



**Capital Funding Contract between:**

**City of Tacoma**

and

**Washington State Department of Commerce  
Homeownership Unit**

Washington State Housing Trust Fund Program  
Homeownership Project

**For:**

City of Tacoma DPA

**Contract Number:**

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**CONTRACT FACE SHEET**  
**Contract Number: «Contract\_Number»**  
**Washington State Department of Commerce**  
**Homeownership Unit (HOU)**

<b>1. Contractor</b> City of Tacoma 747 Market St Tacoma, WA 98402		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> Elizabeth Pauli, City Manager Phone: 253-591-5135 Email: <a href="mailto:Epauli@cityoftacoma.org">Epauli@cityoftacoma.org</a>		<b>4. Commerce Representative</b> Project Manager: Jamee Tovey Phone: 360-742-1196 Email: <a href="mailto:Jamee.Tovey@commerce.wa.gov">Jamee.Tovey@commerce.wa.gov</a>	
<b>5. Contract Amount</b>  <b>\$1,000,000</b>	<b>6. Funding Source</b>  Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/>	<b>7. Contract Start Date</b>  <b>Date of last signature below</b>	<b>8. Contract End Date</b>  <b>«End_date_of_Commitment»</b>
<b>9. Federal Funds Included in Contract Amount above (as applicable):</b> N/A		<b>Federal Agency</b> N/A	<b>CFDA Number</b> N/A
<b>10. Tax ID#</b> 91-6001283	<b>11. SWV#</b>	<b>12. UBI#</b> 278-012-338	<b>13. UEI#</b> N/A
<b>14. Contract Purpose</b> The purpose of this Contract is to fund the down payment assistance of twenty (20) single family homes to serve first time homebuyers to serve the population identified in attachment B – Scope of Work.  The DEPARTMENT, defined as the Washington State Department of Commerce, including its successor agency, and the CONTRACTOR, as identified above and defined below (“the parties”), agree to enter into and acknowledge and accept the terms of this Contract (as defined herein) and its Parts and Attachments, and have executed this Contract on the date of the last signature below, which shall also be the effective date of this Contract (the “Contract Start Date”). The rights and obligations of both parties to this Contract are governed by this Contract including all of its Parts and Attachments incorporated into this Contract as identified in the Table of Contents.			
<b>FOR CONTRACTOR:</b>  _____ Signature  <u>Elizabeth Pauli</u> Name  <u>City Manager</u> Title  _____ Date		<b>FOR DEPARTMENT:</b>  _____ Signature  <u>Corina Grigoras, Assistant Director</u> Housing Division  _____ Date  <b>APPROVED AS TO FORM ONLY:</b> <u>September 15, 2021</u> <u>Sandra Adix, Assistant Attorney General</u>	

## PART 1 – SPECIAL TERMS AND CONDITIONS

This “Part 1 – Special Terms and Conditions” applies to all project types and funding sources, unless otherwise indicated below or in the other Parts of this Contract.

### 1.1. DEFINITIONS

As used throughout this entire Contract, the following terms shall have the meaning set forth below:

- A. “Authorized Representative” shall mean the Director of the DEPARTMENT and/or the designee authorized in writing to act on the Director’s behalf.
- B. “Commerce Representative” shall mean a person acting on behalf of the DEPARTMENT, as identified on the Contract Face Sheet or his or her successor.
- C. “Commitment Period” shall mean the period during which the CONTRACTOR shall use and keep the Property as affordable housing serving the target population identified in, and subject to the terms of, Attachment B – Scope of Work. The Commitment Period shall commence at the time the Property is placed in service (the “Placed in Service Date” as defined below) to serve the target population identified in Attachment B and shall end on the later of the Contract End Date as identified on the Contract Face Sheet, or the period specified in any Covenant in favor of Department that is executed in accordance with this Contract.
- D. “Contract Amount” shall mean the funding amount approved by the DEPARTMENT for the CONTRACTOR to undertake the Project, which is the maximum amount that the CONTRACTOR can receive under this Contract.
- E. “Contract” shall mean this entire written agreement between the DEPARTMENT and the CONTRACTOR, including all the Parts, Attachments, Exhibits, and documents or materials incorporated by reference. The Contractor’s email transmission of a signed and scanned copy of this entire Contract shall be the same as delivery of an original, provided that the Contractor shall deliver the original signed document to the DEPARTMENT within thirty (30) days of Commerce execution.
- F. “Contractor Representative” shall mean the CONTRACTOR’s Executive Director and/or the designee authorized in writing to act on the CONTRACTOR’s behalf, as identified on the Contract Face Sheet, or his or her successor.
- G. “CONTRACTOR” shall mean the Eligible Organization identified on the Contract Face Sheet performing service(s) under this Contract, and its successors and assigns, and shall include all employees and agents of the CONTRACTOR.
- H. “DEPARTMENT” shall mean the Washington State Department of Commerce or its successor agency.
- I. “Eligible Organization” shall mean a local government, local housing authority, behavioral health administrative assistance organization established under chapter 71.24 RCW, nonprofit community or neighborhood-based organization, federally recognized Indian Tribe in the State of Washington, or a

