a federal Standard Form-LLL, "Disclosure Form To Report Lobbying" in accordance with its directions. The form is available from the City on request.
- C. The Subrecipient shall require that the language of this certification be included in all agreements issued to their subcontractors, and that all recipients certify and disclose accordingly.
- D. For federally funded Agreements, this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**CITY OF TACOMA**

**TACOMA COMMUNITY REDEVELOPMENT AUTHORITY**

\_\_\_\_\_  
T.C. Broadnax, City Manager

\_\_\_\_\_  
Curt Curtis, TCRA President

\_\_\_\_\_  
Ricardo Noguera, Director  
Community & Economic Dev. Dept.

\_\_\_\_\_  
Andrew Cherullo, Finance Director

Approved as to form:

\_\_\_\_\_  
Debra Casparian, Deputy City Attorney

Attest:

\_\_\_\_\_  
Doris Sorum, City Clerk

## Applicable Definitions

Many terms used throughout this Agreement are defined in Title 388 Washington Administrative Code (WAC), as subsequently amended, and have the meanings indicated in that title. Additionally, the following terms shall have the following definitions:

"Acquisition Cost" shall mean that amount expended for property, excluding interest, plus, in the case of property acquired with a trade-in, the book value {acquisition cost less amount depreciated through the date of trade-in) of the property traded in. Non-expendable personal property, the value of which was expended when acquired, has a book value of zero {0} when traded in.

"Budget, Accounting, and Reporting System for Counties and Cities and Other Local Governments" will be referred to as BARS.

"Business Entity" means any person, or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit with the City. The term business entity shall include, but not be limited to partnerships, corporations, Subrecipients, and subcontractors doing business with the City.

"Client", "Consumer", "Participant", "Patient", or "Recipient" shall mean any individual applying for or receiving services under this Agreement.

"CFR" means Code of Federal Regulations. All references in this Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.gpoaccess.gov/CFR/>

"Contract" shall mean the Agreement, and any Scope of Work and Exhibits that are attached to and incorporated by reference to the Agreement.

"Contract Budget" shall mean the budget incorporated in this Agreement, identifying a plan for the expenditure of contracted funds.

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

"HOME Written Agreement" shall mean that specific document between the City and Subrecipient, the Subrecipient and Developer, or the Subrecipient and any Beneficiary detailing the HOME and other federal requirements, as appropriate for the project, as provided for in 24 CFR Part 92.504, and including, but not limited to the use of HOME funds, any affordability requirements, the project requirements, and property standards.

"Household" shall mean all persons living in the same household who are related or unrelated persons that reside in the same dwelling unit as their permanent residence. This does not include live-in aides and/or unrelated persons paying rent for a room.

"Independent Auditor" shall mean either a certified public accounting firm or a certified public accountant. "Information Technology (IT) Purchases" include, but are not limited to, computers, software, desk, telephones, and cellular telephones, but do not include keyboards and mice.

"Non-expendable Personal Property" shall mean tangible personal property having a useful life of more than one (1) year and an acquisition cost of \$5,000 or more per unit.



"Personal Property" shall mean property of any kind, including small and attractive items and IT equipment, except real property.

"RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. The RCW can be accessed at <http://apps.leg.wa.gov/RCW/>.

"Real Property" shall mean any interest in land.

"Small and Attractive Items" means those items with a value of \$300 or more that are particularly vulnerable to loss. Examples of these items include, but are not limited to, communication equipment, cameras, IT accessory equipment such as scanners, office equipment, televisions, cellular telephones, DVDs, VCRs and tablets.

"Subcontract" shall mean any agreement between the Subrecipient and a Subcontractor or between a Subcontractor and another Subcontractor that is related to this Agreement, provided that the Subcontract does not include the purchase of:

- A. supplies;  
or
- B. support services that do not directly affect the funded services. The terms Subcontract and Subcontracts shall mean Subcontract(s) in any tier.

"Subcontractor" shall mean any person, partnership, corporation, association, or organization, not in the employment of the Subrecipient, who is performing part of the contract or Subcontract from a Subcontractor. The terms Subcontractor and Subcontractors shall mean Subcontractor(s) in any tier.

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

Characteristics indicative of a federal award received by a subrecipient are when the organization:

- A. determines who is eligible to receive what federal financial assistance;
- B. has its performance measured against whether the objectives of the federal program are met;
- C. has responsibility for programmatic decision making;
- D. has responsibility for adherence to applicable federal program compliance requirements;
- E. uses the federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity;
- F. operates on the basis of allowable costs no payment above cost is allowed; and
- G. may be required to match or share costs of the program.

"Useful Life" of non-expendable personal property shall mean that useful service life as based upon the United States Department of Treasury, Internal Revenue Service, policies on depreciation for tax purposes, unless the Subrecipient or Subcontractor documents in writing some different period that the City agrees to in writing.

"Vendor" shall mean a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program.

Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- A. provides the goods and services within normal business operations;
- B. provides similar goods or services to many different purchasers;
- C. operates in a competitive environment;
- D. provides goods or services that are ancillary to the operation of the federal program;
- E. is not subject to compliance requirements of the federal program; and
- F. the scope of work to be performed is defined by the awarding agency (the awarding agency identifies what it is "buying").

"WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. The WAC can be accessed at <http://apps.leg.wa.gov/wac/>.

"Washington State Department of Social and Health Services" shall be referred to as DSHS.

"Work Order" is a document attached to and incorporated by reference to the -Agreement which states the goods, services, and/or benefits to be delivered, and any other terms and conditions that apply to the work.

**Exhibit B**  
**Scope of Work**

**1. Intention and Deadlines.**

**Intent.** The intent of this Agreement is to enhance Tacoma's housing development climate by providing loans and technical assistance to income qualified homeowners, homebuyers, and to organizations that develop, own and/or sponsor affordability housing, including shelters, group homes, special needs and transitional housing, opportunities for low-income households. In certain instances where the need and/or opportunity is identified the subrecipient reserves the right to directly acquire and develop projects to meet the intent of this Agreement.

**Geographical Limits:** Loans and technical assistance is limited to housing and businesses located within the Tacoma city limits.

**Terms:** The Agreement shall be effective July 1, 2015 and terminate at the end of the period of maturity or affordability or any subsequent enforcement actions arising during the period of affordability, whichever is later.

**Commitment Deadline:** Funding under this Agreement must be committed to projects no later than June 30, 2017.

**Disbursement Deadline:** Funding under this Agreement must be disbursed for committed projects no later than July 31, 2018.

**2. Scope for Housing**

- A. To accomplish this intent the Subrecipient shall fully comply with all noted regulations, requirements and conditions as set forth in this Agreement and serve low income households residing in the City of Tacoma through their Housing program. Housing activities will be provided in accordance with established HOME regulations 24 CFR Part 92 (Subparts A – L) and guidelines to include any of the following, depending on market, demand, staffing availability and policy direction of the TCRA:
1. Providing owner-occupied single family housing rehabilitation loans per unit in accordance with 24 CFR Part 92.254(a)(2);
  2. Providing loans to borrowers for the development of affordable rental or ownership housing. Development includes acquisition, rehabilitation and/or new construction;
  3. Utilize HOME funds for the direct acquisition and rehabilitation of both single family and multifamily multifamily projects;
  4. Hold properties acquired by the Subrecipient and/ or otherwise rehabilitated with HOME funds for the purpose of obtaining program income as it arises from rents or future sale.
  5. Providing loan programs for low income, first-time homebuyers, including assistance for down payment assistance and closing costs;
  6. Continuing to provide funding opportunities, through loans or developer subsidy, to Community Housing Development Organizations (CHDOs) for the development of affordable rental or ownership housing;
  7. Reviewing and approving all loans for compliance with TCRA policies and regulations;

- 8. HOME program loan repayments and interest (Program Income) from previous loans will be used before HOME grant funds are obligated as described in Exhibit C, Sections C through F of this Agreement;
- 9. Completing reports and providing information as required by the City to demonstrate compliance with regulations, client eligibility, goals and objectives to support the HUD 5-Year Consolidated Plan, the Annual Action Plan, the Consolidated Annual Performance and Evaluation Report (CAPER) and other reports as may be required; and
- 10. Servicing the portfolio of loans extended, including tracking of timely payments, maturity, maintaining insurance coverage, monitoring occupancy, current tax status, foreclosure and title issues.

B. Clients may request services at 747 Market Street, Tacoma Washington Monday through Friday during regular business hours between 8:30 AM and 5 PM.

C. Significant deviation from the Scope of Work or Compensation and Financial Requirements requires written concurrence by the City as an amendment to this Agreement. The Subrecipient must submit their request in writing prior to making changes to this Agreement.

**3. Client Eligibility**

- A. Per 24 CFR 92.203, the Subrecipient shall screen all clients served with funds provided under this Agreement and maintain records documenting that one hundred percent (100%) of the total number of clients served do not have a gross annual household income in excess of the limits specified below in Paragraph C, Income Definitions, for Low Income Households with the applicable number of persons per household.
- B. A household is defined as all persons living in the same household who are related or unrelated persons that reside in the same dwelling unit as their permanent residence. This does not include live-in aides and/or unrelated persons paying rent for a room.
- C. Subrecipient agrees to use the most current HOME program income guidelines as issued by HUD. The limits in effect as of the date of this agreement are listed in the table below. This definition is to be used until HUD releases updated HOME limits for the Tacoma/Pierce County Metro-Statistical Area; this update is historically made available by HUD in the first quarter of the calendar year.

Income Limits Summary – 2014 HOME Program Effective May 1, 2014			
Household Size	Extremely Low Income (30% AMI)	Very Low Income (50% AMI)	Low Income (80% AMI)
1 person	\$14,100	\$23,450	\$37,550
2 persons	\$16,100	\$26,800	\$42,900
3 persons	\$18,100	\$30,150	\$48,250
4 persons	\$20,100	\$33,500	\$53,600
5 persons	\$21,750	\$36,200	\$57,900
6 persons	\$23,350	\$38,900	\$62,200
7 persons	\$24,950	\$41,550	\$66,500
8 persons	\$26,550	\$44,250	\$70,800

D. The Subrecipient agrees to utilize the method outlined in 24 CFR Part 5 to determine income eligibility for rental projects. For homeownership projects, the Subrecipient agrees to determine income eligibility,

on a program by program basis, either through the method outlined in 24 CFR Part 5 or as outlined by the Internal Revenue Service's 1040 income calculation. For either calculation, the Subrecipient will ensure that a minimum of two (2) months (60 days) of source documents will be collected when determining income and will project the *anticipated* income for a 12-month period.