regional or statewide nonprofit housing assistance organization, and which is in compliance with the revenue and taxation laws, as applicable to such organization.

- J. “Escrow Office” shall mean the neutral third party authorized by the CONTRACTOR as being responsible for collecting and disbursing funds and documents for the DEPARTMENT, CONTRACTOR, and other primary transacting parties related to the execution of this Contract and related legal documents.
- K. “First-time Homebuyer” shall mean:
- a. an individual or his or her spouse or domestic partner who have not owned a home during the three-year period prior to purchase of a home;
  - b. a single parent who has only owned a home with a former spouse while married;
  - c. an individual who is a displaced homemaker as defined in 24 C.F.R. Sec. 93.2 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and has only owned a home with a spouse;
  - d. an individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; or
  - e. an individual who has only owned a property that is discerned by a licensed building inspector as being uninhabitable..
- L. “Homeownership Project” shall mean a project or program funded by this Contract, which shall provide home buying opportunities to First-time Homebuyers who are Low-income Households. Homeownership Project conditions are described in Part 3 of this Contract.
- M. “Housing Trust Fund Handbook” or “HTF Handbook” shall mean the set of program policies and guidelines that the CONTRACTOR shall apply to the Project, which is published and made available on the DEPARTMENT’s website at [www.commerce.wa.gov](http://www.commerce.wa.gov), as may be amended by the DEPARTMENT from time to time. The Housing Trust Fund Handbook is incorporated in this Contract by reference.
- N. “Low-income Household” shall mean a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the Project is located.
- O. “Low-income Units” shall mean the affordable housing units or beds to be acquired, constructed or improved under this Contract and which shall be occupied by Low-income Households, as described in Attachment B – Scope of Work.
- P. “Multifamily Rental Project” or “Multifamily Project” shall mean an affordable housing project consisting of two or more multifamily household units, in one or more separate buildings or real properties, and which are being rented or leased to eligible tenants as identified in Attachment B – Scope of Work.
- Q. “Placed in Service Date” shall mean the date that the DEPARTMENT has deemed the Project is placed in service for the intended target population as defined in Attachment B and pursuant to the terms of Housing Trust Fund Handbook as evidenced by the issuance of a certificate of occupancy by the applicable regulatory authority or such other evidence as the DEPARTMENT deems adequate.

- R. "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW. (For reference purposes, refer to RCW 36.70A.030)
- S. "Project" shall mean the project funded and undertaken under this Contract, as described in Attachment B – Scope of Work.
- T. "Property" shall mean the real property or properties plus any improvements described in the legal description and address, as specified in Attachment B – Scope of Work.
- U. "State" shall mean the State of Washington.
- V. "Subcontractor" shall mean a person or business not in the employment of the CONTRACTOR, who is providing all or part of the work or materials in relation to this Contract under a separate contract with the CONTRACTOR. The terms "subcontractor" and "subcontractors" mean Subcontractor(s) in any tier.

## **1.2. AUTHORITY**

The DEPARTMENT has received appropriations from the Washington State Legislature under the authority of Chapters 43.185 RCW, "Housing Assistance Program," and 43.185A RCW, "Affordable Housing Program," to provide financial assistance to Eligible Organizations to assist Low-income Households in meeting their basic housing needs.

The DEPARTMENT is contracting with the CONTRACTOR as an Eligible Organization to receive funding to undertake a local affordable housing project that furthers the goals and objectives of the Housing Assistance and/or Affordable Housing Programs (the Project).

## **1.3. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable Federal and State of Washington statutes and regulations.
- B. All Parts contained in this Contract including all terms and conditions, and all Attachments, and documents attached hereto and incorporated into this Contract.
- C. Any other provision, term, or material specifically identified and incorporated by reference in this Contract.

#### **1.4. CONTRACT AMOUNT**

The dollar value of the Contract Amount is identified on the Contract Face Sheet and is structured as one or more loans or recoverable grants, or a combination of both, as outlined in Attachment A – Loan or Grant Terms. Subject to the terms and conditions in the Contract regarding payment and drawdown of funds, the DEPARTMENT shall pay to the CONTRACTOR, directly or through an Escrow Office identified by the CONTRACTOR, a dollar amount up to the Contract Amount for the work outlined in Attachment B – Scope of Work and in Attachment C – Development Budget.

The Contract Amount is funded by the following Washington State funding sources:

- A. \$1,000,000.00 from the “Capital Community Assistance Account” Fund 26V, which was appropriated in the 2022 Supplemental Budget, SSB 5651 Laws of 2022. The parties hereby acknowledge that these funds are proceeds from State of Washington taxable bonds issued in accordance with RCW 43.100A and other applicable provisions of state and federal law.

The CONTRACTOR shall take note of the source(s) of funds identified above and comply with applicable state and federal law in the use of funds under this Contract.

#### **1.5. PROMISSORY NOTE AND DEED OF TRUST**

All amounts loaned or granted as identified in Attachment A – Loan or Grant Terms, shall be evidenced by one or more promissory note(s) (the “Promissory Note(s)”) and shall be secured by one or more deed(s) of trust in favor of the DEPARTMENT (the “Deed(s) of Trust”). Multiple Deeds of Trust may be necessary for Projects that include multiple properties. Each Deed of Trust shall be recorded in the county or counties in which the Property or Properties is or are located. The CONTRACTOR shall ensure that each original Deed of Trust shall be returned to the DEPARTMENT after recordation. The CONTRACTOR shall also ensure each original Promissory Note shall be returned to the DEPARTMENT at Contract execution. Each Deed of Trust shall secure the following:

- A. Payment in the amount of the Contract Amount, together with interest thereon according to the terms of each Promissory Note and Attachment A – Loan or Grant Terms, including all renewals, modifications and extensions thereof, and
- B. Performance of each agreement, term and condition set forth in each Deed of Trust, Covenant, any Priority and Subordination Agreement executed in accordance with this Contract, and this Contract, including, without limitation, payment of any Shared Appreciation due pursuant to the terms of this Contract.

Some Homeownership Projects may be exempt from this provision (refer to Part 3 – Homeownership Project Requirements).



## **1.6. TITLE INSURANCE**

The CONTRACTOR shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed(s) of Trust in an amount not less than the Contract Amount, naming the DEPARTMENT as the insured.

Some Homeownership Projects may be exempt from this provision (refer to Part 3 – Homeownership Project Requirements).

## **1.7. NOTICE IN THE EVENT OF DEFAULT**

### **A. Monetary Default**

If a monetary event of default occurs under the terms of this Contract, the Deed of Trust, the Covenant, or the Promissory Note, including any amendments to the foregoing (together, the "Loan Documents"), prior to exercising any remedies thereunder, the DEPARTMENT shall give the CONTRACTOR, and the LLC, and the Investor Members, if any, simultaneous written notice of such default. The CONTRACTOR, and LLC and/or Investor Members, if any, shall have a period of fifteen (15) days after such notice is given within which to cure the default prior to exercise of remedies by the DEPARTMENT or such longer period of time as may be specified in the Loan Documents. The DEPARTMENT's liability for notification shall be limited to notifying all parties at the last known address as shown in the DEPARTMENT's Contract files. The CONTRACTOR is responsible for ensuring that the DEPARTMENT has current names, addresses and telephone numbers for all parties entitled to notice under the Loan Documents.

### **B. Non-Monetary Default**

If a non-monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, the DEPARTMENT shall give the CONTRACTOR, and the LLC and the Investor Members if any, simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the CONTRACTOR and LLC and/or Investor Members, if any, shall have such period to effect a cure prior to exercise of remedies by the DEPARTMENT under the Loan Documents, or such longer period of time as may be specified in the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days or such longer period if so specified, and if the CONTRACTOR or LLC and/or Investor Members, if any, (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then the CONTRACTOR or LLC and/or Investor Members, if any, shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by DEPARTMENT.