**4. Project Requirements**

Projects assisted utilizing HOME funds must meet the following project requirements:

**A. Per Unit Subsidy**

The total amount of HOME Funds that may be invested on a per-unit basis in affordable housing may not exceed the per-unit dollars limitations as established under Section 234 of the National Housing Act for Condominium Housing basic mortgage limits that apply to the area in which the housing is located. HUD may issue an exception for high-cost percentage (HCP) for specific areas. If designated as an HCP area, HUD will allow the per-unit subsidy amount to be increased on a program-wide basis up to two hundred forty percent (240%) of the original per unit limits.

**B. Subsidy Layering and Underwriting**

In accordance with Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 all projects receiving HUD subsidy combined with any form of other governmental assistance are required to undergo a subsidy layering review. This review will certify that there are no overlaps of governmental subsidies when combining housing assistance programs administered by FHA with other forms of federal funds administered by Federal, State, or local agencies. For underwriting the Subrecipient must: (1) examine the sources and uses of each project and determine whether the costs are HOME-eligible, reasonable and necessary; (2) assess the market conditions of the neighborhood in which the project will be located; (3) assess the experience and financial capacity of the developer, (4) ensure that there are sufficient, creditable financial sources committed for the project, (5) that the project meets the Subrecipients underwriting guidelines, and (6) demonstrate that the Subrecipient is not investing any more HOME funds, alone or in combination with other funds, than are necessary to provide quality, affordable, and financially viable housing for at least the duration of the affordability period.

**C. Property Standards**

HOME funds are intended to support modest housing units. All HOME assisted projects, that include construction and rehabilitation, must meet local building codes and standards for decent, safe and affordable housing, written rehabilitation standards, and conform to the model codes as identified in 24 CFR 92.251. Acquisition only projects need to meet Uniform Physical Conditional Standards (UPCS), as applicable.

**D. Rental Requirements (Rental Projects only)**

In order to qualify as affordable housing in accordance with 24 CFR 92.254, HOME-assisted units in a rental housing project must be occupied by households that are eligible as low income households and must also meet the following requirements:

1. For all HOME-assisted projects, the maximum allowable rent is the HUD calculated High HOME Rent Limits or the Low HOME Rent Limits. The limits in effective as of the date of this agreement are listed in the table below. Any updates HOME rental limits can be located at:

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rents/>.

2014 Rents, effective May 1, 2014						
	1	2	3	4	5	6
Efficiency	Bedroom	Bedroom	Bedroom	Bedroom	Bedroom	Bedroom

Low HOME Rent Limit	\$615	\$658	\$790	\$913	\$1,018	\$1,123	\$1,228
High HOME Rent Limit	\$638	\$767	\$999	\$1,178	\$1,295	\$1,410	\$1,525

2. The Subrecipient shall use utility allowances as adopted by the Tacoma Housing Authority. If the tenant pays their own utilities the utility allowances shall be subtracted from the maximum rent the tenant can pay.
3. In rental projects with five or more HOME-assisted units, twenty percent (20%) of the HOME-assisted units must be occupied by very low-income families and be able to meet the following rent requirements:
  - a. The rent does not exceed thirty percent (30%) of the annual income of a household whose income equals fifty percent (50%) of the median income for the area with adjustments for household size; or
  - b. The rent does not exceed percent (30%) of the families' adjusted income. If the unit receives Federal or state project-based rental subsidy and the very low-income household pays as a contribution toward the rent not more than thirty percent (30%) of the household's adjusted income, then the maximum rent (tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.
4. The Subrecipient shall require owners of HOME rental housing to adopt and maintain written policies and criteria that are consistent with all federal, state and local Fair Housing laws and meet the purpose of providing housing for low-income families and individuals per 24 CFR Part 92.351. The policies must, at a minimum, specify how tenants will be selected, give reasonable consideration to the housing needs of families and individuals with special needs, address the terms of rental assistance, maximum subsidy, and tenant protections through the use of written leases.
5. The Subrecipient shall determine fixed and floating HOME units prior to the commitment of funds on a HOME-assisted rental housing project. For projects with both HOME assisted and non-assisted HOME units, the HOME units may be fixed or floating. When a unit is fixed the unit is designated as a HOME unit and never changes. When units are designated as floating the units may change over time as long as the total number of units in the project does not change.
6. The Subrecipient shall require owners of HOME-assisted rental housing to follow the HOME regulations at 24 CFR Part 92.252(i) if a tenant in a HOME-assisted unit becomes over income.
7. The Subrecipient shall ensure that owners of HOME-assisted rental housing do not engage in the following prohibited leasing practices:
  - a. Requiring participation in services as a condition of tenancy;
  - b. Requiring tenants to adhere to rules outside of the landlord/tenant law;
  - c. Only accepting tenants from one referral source;
  - d. Requiring tenants to sign leases of less than one (1) year;
  - e. Requiring tenants to waive legal rights;
  - f. Requiring tenants to pay owner's legal fees if a dispute is initiated regardless of the final outcome; and
  - g. Other prohibited lease practices as described in the written agreement and the HOME Program Statute.

E. Homeownership Requirements (Homeownership Projects only).

The Subrecipient will ensure that the following additional requirements are adhered to:

1. The assisted housing must be maintained as the owner's principal residence;
2. At the time of assistance, the estimated value of the property must not exceed ninety-five percent (95%) of the Tacoma/Pierce County median area purchase price, as published annually by HUD.
3. The Subrecipient will ensure that the property's being assisted will continue to be affordable and that the Subrecipient is able to recapture all or part of the HOME subsidy invested in the project per this Agreement. The Subrecipient shall use the City's recapture provisions as per the Consolidated Plan and Annual Action Plan(s).
4. The Subrecipient shall ensure that a written agreement, Deed of Trust and Promissory Note are executed to ensure repayment if the Beneficiary fails to meet the affordability restrictions as outlined in this Agreement.

#### **5. Program requirements.**

- A. At least fifteen percent (15%) of the funds allocated under this HOME Program Agreement must be allocated to fund a Community Housing Development Organization (CHDO) for a housing project(s) that will be owned, developed, or sponsored by the entity designated as a CHDO. HOME regulations require the reserved funds be committed within twenty-four (24) months of the Grant Agreement between the City and HUD. CHDOs must meet the following criteria per HUD Notice CPD 97-11. CHDO's will be certified by the City of Tacoma.
- B. A twenty-five percent (25%) match on each HOME dollar expended by the Subrecipient is required under 24 CFR Part 92. On an annual basis, the Subrecipient will provide the City with documentation of match contributions for the purposes of compliance with the HOME Match requirement. The contribution:
  1. Must be a permanent contribution to housing from a nonfederal source of funds;
  2. Must be made to housing that qualifies as affordable under the HOME regulations;
  3. Does not need to be invested in the same project, program or activity as that for which it is being counted as match;
  4. May be provided in the form of grants, deferred-payment loans, or amortizing loans to a HOME-program or beneficiary; and
  5. Eligible sources of match for HOME funds include:
    - a. Cash, including grants or forgivable loans;
    - b. Donated construction material or volunteer labor;
    - c. Value of donated land or real property;
    - d. Value of foregone interest, taxes, fees, or charges levied by public or private entities;
    - e. Investments in on or off-site improvements;
    - f. Proceeds from bond financing;
    - g. Cost of supportive services provided to families in HOME units;
    - h. Other eligible sources of match, as outlined 24 CFR Part 92.

#### **6. Recordkeeping and reporting**

- A. In accordance with 24 CFR 92.508, the Subrecipient shall maintain all program and program related reports and records in accordance with HUD regulations to enable HUD to determine whether the requirements have been met and fully documented.
- B. In accordance with 24 CFR 92.508 (a), the Subrecipient shall maintain regular sufficient records on HOME activities throughout the term of the Agreement, and maintain these records for six (6) years after the term of the agreement. This form will be made available to the Subrecipient.
- C. Financial and demographic information for the City's Consolidated Annual Performance and Evaluation Report (CAPER) and other required reports including:
  - 1. Number of clients (individuals or families) served by the Subrecipient during the program year, as well as the cumulative totals;
  - 2. Race/Ethnicity of clients (individuals or families) served;
  - 3. Income Status;
  - 4. A listing of all funds and funding sources used with HOME monies for programs;
  - 5. Submitting separate reports for each Subrecipient Agreement; and
  - 6. Other information required supporting the quarterly reports, annual CAPER, and other reports shall be provided as requested.

**7. Subrecipient Responsibilities**

- A. The Subrecipient shall be required to have written agreements prior to providing funding to any other entity (identified as owners, developers or CHDOs), beneficiaries (identified as homeowners or homebuyers), subrecipients, or contractors. Terms of all written agreements with other entities must be in accordance with 24 CFR 92.504 for the type of agreement being executed and include all applicable HOME program requirements and any terms contained in this Agreement.

Written agreements with for-profit or non-profit housing owners, developers and sponsors of housing must meet the terms of 24 CFR 92.504(c)(3).

Written agreements with beneficiaries (homeowners or homebuyers) must meet the terms of 24 CFR 92.504(c)(5).

Written agreements with subrecipients must meet the terms of 24 CFR 92.504(c)(2).

Written agreements with contractors must meet the terms of 24 CFR 92.504(c)(4).

- B. The Subrecipient will submit timely invoices for expenses to the City. Invoices for programs administered by the Subrecipient will be submitted no less than monthly. Invoices for development projects will be submitted as the expenses are incurred by the Subrecipient.
- C. Failure to lawfully plan, administer and implement the project or to demonstrate substantial progress within ninety (90) days of the effective date of this Agreement shall cause the City to re-evaluate the program or project, necessitating the amendment and/or termination of this Agreement.

**8. City Responsibilities**

To accomplish the intent of this Agreement, the City shall:



- A. Designate the Director of the Community and Economic Development Department (CEDD), the Assistant Director of CEDD, and the Housing Division Manager of CEDD to plan, administer and implement programs and projects, to acquire property, to provide loans and other financing opportunities to low-income homeowners, homebuyers, CHDOs and housing developers according to program guidelines.
- B. The City will provide appropriate staff to manage and disburse grant funds, issue, administer and closeout all contracts, direct the services of consultants, subrecipients, contractors and sub-contractors and execute checks disbursing funds on behalf of the Authority.
- C. The Director of the Community and Economic Development Department (CEDD) may perform or may delegate the administrative responsibilities delegated by the Authority Board hereunder to the Assistant Director and/or the Housing Division Manager, as the Director determines is appropriate , to carry out the administrative functions provided for in this Agreement, as necessary to provide for the most effective and orderly rendition of administrative functions in light of the work load and availability of these three City employees. The term “Administrator” as hereinafter used shall denote any of the three individuals filling the above-defined position in CEDD, and such other individuals as designated by the Director with the approval of the Authority Board.
- D. The Administrator is authorized, on behalf of the Authority, to provide the following administrative support functions:
  - 1. Forward to the Authority’s Attorney of record non-judicial matters, and to engage the Authority’s Attorney without prior Board approval for up to \$2,500 per matter relating to single-family housing loans and administrative matters, and up to \$5,000 per matter relating to economic development and multi-family housing loans; provided that such expenditures have been budgeted or are chargeable to a borrower.
  - 2. Oversee the investment of the Authority funds to be made by the City Treasurer’s office, in accordance with City investment policies and procedures and in compliance with applicable laws and regulations. The amount of funds which are not currently needed and which are currently available to be invested will be based on recommendation and findings by the authority accountant designated by the Authority board and in accordance with policies as, from time to time, are approved by resolution of the Authority Board. The City will provide periodic and adequate reports to the Authority Board in respect to the investment of TCRA funds. All interest earned on investments of HOME Investment Partnership (HOME) program funds received from the U.S. Department of Housing & Urban Development (HUD) of the repayment of loans made with HOME funds will (after payment of administrative fees as herein provided) be remitted to the U.S. Treasury, if required by HUD regulations. The City may charge an administrative fee for its administrative costs in administering investments and in providing administrative services under this agreement, which fee will be payable from any investment earnings, to the extent allowable under applicable federal laws and regulations.
  - 3. Sign on behalf of the Authority required documentation on loans approved or modified by the Authority or the Administrator, as provided herein. The Administrator is further authorized to sign on behalf of the Authority lien releases on fully paid or forgiven loans and to authenticate or sign on behalf of the authority such other documents as are, from time to time, approved by resolution of the Authority Board.

The City is not authorized to sign Board Resolution(s), Real Estate Purchase and sale Agreement(s), Promissory Note(s) or other items requiring the Board's approval, as stated in Article V of the Authority Charter, and requiring the signature of the president or other officer of the Authority Board.

Nothing herein shall limit the authority of the Board to:

(a) authorize or direct the President of the Board or other Board officers to sign and authenticate any document or documents on behalf of the Authority as the Board may, from time to time, determine; or

(b) limit the authority of the City to sign and authenticate any document or documents as to any particular transaction or in general.

4. Supervise City staff assigned to provide administrative or support to the Authority and will provide administrative support or such supervision in assisting and advising the Authority Board relative to:

(a) compliance with the requirements of agreements with the Authority;

(b) development of appropriate forms and procedures in the implementation of programs and projects administered by the Board;

(c) development of appropriate budgets, financial analysis and planning, and utilization of appropriate accounting practices and procedures;

(d) coordination of the stated goals and objectives of the City and the Authority in the implementation and planning of present or future programs and projects in which the Authority is or will be involved;

(e) development of long-range plans for implementation of the mutual goals and objectives of the Authority and the City;

(f) development of processes and procedures to enable early detection and reporting to the Authority Board of noncompliance with applicable program and financial requirements;

(g) monitoring and collection of loans; and

(h) development of recommendations for consideration by the Board from time to time for improvements to the manner in which the Authority delivers services and to improve and broaden the Authority's relationship with third parties who are potential recipients of intended public services or who can assist the authority in carrying out and fulfilling its intended goals and objectives.

E. Increase an approved loan up to 10% of the original loan amount, but not more than \$10,000 per loan. The higher loan amount must continue to meet all program guidelines and limits. The requested increase must coincide with the original purpose of the loan or pay for unanticipated closing costs. The increase must be recommended by the Housing Division Manager, or staff authorized to take action on their behalf. The same person is not authorized to both recommend and approve any such action.

- F. Approve on behalf of the Authority subordination requests when the Administrator determines in good faith that the requested subordination will not jeopardize the Authority's current collateral position nor cause additional risk to the Authority. The subordination must be recommended by the Housing Manager, or staff authorized to take action on their behalf. The same person is not authorized to both recommend and approve any such action. A report, including full loan write-up, will be provided to the Authority of all loans approved in the prior month. The Authority will ratify the action(s) of the Administrator at its next regular meeting or take action indicating it does not want the Administrator to take similar action in the future.
  
- G. Approve loans through the Down Payment Assistance program, in an amount not to exceed \$20,000. The loans must meet all program guidelines and be recommended by the Housing Division Manager, or staff authorized to take action on their behalf. The same person is not authorized to both recommend and approve any such action. A report, including full loan write-up, will be provided to the Authority of all loans approved in the prior month. The Authority will ratify the action(s) of the Administrator at its next regular meeting or take action indicating it does not want the Administrator to take similar action in the future.
  
- H. Approve loans through its homeowner housing rehabilitation program, in an amount not to exceed \$25,000 for direct rehabilitation costs. The loans must meet all program guidelines and be recommended by the Housing Division Manager, or staff authorized to take action on their behalf. The same person is not authorized to both recommend and approve any such action. A report, including full loan write-up, will be provided to the Authority of all loans approved in the prior month. The Authority will ratify the action(s) of the Administrator at its next regular meeting or take action indicating it does not want the Administrator to take similar action in the future.
  
- I. Extend the maturity date of a loan for up to 90 days, per loan, with the recommendation of the Housing Division Manager (or staff authorized to take action), under the following conditions:
  - 1. the loan is current and performing; and
  - 2. (a) the extension request is based on need for additional time to gather necessary information needed to submit a formal request for extension to the Authority Board; or (b) the extension request is needed due to unanticipated loss of income by borrower, due to death or medical crises of the borrower, or a need for additional time to refinance the Authority loan.

The same person is not authorized to both recommend and approve any such action.
  
- J. Approve, on behalf of the Authority, a one-time deferment on housing loans up to 90-days with the recommendation of the Housing Division Manager, or staff authorized to take action on their behalf. The same person is not authorized to both recommend and approve any such action. Any such deferment must be based on loss of employment, medical crises, or other unanticipated emergency situation which prevents the borrower from making his or her regular payment. The intent of any such deferment is to prevent the borrower from becoming delinquent on his or her loan while staff prepares a recommendation for loan modification, if necessary, for Board approval. Any such deferred payment will be added at the end of the loan term until the loan is paid in full, but will not be considered a delinquency.
  
- K. Modify loan in order to extend the first payment due date and, subsequently the maturity date, only under the following conditions:
  - 1. delay(s) in the construction process on a project;

2. delay(s) in funding on a project;
  3. errors in the documentation and setup of a loan.
- L. Approve expenditures of up to \$5,000 of Authority Funds, per item or service contract, provided payment therefore has been budgeted. The Administrator will provide the following reports to the Board on a quarterly basis:
1. TCRA budget-to-actual expenditures report
  2. Financial Reports, including balance sheet, income statement and statement of cash flows;
  3. Check or ACH payments made on the Board's.
- M. Approve expenditures of up to \$10,000 of Authority funds for repairs and upkeep on any Authority-owned property. The expenditures, unless otherwise approved by the Authority Board, will be covered by income generated from the property. All requests will be recommended by the Housing Division Manager and will be reported to the Board. The purchase of goods and supplies authorized by the Administrator will be purchased through the City using City purchasing procedures. Contracts for services and repairs as authorized herein will be obtained and signed by the Administrator on behalf of the Authority. Purchases and contracts for services and repairs will comply with applicable federal procurement and contract requirements and with such additional procurement and contract requirements as the Authority Board may, from time to time, provide by Board action.

## Exhibit C

### Compensation and Financial Requirements

#### 1. Compensation.

In consideration of the mutual promises given and the benefit to be derived from this Agreement, the City agrees to provide HOME funds in the amount of \$966,901.00 to accomplish the scope of services described in Exhibit B – Scope of Work.

-2015-2016 HOME Budget	
Eligible Categories	New HOME Award
Down Payment Assistance	\$150,000.00
Homeowner Rehabilitation	0.00
Affordable Housing Development	474,752.00
CHDO Set-Aside	141,582.00
<b>Sub-total</b>	<b>766,334.00</b>
Lakewood Homeowner Rehabilitation	80,000.00
Lakewood Down Payment Assistance	20,000.00
Lakewood Affordable Housing	77,543.00
<b>Total</b>	<b>\$943,877.00</b>

#### 2. Financial Requirements – Payments.

##### A. Application Regulations

It is understood that where applicable, HOME funds provided by this Agreement and program income generated by any HOME-funded project or projects are considered federal funds administered by the City and are subject to those regulations and restrictions normally associated with federal programs including, but not limited to: OMB Circulars A-21, A-87, A-110, A-122 and A-133 (as appropriate), OMB's *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, the Washington State BAR's Manual, 24 CFR Part 84 and other such uniform administrative requirements for grants-in-aid now in effect or which hereafter may be made applicable by local, state or federal laws or regulations. All such rules and restrictions are incorporated in this agreement by reference.

##### B. Approved Uses

It is expressly understood that HOME funds may only be used for costs included in the HOME budget and may not be used for the general administration or operation of the Subrecipient, and may not replace non-federal funds in any jointly funded project except as outlined below in paragraph 2 of this Section.

During the period of performance, the total budget or any adjustments of funds between individual line items in the Subrecipient's budget will be accomplished by a written Change Order or Amendment approved by the City. Unexpended funds not subject to a request for payment will be returned to the City.

### **C. Funds Disbursement Provision**

The Subrecipient shall not request fund disbursement until the funds are needed for payment of eligible costs and the amount of each disbursement request may not exceed the amount needed. Program income must be disbursed prior to requesting distribution of funds per 24 CFR Part 92.503.

Reimbursement requests from the Subrecipient for administrative services rendered under this Agreement shall be based upon reporting requirements from the City and be submitted and supported by appropriate documentation of costs actually incurred and shall, when appropriate, include actual hours worked, a description of costs, and the total dollar payment requested.

The Subrecipient shall refund to the City any payment or partial payment expended by the Subrecipient, its Contractors or Consultants which is subsequently found to be ineligible, inappropriate or illegal. Further, the Subrecipient shall refund to the City any funds remaining at the end of the period of performance.

The Subrecipient is expressly prohibited from submitting claims in excess of actual costs for carrying out the program.

### **D. Inappropriate Funds Obligation**

Under this Agreement, HOME funds shall not be obligated for:

1. Costs incurred prior to the effective date of this Agreement , except as authorized by the City;
2. Costs incurred after this Agreement has expired, except as authorized by the City; or
3. Any action subsequent to written notification from the City suspending or terminating the Agreement, except as authorized by the City.

### **E. Multiple Funding Sources**

Subrecipient programs funded by multiple funding sources, or from multiple funding years, shall maintain records which clearly identify (1) funding source(s), (2) the amount of funding, (3) funding year and (4) use of funds.