## **1.8. COVENANT RUNNING WITH THE LAND**

For Multifamily Rental Projects, the CONTRACTOR shall cause to be recorded one or more covenant(s) running with the land (the "Covenant(s)") limiting the use of the Property or Properties to residential rental housing for Low-income Households that at the time of initial occupancy have gross annual household incomes as outlined in Attachment B – Scope of Work.

Homeownership Projects may be exempt from this provision (refer to Part 3 – Homeownership Project Requirements).

### **1.9. CROSS DEFAULT**

The DEPARTMENT shall not cross default or cross collateralize the loan(s) or grant(s) made under this Contract with any other contracts, loans, or grants.

### **1.10. REIMBURSEMENT OF EXPENSES INCURRED PRIOR TO CONTRACT EXECUTION**

Upon the DEPARTMENT's written consent, Contract Amount funds may be used to reimburse costs incurred up to two (2) years prior to the date funds were allocated to the Project, or three (3) years prior to the date of the Contract execution, whichever is earlier. Exceptions allowing the use of the Contract Amount to reimburse earlier expenses must be requested in writing and approved in advance of Contract execution.

Unless otherwise noted in this Contract and unless the DEPARTMENT approved funds are to be drawn down at Contract execution, drawdown of funds shall be made on a reimbursement basis for expenses incurred after formal execution of this Contract. The CONTRACTOR shall provide appropriate documentation and meet the DEPARTMENT's reporting requirements to support all eligible reimbursement requests.

### **1.11. REQUIREMENTS FOR DRAWDOWN OF CONTRACT AMOUNT**

Except as may be approved by the DEPARTMENT in writing, the CONTRACTOR shall meet the following conditions in order to drawdown the Contract Amount:

- A. Receipt by the DEPARTMENT of the original Promissory Note(s) and the CONTRACTOR's Recording of the DEPARTMENT's Covenant(s) and Deed(s) of Trust, and if applicable, Assignment, Assumption and Consent Agreement and/or Priority and Subordination Agreement in form and substance acceptable to the DEPARTMENT. Some Homeownership Projects may be exempt from this condition (refer to Part 3 – Homeownership Project Requirements).
- B. The CONTRACTOR has in place all applicable construction, land use, environmental, cultural and historical resource, and zoning permits, and other federal, state and local governmental approvals as necessary to undertake the activity to which the specific draw request applies.
- C. If the Project includes acquisition of land and/or buildings, an appropriate appraisal shall have been reviewed and approved by the DEPARTMENT.
- D. The CONTRACTOR shall meet the requirements outlined in Attachment B – Scope of Work within the timeframe specified in Attachment D – Project Schedule. The CONTRACTOR shall be reimbursed for all eligible Project expenditures up to the Contract Amount. The CONTRACTOR shall draw down the entire Contract Amount within six (6) months of the Placed in Service date as referenced in Attachment D – Project Schedule, or the DEPARTMENT may reduce the Contract Amount by the

amount of the unspent funds. For Homeownership projects, the cutoff draw date may be different as identified in Attachment D – Project Schedule.

- E. If applicable and approved by the DEPARTMENT, funds for replacement reserves shall be drawn down from the Contract Amount for deposit into a reserve account in accordance with Attachment C – Development Budget. Reserve account balances and any changes to such balances shall be reported by the CONTRACTOR to the DEPARTMENT on an annual basis, in accordance with the annual reporting requirements as stated in this Contract. Any portion of the Contract Amount used to capitalize replacement reserves and the interest that accrues to the replacement reserve account shall be considered part of the Property in the event of transfer, assignment, or sale to an eligible nonprofit organization approved by the DEPARTMENT.
- F. The CONTRACTOR shall submit reports and back-up documentation, in a form and manner to be established by the DEPARTMENT, with each request for reimbursement (currently known as the “A19 Voucher”) regarding work under this Contract identifying the portion of Contract Amount expended for work or services performed by Subcontractors, at any tier, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned businesses.
- G. All requests for reimbursement submitted by the CONTRACTOR to the DEPARTMENT shall be reviewed by the DEPARTMENT and may be reviewed by a third-party reviewer contracted by the DEPARTMENT to perform such activity, unless funds are drawn down at Contract execution. Reimbursement requests will be reviewed for conformance with the respective Subcontractor construction contract, source of the costs, and to provide a recommendation for funding the reimbursement. Some Homeownership Projects may be exempt from this condition (refer to Part 3 – Homeownership Project Requirements).