### **F. Program Income**

In the event that program income, as defined in 24 CFR Part 92.503, is generated from the use of HOME funds, then any and all such income shall be identified, accounted for, and reported to the City on a monthly basis in accordance to the reporting scheduled outline in Exhibit B – Scope of Work, Section 7 Recordkeeping and Reporting. Program income in the form of repayments to, or interest earned on, a loan fund as defined in 24 CFR 92.503(c) shall be substantially disbursed by the Subrecipient prior to requesting any grant funds from the City. In the event that program income can be not used in accordance with these conditions, such program income shall be returned to the City. The Subrecipient shall transfer to the City any HOME funds on hand or any account receivables attributable to the use of the HOME funds that do not meet the above requirements.

A total of ten percent (10%) of the program income received may be retained for HOME Program Administrative expenses as follows: the Subrecipient may retain ten percent (10%) of the program income received on projects located in Lakewood for reimbursement of

eligible HOME administrative expenses incurred by City of Lakewood staff; ten percent (10%) of the remaining program income may be utilized for any eligible HOME administrative expense. Any program income utilized for administrative expenses must be expended in the same program year it was received.

**G. Unexpended Funds and Income**

At the conclusion of this Agreement, all unexpended HOME funds, any uncollected and/or unexpended program income remaining in the Subrecipient's accounts, and any remaining equipment or operation supplies with a value in excess of \$5,000 shall be immediately returned to the City unless specifically authorized in writing by the City. All HOME funds under this Agreement shall be committed to eligible projects by June 30, 2017. Commitment of funds shall be documented by an executed written agreement that complies with the requirements of 24 CFR 92.504(b) and (c).

**Exhibit D**  
**Contract**  
**Compliance**

**1. Compliance with local and federal regulations.**

The Subrecipient and any contractors or consultants shall comply with all applicable local, state and federal laws and regulations, whenever and wherever they are applicable, including those listed below. The Subrecipient, its consultants, subrecipients and contractors shall obtain all permits and approvals, in a timely fashion, necessary to lawfully implement any project or program. The Subrecipient, its contractors, subrecipients and consultants shall include in all contracts, subcontracts and purchase orders under this Agreement the following lists of laws and regulations and shall require compliance with such laws and regulations:

- A. HUD Regulation 24 CFR Part 1 – Non-discrimination in Federally-assisted Programs of the Department of Housing and Urban Development (HUD) – effectuation of Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
- B. 24 CFR Part 8 – Non-discrimination based on Handicap in Federally-assisted Programs and Activities of the Department of Housing and Urban Development and 24 CFR Part 9 – Enforcement of Non-discrimination based on Handicap in Federally-assisted Programs or Activities conducted by the Department of Housing and Urban Development.
- C. Housing must meet property standards and accessibility requirements per 24 CFR Part 92.251(a)(3) and 24 CFR Part 8 which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multi-family dwellings as defined at 24 CFR 100.201 and also meet design and construction requirements of 24 CFR 100.205 which implement the Fair Housing Act (42 U.S.C. 3601-3619).
- D. 24 CFR Part 100.205 Design and Construction Requirements and Site and Neighborhood Standards per 24 CFR 92.202 and 24 CFR 983.6(b) are applicable.
- E. 29 U.S.C., Chapter 16, Section 794 – Nondiscrimination under Federal Grants and Programs.
- F. 24 CFR 92.351(a) – HOME Affirmative Marketing Requirements.
- G. The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 Regulations.
- H. Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended, relating to nondiscrimination in housing as implemented by HUD regulation 24 CFR 570.601(b).
- I. HUD Regulation 24 CFR Part 107 – Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063.



- J. HUD regulation 24 CFR Part 146 – Nondiscrimination on the Basis of Age in HUD Programs or Activities receiving Federal Financial Assistance.
- K. Federal Code Regulations 41 CFR Public Contracts and Property Management Part 60 – Obligations of Contractors and Subcontractors Subpart A: Preliminary Matters: Equal Opportunity Clause: Compliance Reports.
- L. General HUD Program Requirements per 24 CFR Part 92.350, 24 CFR Part 5.105, and 24 CFR Part 5.110;
- M. Section 109 of the Housing and Community Development Act of 1974 as amended, dealing with non-discrimination in program benefits because of race, religion, color, age, national original, sex or disability as implemented by HUD regulation 24 CFR 570.602.
- N. The construction labor standards and wage rates set forth in section 110 of the Housing and Community Development Act of 1974 as amended and as implemented by HUD regulation 24 CFR 92.354 and 24 CFR Part 70 – Volunteer Labor.
- O. The Davis-Bacon Act (DBA) and Related Acts or HUD-assisted (DBRA) (40 U.S.C., Chapter 3, Section 276a-276a-5 and Chapter 5, Section 327-332) provides that contracts to which federal funding is applied for the construction, alteration, and/or repair, including painting and decorating, or of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.
- P. Lead-based Paint Requirements per 24 CFR Part 92.355 and Lead-based Paint Hazards per 24 CFR 35.
- Q. Executive Order 11246 dealing with non-discrimination in employment as amended by Executive Order(s) 11375 and 12086 and as implemented by HUD regulation 24 CFR 570.607(a).
- R. The relocation, acquisition and displacement requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as implemented by HUD regulation 24 CFR 92.353 and 42 U.S.C. Chapter 61 and CFR Part 42 and 49 CFR Part 24.
- S. The regulations, policies, guidelines and uniform administrative requirements of OMB Circulars A-21, A-87, A-110, A-122 and A-128 as they relate to the acceptance and use of Federal funds as implemented by HUD regulation 24 CFR 570.610.
- T. The National Environmental Policy Act of 1969 (42 U.S.C. Chapter 55) (NEPA) and other statutory environmental requirements as implemented by HUD regulation 24 CFR 92.352 and 24 CFR Parts 50 and 58. NOTE: The environmental effects of each activity carried out with HOME funds must be assessed in accordance with NEPA and the related implementing regulations. The Subrecipient may not expend any funds (HOME or otherwise) for the activities defined in the written agreement until notified by the City in writing that the environmental review has been completed.

- U. 24 CFR Part 92.506 – HOME Audit Requirements.
- V. 24 CFR Part 92.356 – HOME Conflict of Interest Provisions and 24 CFR Part 84.42 – Code of Conduct.
- W. Debarment or Suspension per 24 CFR 24.200, Ineligible Persons per 24 CFR 24.205, Voluntary Exclusion per 24 CFR 24.210, Exception Provision per 24 CFR 24.215, Continuation of Covered Transactions per 24 CFR 24.220 and Failure to Adhere to Restrictions per 24 CFR 24.225.
- X. Executive Orders 11625, 12138 and 12432 and Public Law 98-507, dealing with the use of minority and women owned business enterprises as implemented by HUD regulation 24 CFR 85.36(e).
- Y. The provisions of the Hatch Act limiting political activities of government employees.
- Z. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).
- AA. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and regulations set forth at 24 CFR Part 21.

NOTE: Copies of applicable laws and regulations are available upon request from the Community and Economic Development Department, Housing Division. A listing of these applicable laws and regulations are to be incorporated in each contract, subcontract, subrecipient and consultant agreement issued by the Subrecipient and its contractors.

**2. Affordability Restrictions**

- A. Real property acquired and/or improved for a homebuyer project by use of loan funds approved by the Subrecipient or its subrecipient are subject to recapture provisions per 24 CFR 92.254(4) and limit any Sub-grantee or homebuyers rights to dispose of said property or to utilize it for a purpose other than that specified in this Agreement, for a minimum period of time as indicated below. This provision will be implemented through a Deed of Trust from the homebuyer in favor of the Subrecipient per the stated schedule below, placed on the property at the time any assistance to a sub-grantee or homebuyer is provided. Any circumstances affecting that property other than those stated in Sub-grantee’s application for funding shall require the specific approval of the City of Tacoma. In the event of a proposed change of use or ownership, Subrecipient shall contact the City for appropriate disposition of this provision.

<b>Activity</b>	<b>HOME Subsidy</b>	<b>Minimum Federal Term</b>
Homeowner Rehabilitation	Any Amount	No minimum HOME term
Homebuyer Assistance	\$-0- to \$14,999	5 Years
	\$15,000 to 39,999	10 Years
	\$40,000 and higher	15 Years

- B. The City of Tacoma uses the recapture provision to recapture the direct HOME assistance to homebuyers receiving funding through a down payment assistance program or its homeownership development programs. Developers, subrecipients, owners and/or sponsors of HOME homebuyer projects cannot choose their own recapture options. HOME funds will not be provided as a development subsidy only; a

direct subsidy loan will be required with each HOME eligible homebuyer. If the HOME-assisted homebuyer sells the HOME-assisted unit during the relevant period of affordability, the Subrecipient will recapture the entire amount of the HOME subsidy to the homebuyer as defined in 24 CFR 92.254(a)(4). If there are no net proceeds from a sale, or the net proceeds from a sale are insufficient to repay the HOME investment due, the Subrecipient or its subrecipient will only recapture the amount of net proceeds available, if any. Net proceeds shall be defined as the sales price minus superior loan repayment (other than HOME funds) and standard closing costs. Under no circumstances will the Subrecipient recapture more than is available from the net proceeds of the sale.

- C. Real property acquired and/or improved for a rental housing project by use of loan funds provided by the Subrecipient to an owner/developer/sponsor is subject to the affordability restrictions under 24 CFR 92.252 indicated below. The affordability restrictions will be secured by a Note, Deed of Trust and Affordability Covenant between the Subrecipient and the Owner of the HOME-assisted housing project.
- D. Disposition of real property by the Subrecipient acquired in whole or in part with HOME funds shall be at current appraised fair market value. The property may be disposed of for lesser value, including donated, if the disposition at the lesser value is necessary to meet one of HUD's national objections and is permissible under state and local law. When disposition is for a lesser value, or if the Subrecipient should determine that disposition for such lesser value is in the best interest of the program, those reasons shall be fully documented.
- E. The Subrecipient will be required to repay to the City all HOME funds expended on housing projects that are determined not to have met the affordability requirements for the duration of the affordability period, except for:
  - 1. Homebuyer assistance subject to recapture; and
  - 2. Any direct subsidy provided to a sub-grantee in connection with a homebuyer assistance project.
- F. Non-expendable equipment, materials, operating supplies, and other assets other than real property, purchased in whole or in part with HOME funds, whose per unit fair market value (or total value for supplies) at the time of completion of use is in excess of \$5,000, are the property of the City and are to be utilized, maintained, inventoried, controlled and disposed of, pursuant to applicable federal regulations.
- G. The Subrecipient shall be responsible for loss or damage to all such equipment, materials, operating supplies and other assets in its care and, after completion of use, shall return all such equipment, materials and assets to the City for disposition within thirty (30) days following completion of the project, unless otherwise specified.
- H. If such equipment, materials, operating supplies or assets are partially funded from other sources, the City shall share any funds received as a result of said disposition, at the percentage of value received equal to the percentage of the original costs provided by the individual funding sources.
- I. Any equipment, materials, operating supplies and other assets with per unit fair market value (or total value for supplies) at the time of completion of less than \$5,000 may be retained or disposed of by the Subrecipient. The City retains no financial interest in these

items. Any assets whose fair market value is in question should be referred to the City for decision before any disposition action is taken by the Subrecipient.

### **3. Procurement and Contracts**

The Subrecipient may enter into any contract or procurement action authorized or necessary for the successful completion of this Agreement. All procurement actions and contracts other than incidental procurements shall be structured in accordance with applicable City policies and procedures, and state and federal law relating to contracting by public agencies and according to 24 CFR 85.36 – Procurement.

### **4. Monitoring / Assessment Procedures**

- A. The City will conduct annual monitoring and performance assessments of all services provided under this Agreement, in the manner and at reasonable times, with reasonable notice, as the City considers appropriate.
- B. Monitoring and assessment activities include, but are not limited to, the review of service and financial reports, including all books, records, documents and other data, facilities, activities, and on-site visits by City staff or their designee, state or federal representatives.
- C. Unless the City elects to terminate this Agreement for cause, when findings from monitoring efforts or audits show that there are apparent violations of the terms or conditions of this Agreement, the Subrecipient and the City shall negotiate a mutually agreeable plan of action to address the identified problem. If the parties are unable to come to agreement, the Subrecipient may file a complaint, as specified in this Agreement.

### **5. Client Assets and Records**

- A. Except as otherwise provided by court order, the Subrecipient shall ensure that any client shall have unrestricted access to his or her personal property. The Subrecipient shall not interfere with the client's ownership, possession, or use of such property. Upon termination of the agreement, the Subrecipient shall immediately release to the client all of the client's personal property.
- B. As a unit of the City of Tacoma's Community and Economic Development Department, the Housing Division shall plan, administer and implement any program or project in compliance with applicable local, state and federal laws or regulations. In compliance with the National Environmental Protection Act (NEPA) the Housing Division will make the determination of exemption for activities included in 24 CFR 58.34(a) with necessary documentation and act as the Responsible Entity for purposes of HUD's environmental review requirements for any programs or projects funded under this Agreement. The Housing Division will maintain the Environmental Review Record for each activity utilizing HOME funds.
- C. The Subrecipient shall maintain all project records required by applicable federal, state and local regulations, which are incorporated herein by reference. Project or

program records must be retained for a period of at least six (6) years after completion or termination of the project or program.

D. The Subrecipient shall maintain records and file for this agreement containing the following items:

1. Notice of Grant Award;
2. Motions, resolution or minutes documenting Board or Council actions;
3. A copy of this Agreement;
4. Correspondence regarding budget revisions requests;
5. Copies of all invoices and reports submitted to the City under this Agreement;
6. Copies of approved invoices;
7. Records documenting that costs reimbursed with funded project under this Agreement are allowable in accordance with OMB Circular A-87 for local governments and A-122 for nonprofit organizations. Such records include, but are not limited to:
  - a. for personnel costs, payroll timesheets for actual salary and fringe benefits costs. Timesheets must be signed by a supervisor and annotated to document percent of time charged against this Agreement. Direct salaries and wages of employees chargeable to more than one grant program or other cost objectives must be supported by time distribution records;
  - b. for staff travel, documentation of mileage charges for private auto use must include (a) destination and starting location, (b) total miles driven, and (c) purpose of trip;
  - c. for copy machine use, postage, telephone use and office supplies when these costs are shared with other programs and no invoice is available, log sheets or annotated invoices.
8. Documentation of the solicitation process used to select vendors and subcontractors with original purchase orders and subcontracts;
9. Documentation required by this Agreement if any funds provided under this agreement are used to acquire equipment;
10. Documentation of client income, demographics and eligibility as required in the Exhibit B – Scope of Work;
11. Documentation of environmental review requirements under 24 CFR Part 58 on all housing units assisted under this Agreement.



**SUBRECIPIENT AGREEMENT – HOME PROGRAM  
BETWEEN THE CITY OF TACOMA, THE CITY OF LAKEWOOD, AND THE TACOMA  
COMMUNITY REDEVELOPMENT AUTHORITY**

This HOME Subrecipient Agreement, hereinafter called “Agreement”, has been made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the City of Tacoma (“Tacoma”), the City of Lakewood (“Lakewood”), and the Tacoma Community Redevelopment Authority (“TCRA”) to allow for the administration of the Tacoma-Lakewood HOME Consortium (“Consortium”), whose address is 747 Market Street, Room 900, Tacoma, WA 98402 as authorized by Title II, Section 216 and 217 of the National Affordable Housing Act of 1990, and 24 CFR Part 92, also known as the HOME Investment Partnerships (“HOME”) Program.

**RECITALS**

WHEREAS, the U.S. Department of Housing & Urban Development (“HUD”) has designated Tacoma as a Participating Jurisdiction for the HOME Program under 24 CFR Part 92.105 and has maintained a continuous designation as a Participating Jurisdiction under § 92.106; and

WHEREAS, HUD allows for Participating Jurisdictions to select a public agency to administer its HOME program for the purpose of strengthening public-private partnerships and to expand the supply of decent, safe, sanitary and affordable housing, for low-income households; and

WHEREAS, HUD has designated the cities of Tacoma and Lakewood as the Tacoma-Lakewood HOME Consortium (“Consortium”). HUD has further designated Tacoma as the Lead Agency (“Lead Agency”) under § 92.101(2)(ii) and Lakewood as a Subrecipient Agency (“Subrecipient”); and

WHEREAS, the Lead Agency distributes HOME funds to the Subrecipient as allowed under 24 CFR Part 92.101(d) for the purpose for the purpose of promoting affordable housing for low income households through the acquisition, construction or rehabilitation of non-luxury housing; and

WHEREAS, the Lead Agency has contracted with the Tacoma Community Redevelopment Agency (“TCRA”) to administer and carry-out the HOME program on the Lead Agency’s behalf through an annual subrecipient agreement and allocation of HOME funds.

NOW, THEREFORE, the parties, for and in consideration of the promises and mutual obligations set forth below, agree as provided for in this agreement.

**I. Definitions**

Act – means the HOME Investment Partnership Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et seq.

Annual Action Plan – the annual plan through which the Lead Agency identifies the use of their HOME funds and the amount allocated to each program or project.

HOME Assisted Units – those units which were partially or totally acquired, rehabilitated, constructed, or otherwise, assisted with the use of HOME Funds.

HOME Funds – the total amount of HOME Program dollars being distributed by the Lead Agency to the Subrecipient under this Agreement.

Household – means one or more persons occupying a housing unit.

Lead Agency—means the City of Tacoma

Low-income households – means households whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD.

Project – a site or sites together with any buildings that are under common ownership management and financing and are to be assisted with HOME funds as a single undertaking under this agreement.

Project Completion – means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of part 24 CFR § 92, including the property standards under 24 CFR § 92.251; the final drawdown has been disbursed for the project; and the project completion information has been entered in the disbursement and information system established by HUD.

Program – a grouping of individual projects that have a common eligible activity and result (ie: Homeowner Rehabilitation or Down Payment Assistance).

Program Income – means gross income received by the Subrecipient, whether received directly or indirectly, that is generated from the use of HOME funds.

Program Year – the program year for this Agreement shall run from July 1<sup>st</sup> to June 30<sup>th</sup>.

Regulations – the requirements in 24 CFR Part 92 which govern the HOME Program and the use of HOME Funds, and all related and applicable OMB Circulars, Codes, Regulations and requirements.

Subrecipient—means the City of Lakewood

Tacoma Community Redevelopment Authority (TCRA) – a public development authority created and operated by the City of Tacoma to act as the administrator and lender of HOME funds.



## II. Sources and Uses of Funds

- A. Amount. The total amount of HOME Program dollars, hereinafter called "HOME Funds", to be allocated to the Subrecipient under this Agreement is One Hundred Seventy-seven Thousand Five Hundred Forty-three and No/100 Dollars (\$177,543.00), excluding any Program Income received from Subrecipient projects.
- B. Program Year. This Agreement covers HOME funds allocated for the Program Year 2015.
- C. Timeliness of Expenditures. Time is of the essence in this Agreement. Any Program Year 2015 funds uncommitted as of June 30, 2019 may be recaptured by the Lead Agency for redistribution to an eligible HOME activity, unless prior written approval is granted by the Lead Agency.
- D. Program Description. The Lead Agency has approved the Subrecipients Annual Action Plan for the Program Year 2015-2016 which includes funding of three programs in FY 2015 - an Affordable Housing Project(s), Housing Rehabilitation, and Down Payment Assistance in a total amount of \$207,543.00, including an anticipated Thirty Thousand and No/100 Dollars (\$30,000.00) in program income.
- E. Scope of Work. The Subrecipient will act as program coordinator, and will market the programs in accordance with applicable HOME rules and regulations to households whose gross annual household income is at or below 80 percent of median under income guidelines established annually by HUD for the Tacoma-Lakewood area. The Subrecipient is responsible for ensuring that all federal, state and local regulations, laws and requirements are met prior to the written commitment and/or disbursement of any HOME funds under this Agreement.
- F. Project Approval. All projects will be reviewed individually and independently approved by the TCRA, a public development authority, staffed by the Lead Agency. All projects must meet the regulatory requirements of 24 CFR Part 92. The TCRA, on behalf of the Subrecipient, will act as lender of the Subrecipient HOME funds to households, developers and/or owners ("Borrower") as individually authorized and approved by TCRA.

All loans will be subject to TCRA terms and conditions of approval and made in compliance with 24 CFR Part 92, as appropriate for the specific activity. TCRA will be named as mortgagee on the properties which will be documented by one or more of the following documents, as appropriate: a Developer Agreement, a Promissory Note, a Loan Agreement, a Deed of Trust, and a HOME Agreement. All documents must be satisfactory to the Lead Agency and/or TCRA. All properties acquired construction or rehabilitated with HOME funds will maintain property insurance naming TCRA as a loss payee throughout the life of the loan. The original loan documents and proof of insurance will be forwarded to TCRA prior to the start of work on the project.

- G. Disbursements. The Subrecipient may request funds under this Agreement only when they are needed for payment of specific allowable costs described herein, and only in amounts needed to pay such costs. The Lead Agency has designated TCRA as the disbursing agent for the HOME funds. The Subrecipient shall be reimbursed for eligible project costs after review and approval by the Lead Agency of invoices, statements, and other billings, and property inspection if applicable. Upon prior approval of the Lead Agency, a vendor, contractor or escrow office may be paid directly on behalf of the Subrecipient.

Each request for a disbursement of funds shall be deemed a certification of the Subrecipient that as of the date of such request, all representations and warranties contained in this agreement and any applicable project loan documents have been satisfied. The obligation of the Lead Agency to make any disbursement shall also be subject to the (a) availability of the funds from the grant (HOME Grant) made by the United States Dept. of Housing and Urban Development to the Lead Agency, (b) allocation of the necessary HOME funds by the City of Tacoma to TCRA, (c) satisfaction by Subrecipient of all other conditions under this Agreement, and (d) satisfaction by Borrower of all other conditions to the obligations of TCRA.

### **III. Project Requirements and Standards**

- A. Eligible Households. The Subrecipient will determine each household is income eligible by determining the household's annual income in accordance with 24 CFR § 92.203(a)(2) requiring the examination of source documents. For the Affordable Housing program, the Subrecipient will establish an income calculation at the time of the project contract, in accordance with 24 CFR § 92.203(b).

The Subrecipient will calculate the annual income of the household by projecting the prevailing rate of income of the household at the time the Subrecipient determines that the family is eligible. Annual income shall include income from all household members aged 18 and older. The Subrecipient is not required to re-examine the family's income at the time the HOME-assistance is provided, unless more than six months has elapsed since the Subrecipient determined that the family qualified as income eligible.

- B. Maximum per-unit subsidy. The total amount of HOME funds that the Subrecipient may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the Tacoma/Pierce County area.
- C. Minimum per-unit subsidy. The minimum amount of HOME funds that may be invested in a project is One Thousand and No/100 Dollars (\$1,000.00).
- D. Subsidy Layering. Before committing funds to a project, the Subrecipient must evaluate the project in accordance with guidelines it has adopted for the purpose of

subsidy layering and not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

- E. Property Standards. In compliance with 24 CFR § 92.251, all housing that is constructed or rehabilitated with HOME funds will meet all applicable local codes, the Subrecipient's written rehabilitation standards, ordinance and zoning ordinances at the time of project completion, except as provided in paragraph (b) of § 92.251. The Subrecipient's written rehabilitation standards must be satisfactory to the Lead Agency and will ensure that the HOME-assisted housing is decent, safe and sanitary.

All other HOME-assisted housing must meet 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.

- F. Rental Project Affordability. Any HOME-assisted units in a rental housing project must be occupied by households that are at or below Sixty Percent (60%) of the area median income at the time of initial occupancy. Any rental projects funded through the Subrecipient's Affordable Housing Program will comply with 24 CFR § 92.252 and 92.253. These regulatory requirements include rent limitations, initial rent schedule and utility allowances, nondiscrimination against rental assistance subsidy holders, periods of affordability, rent adjustments during the period of affordability, tenant income, over-income tenants, fixed and floating HOME units, and tenant protections, including lease requirements and prohibitions.

These requirements also apply to the HOME-assisted non-owner occupied units in a single-family housing purchased with HOME funds in accordance with 24 CFR § 92.254.

- H. Homeowner Rehabilitation Affordability. Housing that is currently owned by a household qualifies as affordable housing only if:
1. The estimated value of the property, after rehabilitation, does not exceed 95 percent of the median purchase price for the area, as published annual by HUD under the HOME program;
  2. The housing is the principal residence of an owner whose household qualifies as a low-income family at the time HOME funds are committed to the housing; and
  3. The ownership in the housing assisted meets the definition of "homeownership" in 24 CFR § 92.2.
- I. Homeowner Acquisition Affordability. Housing that is for acquisition, with or without rehabilitation, must meet the affordability requirements 24 CFR § 92.254(a), including:
1. Housing must be single-family housing;

2. The housing must be modest housing with a purchase price that does not exceed 95% of the median purchase price for the area, as published annually by HUD. In the case of acquisition with rehabilitation, the housing must have an estimated value after rehabilitation that does not exceed 95% of the median purchase price for the area, as published annually by HUD;
3. The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in sub-paragraph 4 of this section;
4. The HOME-assisted housing must meet the affordability requirements, beginning after project completion, for not less than the applicable period as follows: Under \$15,000 HOME-assistance per unit, 5 years; \$15,000 to \$40,000 HOME-assistance per unit, 10 years; Over \$40,000 HOME-assistance per unit, 15 years; and
5. To ensure affordability, the Subrecipient will impose recapture requirements that will allow TCRA, on behalf of the Consortium, to recoup all or a portion of the HOME assistance to the homebuyers if the housing does not continue to be the principal residence of the household for the duration of the period of affordability, as required in 24 CFR §92.254(a)(5)(ii). If the recapture requirements are triggered by a sale, voluntary or involuntary, of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the Lead Agency, Subrecipient and/or TCRA can only recapture the net proceeds, if any. Net proceeds are defined as the sale price minus superior loan repayment (other than HOME funds) and any closing costs. Funds recaptured under this provision are considered as recaptured funds and will be invested in additional eligible HOME projects allowed under 24 CFR § 92.503(c).

- J. Repayments. Any HOME funds invested in housing that does not meet the affordability requirements for the affordability period specified in 24 CFR
- K. § 92.252 or § 92.254, as applicable, must be repaid by the Subrecipient in accordance with § 92.503(b)(3). Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the Subrecipient in accordance with 24 CFR § 92.503(b)(3).

#### **IV. Federal Requirements**

The Federal requirements set forth in 24 CFR Part 5, subpart A, are applicable to this Agreement. The nondiscrimination requirements at section 282 of the Act are also applicable.

- A. Affirmative Marketing. Subrecipient is required, in projects with 5 or more HOME-assisted units, to establish affirmative marketing procedures and requirements in place. Affirmative marketing steps consist 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.

Project owners or developers must keep records that describe the actions taken to affirmatively market units and records to assess the results of these actions.

- B. Environmental Review. The effects of each activity related to the Program must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities in 24 CFR 58, and as detailed in 24 CFR Part 92.352. The Subrecipient must, **prior** to undertaking any choice limiting or physical activity with respect to the Project, regardless of whether such activity is to be funded by the HOME Funds, comply to the extent applicable, with the regulations found at 24 CFR Part 58. All applicable environmental review and clearance requirements as provided in 24 CFR 58.5 must be completed by the Subrecipient and a Release of Funds from the U.S. Department of Housing and Urban Development must be received prior to any commitment by the Subrecipient of HOME dollars, if applicable. The Subrecipient will abide by any special conditions, procedures and requirements of the environmental review and will advise the Lead Agency of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b). The Subrecipient may not use any of the HOME Funds for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973.
- C. Uniform Relocation Act. All reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations and farms) as a result of a project assisted with HOME funds will be taken. A person displaced as a direct result acquisition, rehabilitation or demolition for a HUD-funded project must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 USC 4201-4655) and 49 CFR part 24. This includes any permanent, involuntary move for an assisted project that is made after notice by the owner to move permanently from the property if the move occurs on or after (a) the date of submission of an application to the Subrecipient, if the applicant has site control and the application is later approved; (b) the date the Subrecipient approves the applicable site, if the applicant does not have site control at the time of the application; or (c) if the Subrecipient, Lead Agency or HUD determine that displacement resulted directly from the acquisition, rehabilitation or demolition of the project. Further definitions of displaced persons, permanent and temporary, may be found in the Act and at § 92.353(c)(2).
- D. Labor. Every contract for new construction or rehabilitation of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the

Secretary of Labor pursuant to the Davis-Bacon Act (40 USC 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 USC 327-332). HOME funds includes any project costs in § 92.206. including construction or non-construction costs, of housing with 12 or more HOME-assisted units.

- E. Lead-based Paint. Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.
- F. Conflict of Interest. In the procurement of property and services by the Subrecipient, the conflict of interest provisions in 24 CFR 85.36 apply. In all cases not governed by 24 CFR 85.36, the provisions of 24 CFR 92.356(b) through § 92.356(f) apply.
- G. Consultant Services. No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (ie: annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, 1997, Pub. L. 104-204 (09/26/1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.
- H. Procurement. The Subrecipient will 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 agreement, the Subrecipient shall comply at a minimum with the procurement standards at 24 CFR 85.36.
- I. Uniform Administrative Requirements. The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to this Agreement: § 85.6, 85.12, 85.s0, 85.22, 85.26, 85.32-85.34, 85.36, 85.44, 85.51, and 85.52.
- J. Non-discrimination. The Subrecipient agrees that they will utilize and make available the HOME Funds in conformity with the non-discrimination and equal opportunity requirements set out in the HUD regulations in the National Housing Affordability Act. These regulations include:

1. The requirements of the Fair Housing Act, 42 U.S.C. 3601-20, and implementing regulations at 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) as amended by Executive Order 12259 and implementing regulations at 24 CFR 107; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and implementing regulations at 24 CFR Part 1 (Nondiscrimination in Federally Assisted Programs);
  2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and the regulations at 24 CFR 146;
  3. The prohibitions against discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR, Part 8;
  4. The requirements of the Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;
  5. The requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1702u (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects); and
  6. The requirements of Executive Orders 11625 and 12432 regarding Minority Business Enterprise, and 12138 regarding women's Business Enterprise, and regulations S.85.36(e) of Section 281 of the National Housing Affordability Act.
  7. The requirements of Washington State Law as found at RCW 49.60.
- K. Minority/Women-Owned businesses. Subrecipient will document and provide data on the outreach steps taken to assure that minority business (MBE) and women's business enterprises (WBE) have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. Subrecipient will report to the Lead Agency the contracts or subcontracts awarded to MBE and WBE businesses for the project.
- L. Debarment. The Subrecipient may not award or permit an award of a contract to any party which is debarred, suspended or ineligible to participate in a Federal program. The Subrecipient certifies that it is not debarred, suspended or ineligible to participate in a Federal program. The Subrecipient will, prior to signing any contracts, ensure compliance with 24 CFR Part 24, "Debarment and Suspension" for any contractor, subcontractor or vendor. The Subrecipient will also assure that language pertaining to debarred, suspended or ineligibility to participate is inserted in all contract agreements. If during the time of this agreement the Subrecipient is debarred, suspended or ineligible to participate in a Federal program, the Consortium may terminate this agreement for cause.

- M. Program Income. All program income will be deposited into the Lead Agency's HOME Investment Trust Fund local account. Program income derived from Consortium HOME activities undertaken by the Subrecipient will continue to be program income of the Consortium should the Subrecipient terminate its participation in the Consortium. Subrecipient understands that it will use any available HOME Program Income prior to requesting grant funding from the Lead Agency. Program Income funds will be used for additional eligible affordable housing activities; up to ten percent (10%) of program income may be used for administration costs in the program year received.

Failure to comply with any provision in this Section may cause an immediate cancellation of this Agreement and forfeiture of the HOME funds.

#### **V. Subrecipient covenants.**

In addition to the other requirements of this document, through the term of this Agreement, the Subrecipient agrees to all of the following:

- A. Reversion of Assets. Upon expiration of the Consortium, the Subrecipient must transfer to the Lead Agency any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.
- B. Financial Responsibility. The Subrecipient agrees that it is financially responsible (liable) for any audit exception which occurs due to its negligence or failure to comply with the terms of this Agreement
- C. Indemnification. The Subrecipient agrees to hold TCRA, the Lead Agency and the Consortium harmless and to indemnify TCRA, the Lead Agency and the Consortium and its individual representative members against any and all liability, claims and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with or in any way incident to or arising out of activities undertaken under this Agreement.
- D. Insurance and Bonds. The Subrecipient and its employees, volunteers, contractors or consultants shall carry throughout the life of this Agreement, General Liability Insurance, Comprehensive Automobile Liability Insurance and other such coverage as may be appropriate or required by State or Federal law, for the services to be performed. This insurance shall include the following:
1. Professional Legal Liability: Subrecipient shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Subrecipient's profession and shall be written subject to limits of not less than \$1 million per claim and \$1 million policy aggregate limit. The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the work for this agreement. Coverage shall not exclude bodily injury, hazards, or property damage related to the work in this agreement, including



testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the agreement.

2. Worker's Compensation (Industrial Insurance): Workers' compensation insurance as required by Title 51 RCW shall be maintained and Subrecipient shall provide evidence of coverage if so required.
3. Commercial General Liability: Commercial General Liability coverage shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, personal injury and advertising injury. The insurance shall include the Consortium, its members, officers, officials, employees and agents with respect to performance of services, and shall contain no special limitations on the scope of protection afforded as an additional insured. If the liability coverage is written as a claims made policy, then evidence of an extended reporting period or "tail" coverage for a three-year period after project completion must be purchased, or otherwise maintained for the three-year period. If this agreement is over \$50,000 then Employers Liability Coverage shall also be maintained. Coverage shall include limits of not less than \$1 million per occurrence, and \$2 million aggregate.
4. Automobile Liability: Business Automobile Liability insurance with a minimum combined limit no less than \$1 million per accident for bodily injury and property damage shall be maintained. Coverage shall include owned, hired, leased, and non-owned automobiles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If deemed necessary, the policy shall be endorsed to provide contractual liability coverage.

Insurance is to be placed with insurers with a current A.M. best rating of not less than A:VII. Subrecipient shall furnish the Lead Agency with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements prior to the commencement of the work. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

The insurance coverage shall be primary as respect to any insurance or self-insurance covering the Lead Agency, its members, elected and appointed officers, officials, employees and agents. Any insurance, self-insurance, or insurance pool coverage maintained by the Consortium and its members shall be excess of the Subrecipients insurance and shall not contribute with it. The insurance shall not be cancelled by either party, except after 30 days prior written notice by certified mail, return receipt requested, has been given to the Consortium.

- E. Financial Management. The Subrecipient agrees to adhere to the generally accepted accounting principles and procedures, and utilize adequate internal controls and maintain necessary source documentation for all costs incurred.
- F. Audit. The Subrecipient will also comply with auditing standards issued by the Comptroller General of the United States. All Subrecipients that expend \$500,000 or more in a year in Federal awards shall have a single audit conducted for that year in accordance with the provision of OMB A-133, Subpart B. When a Subrecipient expends Federal awards under only one Federal program, and the program's laws, regulations, or grant agreements do not require a financial statement audit, the Subrecipient may elect to have a program-specific audit conducted in accordance with Subpart B, Section 235. The audit must be conducted within 90 days of completion of this agreement.
- G. Additional Audits. Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except this does not limit the authority of Federal agencies, including HUD, Inspectors General, or General Accounting Office to conduct or arrange for additional audits. All records will be made available for review or audit by appropriate local, state and federal entities.
- H. Corrective and Remedial Action. Subrecipient will immediately correct or cause to be immediately corrected, any and all actions or performance deficiencies in the project as may be determined by the TCRA, the Lead Agency, or HUD. Failure to correct such actions or performance deficiencies within 30 days from written notification may result in suspending HOME funds for this Agreement, the cancellation of this Agreement, and the reprogramming of HOME funds to other eligible Consortium activities, or the repayment of the HOME funds.

## **VI. Records and Monitoring**

- A. Records. Records must be kept by the Subrecipient and TCRA and be made available to the Lead Agency and HUD that demonstrate compliance with this Agreement. At a minimum the following records must be kept:
  - 1. Subsidy layering guidelines adopted in accordance with 24 CFR § 92.250;
  - 2. Procedures used for establishing the 95 percent of the median purchase price for the area in accordance with 24 CFR § 92.254(a)(2) for homeownership projects;
  - 3. Recapture guidelines established in accordance with 24 CFR § 92.254(a)(5) for acquisition of homeownership housing;
  - 4. Written Rehabilitation Standards;
  - 5. A full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the units or tenants assisted with HOME funds;

6. The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20;
7. Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy of 24 CFR § 92.205(c), the maximum per-unit subsidy amount of 24 CFR § 92.250(a) and the subsidy layering guidelines adopted in accordance with 24 CFR § 92.250(b);
8. Records demonstrating that each project meets the property standards of 24 CFR § 92.251 and the lead-based paint requirements of 24 CFR § 92.355;
9. Records demonstrating that each family is income eligible in accordance with 24 CFR § 92.203;
10. Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.252 for the required period. Records must be kept for each family assisted;
11. Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area in accordance with 24 CFR § 92.254(a)(2). The records must demonstrate how the estimated value was determined;
12. Records demonstrating that each homeownership project meets the affordability requirements of 24 CFR § 92.254 for the required period;
13. Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted to determine that the site meets the requirements of 24 CFR 983.6(b), in accordance with 24 CFR § 92.202;
14. Records demonstrating compliance with the written agreements required by 24 CFR § 92.504;
15. Records demonstrating compliance with the applicable uniform administrative requirements required by 24 CFR § 92.505;
16. Records documenting required inspections, monitoring review and audits, and the resolution of any findings or concerns;
17. Data on the extent to which racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds;
18. Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u);
19. Documentation of the actions the Subrecipient has taken to affirmatively further fair housing;
20. Records demonstrating compliance with the affirmative marketing procedures and requirements of 24 CFR § 92.351;
21. Documents and data on the steps taken to implement the Subrecipient's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or

- subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services;
22. Records demonstrating compliance with the environmental review requirements of 24 CFR § 92.352 and 24 CFR part 58, including flood insurance requirements;
  23. Records demonstrating compliance with the requirements of 24 CFR § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in 24 CFR § 92.353(c)(2)(i)(A), moving into the property on or after the date described in 24 CFR § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.
  24. Records demonstrating compliance with the labor requirements of 24 CFR § 92.354, including contract provisions and payroll records;
  25. Records demonstrating compliance with the lead-based paint requirements of part 35, subparts A, B, J, K, M and R of this title;
  26. Records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR § 92.356; and
  27. Debarment and suspension certification required by 24 CFR parts 24 and 91.

B. Period of Record Retention. All records pertaining to each project year of HOME funds must be maintained for the most recent five years period, except as provided below:

1. For rental housing projects, records must be retained for five years after the project completion date; except for the records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates.
2. For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing the recapture restrictions which must be retained for five years after the affordability period terminates.
3. Written agreements must be retained for five years after the agreement terminates.
4. Records covering displacement and acquisition must be retained for five years after the date by which all persons displace from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR § 92.353.
5. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

The Subrecipient agrees to provide any and all information as may be requested by the Lead Agency, TCRA or HUD to document compliance with the HOME Program and related laws, rules, regulations and policies.

- C. Monitoring. At least annually, or more often if deemed necessary, the Lead Agency will monitor the performance of the Subrecipient to assure compliance with the requirements of this Agreement. The review may include on-site inspections and review of all records to determine compliance with this Agreement through the contract period. The Subrecipient agrees to provide any and all information to the Consortium to assist in meeting administrative and monitoring requirements.

Any duly authorized representative of the U.S. Department of Housing and Urban Development, authorized federal or state agent, or the Consortium shall at all reasonable times have access to and the right to inspect, copy, audit, and examine all books, records and other documents relating directly to the Subrecipient's receipt and disbursement of the HOME Funds, as well as access to the project site(s) and all project records.

## **VII. Miscellaneous**

- A. Relationship. The relationship of the Subrecipient to the Lead Agency and TCRA shall be that of an independent agency. Nothing herein shall be deemed to create the relationship of employer/employee or principal/agent between the parties.
- B. Modification and Amendments. This agreement can only be amended in writing signed by the Lead Agency, TCRA and the Subrecipient. All modifications and amendments shall not take effect until specifically approved by the Lead Agency in writing.
- C. Waivers. No conditions or provisions of this agreement can be waived unless approved by the Lead Agency in writing.
- D. Assignment. The Subrecipient shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement to any party (whether by assignment or novation) without prior written consent of the Lead Agency
- E. Severability. If any provision of this Agreement, or portion thereof is held invalid by any court of rightful jurisdiction, the remainder of this Agreement shall not be affected providing the remainder continues to conform to applicable Federal and State law(s) and regulations and can be given effect without the invalid provision.
- F. Attorney Fees and Costs. In the event of a lawsuit between the parties to this agreement, the prevailing party shall be entitled to recover judgment against the other party for reasonable attorney's fees and other costs either at trial or on appeal. If either party exercises any non-judicial right or remedy to enforce such party's rights hereunder, it shall be a condition for the cure of the default that the defaulting party will

pay the non-defaulting party's reasonable attorney's fees incurred and all reasonable costs. Failure to pay such costs and reasonable attorney's fees shall constitute an event of default under this agreement.

- G. Dispute Resolution. The Consortium, participating jurisdiction and the Subrecipient agree to negotiate in good faith for a period of 30 days from the date of notice of all disputes between them prior to exercising their rights under this agreement or under law. All disputes not resolved by negotiation between the parties may be arbitrated only by mutual agreement of the parties. If not mutually agreed to resolve the claim by arbitration, the claim will be resolved by legal action. Arbitration of all claims will be in accordance with the RCW 7.04A and the mandatory rules of arbitration with venue being placed in Pierce County, Washington. Arbitration shall include an award to the prevailing party of its reasonable attorney fees and costs against the other.
- H. Venue and Law. Venue for any action under this contract shall be in Pierce County, Washington. This agreement shall be governed by the laws of the State of Washington.

### **XIII. Duration of Agreement**

- A. Suspension or Termination. This agreement may be cancelled "for cause" or "not for cause" by providing written 30 days notice by certified mail, return receipt requested, to the other signatory members of this agreement. There are three (3) separate methods of suspension or termination of this Agreement:
  - i. By fulfillment. The Agreement will be considered to be terminated upon fulfillment of its terms and conditions, including all affordability periods for project received HOME funds under this agreement.
  - ii. By mutual consent. The Agreement may be terminated or suspended in whole or in part, at any time, if both parties consent to such termination or suspension. The conditions of the suspension or termination shall be documented by giving a minimum of 30 days written notice.
  - iii. For cause. The Lead Agency may suspend or terminate this Agreement in whole or in part, for cause, when the Subrecipient has failed in whole or in part to meet its commitments and obligations as outlined and when the Lead Agency deems continuation to be detrimental to its interest. Failure to carry out the project as described in the approved application and in compliance with HOME Program regulations found at 24 CFR 92 will be deemed a failure to perform and cause the immediate repayment of HOME funds. "For cause" includes:
    - aa. failure to comply with the terms and conditions of this Agreement, or to substantiate compliance;

- bb. improper or illegal use of project funds or resources;
- cc. any illegal act by the Subrecipient and its representatives.
- dd. Failure to submit required reports on or before due date or failure to document compliance with the terms and conditions contained herein.

In the event of suspension, the Lead Agency will notify the Subrecipient in writing of the corrective action required. Further payment may be withheld until the Subrecipient takes corrective action or the Agreement is terminated. In the event of termination, the Lead Agency will notify the Subrecipient in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Payments made to the Subrecipient or recoveries by the Lead Agency will be in accordance with the legal rights and liabilities of the parties.

Actions by either party under this article shall not constitute a waiver of any claim by either party arising from conditions or situations leading to such suspension or termination.

HOME funds not committed to specific projects as of the cancellation date will be relinquished to the Consortium for redistribution to other qualified projects.

**SUBRECIPIENT:  
City of Lakewood**

6000 Main Street S.W.  
Lakewood WA 98499

**LEAD AGENCY:  
City of Tacoma**

747 Market Street, Room 900  
Tacoma, WA 98402

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Ricardo Noguera, Director Date  
Community & Economic Dev.  
Dept.

**Attest:**

\_\_\_\_\_  
Alice M. Bush, MMC, City Clerk Date

**Approved as to Form:**

\_\_\_\_\_  
City Attorney Date

**Approved as to Form:**

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Heidi Wachter, City Attorney      Date

**Tacoma Community  
Redevelopment Authority**

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Curt Curtis, TCRA President      Date



AGREEMENT BETWEEN THE CITY OF TACOMA  
AND  
TACOMA COMMUNITY REDEVELOPMENT AUTHORITY  
FOR  
CDBG PROGRAM

THIS AGREEMENT, entered this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the CITY OF TACOMA (herein called the "City" or "Grantee") and TACOMA COMMUNITY REDEVELOPMENT authority (herein called "TCRA" or the "Subrecipient").

WHEREAS, the City/Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that:

**I. SCOPE OF SERVICE**

**A. Activities**

The Subrecipient will be responsible for administering a CDBG Year (Program Year 2014) (Affordable Housing Fund, Economic Development Fund and Valhalla Hall Adaptive Reuse) in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

**Program Delivery**

The intent of this Agreement is to enhance Tacoma's housing and economic development climate by providing (1) loans and technical assistance to low income qualified homeowners, homebuyers, and to organizations that develop, own and/or sponsor affordable housing, including shelters, group homes, special needs and transitional housing, opportunities for low-income homebuyers; (2) loans to businesses that create or retain employment opportunities for low-income individuals; and (3) direct

acquisition of real properties in support of (1) and (2) above. Additional details on program delivery are provided on Exhibit A to this agreement.

### General Administration

The City will provide appropriate staff to manage and disburse grant funds, issue, administer and closeout all contracts, direct the services of consultants, subrecipients, contractors and sub-contractors and execute payments (checks or electronic transfers) disbursing funds on behalf of the Subrecipient.

### B. National Objectives

All activities funded with CDBG funds must meet one or the CDBG program's National Objectives: (1) benefit low- and moderate-income persons; (2) aid in the prevention or elimination of slums or blight; or (3) meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity(ies) carried out under this agreement will benefit low- and moderate-income persons. The Subrecipient will (1) provide housing development opportunities that benefit low- and moderate-income persons; (2) provide rehabilitation loans to low- and moderate- income homeowners; (3) provide rehabilitation loans to developers and owners that provide affordable housing to low- and moderate-income households; (4) create or retain employment opportunities for low-and moderate-income persons; and (5) acquire real properties in support of (1) through (4) above.

### C. Levels of Accomplishment-Goals and Performance Measures

The levels of accomplishment may include such measures as units rehabbed, persons or households assisted, or employment opportunities created, and should also include time frames for performance.

The Subrecipient agrees to provide the following levels of programs services:

Activity	Units per Month	Total Units/Year
Homeowner Rehabilitation	2 houses	24 houses
Affordable Housing Fund Activity(ies)	N/A	2 facilities and/or affordable housing projects
Valhalla Hall Adaptive Subrecipient Agreement	N/A	Secured contractor,

Reuse

building permits, Notice to Proceed Issued  
Acquisition of 1 building

Economic Development Fund      N/A

D. Staffing.

The City will provide appropriate staff to provide program delivery.

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

**II. TIME OF PERFORMANCE**

Services of the Subrecipient shall start on the 1st day of July, 2015 and end on the 30th day of June of 2018. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

**III. BUDGET**

The City agrees to provide CDBG funds in the amount of \$1,604,120 (One Million Six Hundred Four Thousand One Hundred Twenty and No/100 Dollars) to accomplish the scope of services described in Exhibit A. The funds are to be used for solely for program delivery and program costs. A more detailed budget breakdown is contained on Exhibit B: Compensation of Financial Requirements.

In addition, the Grantee will require a detailed operating budget on a biennial basis, beginning in 2015. The Subrecipient shall provide the operating budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

**IV. PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$1,604,120. Drawdowns for the payment of eligible expenses shall be made against the line items budgets specified in Paragraph III herein and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

## **V. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

### Grantee

Carey K. Jenkins, Housing Division  
Manager

City of Tacoma

Address: 747 Market Street, Room 808

City, State, Zip Tacoma WA 98402

Telephone: (253) 591-5238

Fax Number: (253) 591-5180

### Subrecipient

Curt Curtis, Board President

Tacoma Community Redevelopment  
Authority

Address: 747 Market Street, Room 900

City, State, Zip Tacoma WA 98402

Telephone:(253) 591-5086

Fax Number: (253) 591-5180

## **VI. GENERAL CONDITIONS**

### **A. General Compliance**

The Subrecipient agrees to comply with the requirement of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations

concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

See Exhibit C: Contract Compliance for additional detailed information.

B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, like and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and at a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding requirements of 24 CFR 85.36(h), Bonding.

#### F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

#### G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

#### H. Suspension or Termination.

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial

termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

## **VII. ADMINISTRATIVE REQUIREMENTS**

### **A. Financial Management**

#### **1. Accounting Standards**

The Subrecipient agrees to comply with 24 CFR 85.40-44 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### **2. Cost Principles**

The Subrecipient shall administer its program in conformance to OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### **B. Documentation and Record Keeping**

#### **1. Records to be Maintained**

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 85.40-44; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

#### **2. Retention**

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of six (6) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the six-year period, then such records must be retained until the completion of the actions and resolution of all issues, or the expiration of the six-year period, whichever occurs later.

### 3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### 4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provide under this contract, is prohibited by the (insert applicable State or Federal law) unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### 5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

### 6. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and Comptroller General of the United



States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have any annual agency audit conducted in accordance with current Grantee policy concerning Subrecipient audits and OMB Circular A-133.

### C. Reporting and Payment Procedures

#### 1. Program Income

The Subrecipient shall report (monthly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

#### 2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

#### 3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

#### 4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

#### D. Procurement

##### 1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

##### 2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 85.36

##### 3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

#### E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 85 and 24 CFR 570.502, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement (or such longer period of time as the Grantee deems appropriate). If the Subrecipient fails to use CDBG –assisted real property in a manner that meets CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute

program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period (or such longer period of time as the Grantee deems appropriate).

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee (an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment).

### **VIII. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in CFR 570.606(d) governing optional relocation policies. (The Grantee may preempt the optional policies.) The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and polices concerning the displacement of persons from their residences.

### **IX. PERSONNEL & PARTICIPANT CONDITIONS**

#### **A. Civil Rights**

##### **1. Compliance**

The Subrecipient agrees to comply with (fill in local and state civil rights ordinances here) and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11053, and Executive Order 11245 as amended by Executive Orders 11375, 11478, 12107 and 12086.

##### **2. Nondiscrimination**

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCD Act are still applicable.

### 3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1954 (P.L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

### 4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulation in force during the term of this Agreement.

#### B. Affirmative Action

##### 1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

##### 2. Women- and Minority-Owned Business (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to

participate in the performance of this contract. As used in this contract, the terms “small business” means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

### 3. Access to Records

The Subrecipient shall furnish and cause each of its own Subrecipient or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

### 4. Notifications

The Subrecipient 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 agency contracting officer, advising the labor union or worker’s representative of the Subrecipient’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

### 5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity and Affirmative Action employer.

### 6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A., Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subrecipients or subcontractors.

## C. Employment Restrictions

### 1. Prohibited Activity

Subrecipient Agreement

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Attorney: DEC

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

## 2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engage under contracts in excess of \$2000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Pars 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulation are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient or its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

## 3. "Section 3" Clause

### a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1958, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient 's subrecipients and subcontractors, their

successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD 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). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and every low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project is given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project to located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards) housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents with the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

#### b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if

any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.



d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engage in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engage in the award and administration of contracts supported by Federal Funds.

b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

a. No Federal funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and office 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 cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly;

d. **Lobbying Certification**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. **Copyright**

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. **Religious Activities**

The Subrecipient agrees that the funds provide under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**X. ENVIRONMENTAL CONDITIONS**

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement

Clean Air Act, 42 U.S.C., 7401, et seq.;

Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended. 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazard, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposed (including rehabilitation)

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1955, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Par 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**XI. SEVERABILITY**

If a provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**XIII. WAIVER**

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XIV. ENTIRE AGREEMENT**

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

*[NOTE: For the above sections, if the Subrecipient is a governmental or quasi-governmental agency, the applicable sections of 34 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-87 would apply.]*

IN WITNESS WHEREOF the parties have executed this Agreement as of  
the day and year first above written.

**CITY OF TACOMA**

**TACOMA COMMUNITY  
REDEVELOPMENT AUTHORITY**

\_\_\_\_\_  
T.C. Broadnax, City Manager

\_\_\_\_\_  
Curt Curtis, TCRA President

\_\_\_\_\_  
Ricardo Noguera, Director  
Community & Economic Dev. Dept.

\_\_\_\_\_  
Andrew Cherullo, Finance Director

\_\_\_\_\_  
Deputy City Attorney

Attest:

\_\_\_\_\_  
Doris Sorum, City Clerk