#### **1.12. BILLING PROCEDURES AND PAYMENT**

The DEPARTMENT may, at DEPARTMENT’s discretion, deliver initial funds to an Escrow Office at Contract execution or to the CONTRACTOR upon completion of work identified in Attachment B – Scope of Work and receipt of properly completed and approved reimbursement requests. Subsequent reimbursement requests shall be timely and regularly submitted to the DEPARTMENT, but shall not be submitted more often than monthly. The CONTRACTOR or Escrow Office shall receive payment from the DEPARTMENT for eligible expenditures through Electronic Funds Transfer whenever possible. Reimbursement requests must be made via the DEPARTMENT’s Internet-based data-system (currently known as the Contracts Management System or CMS) and must be accompanied by all supporting documentation.

Each reimbursement request shall describe and document, to the DEPARTMENT’s satisfaction, the work performed, costs being reimbursed, the progress of the Project, and any applicable fees. Reimbursement requests shall include the Contract Number as identified on the Contract Face Sheet and shall separately identify funds expended by the CONTRACTOR and those expended by its Subcontractors. A receipt or invoice must accompany each request for reimbursement of any single expense in the amount of Fifty and 00/100 Dollars (\$50.00) or more in order to receive reimbursement.

Payment shall be considered timely if made by DEPARTMENT within thirty (30) calendar days after receipt of the properly documented request for reimbursement. Payment shall be sent to the statewide vendor number designated by the CONTRACTOR and identified on the Contract Face Sheet and on the A19 Voucher.

The DEPARTMENT may, in its sole discretion, terminate this Contract or withhold payments requested by the CONTRACTOR for reimbursement if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of work to be provided under this Contract shall be made by DEPARTMENT.

**Duplication of Billed Costs:** The CONTRACTOR shall not bill the DEPARTMENT, and the DEPARTMENT shall not pay the CONTRACTOR, if the CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that expenditure. The CONTRACTOR shall disclose to the DEPARTMENT when the CONTRACTOR is entitled to payment of, or has been or will be paid by any other source, including grants, for expenditures eligible for reimbursement under this Contract.

**Disallowed Costs:** The CONTRACTOR is solely responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

### **1.13. TARGET POPULATION AND BENEFIT STANDARD**

For the Commitment Period defined in Part 1 above, the Low-income Units funded under this Contract shall serve the target population(s) at the Area Median Income (AMI) level(s) identified in Attachment B – Scope of Work.

The Low-income Units funded under this Contract shall be occupied by households that at the time of initial occupancy have gross annual household incomes at or below the applicable AMI percentage levels, as listed in Attachment B – Scope of Work, for the AMI County and Area identified.

The median income limits can be found on the Annual Reporting page of Commerce’s website. It is the CONTRACTOR’s responsibility to follow the most current HTF Income Limits.

### **1.14. SHARED APPRECIATION**

If the use of the Property changes to something other than that stated in Attachment B – Scope of Work of this Contract prior to completion of the Commitment Period or the end of this Contract, either by the CONTRACTOR, its successors or assigns, or as a result of a sale, transfer or refinance of the Property, the DEPARTMENT shall share in the appreciated value of the Property as described below.

The DEPARTMENT reserves the right in some circumstances to waive its Shared Appreciation, partially or in its entirety, where the funds generated by a sale, transfer or refinance of the Property are to be reinvested in affordable housing for Low-income Households to serve the same population targeted in this Contract, pursuant

to a plan agreed to in writing by the CONTRACTOR and the DEPARTMENT prior to such sale, transfer or refinance.

The DEPARTMENT's Shared Appreciation shall be due and payable, by the then current owner of the Property, if any or all of the following occurs:

- A. Sale, transfer or refinance of the Property, or a portion of the Property, for a use other than that stated in Attachment B – Scope of Work of this Contract.
- B. Change in use.
- C. Contract termination for cause.
- D. Material non-compliance with the terms and obligations of this Contract.

For purposes of Shared Appreciation, "Original Principal" shall mean the Contract Amount awarded under this Contract.

Shared Appreciation is the DEPARTMENT's proportionate share of the appreciated value of the Property, together with the appreciated value of the improvements constructed thereon regardless of whether such improvements are developed by the CONTRACTOR, its assigns, or by any lessee of the Property.

Shared Appreciation (SA) is the product of the Net Proceeds (NP) less Total Original Development Costs (TODC) multiplied by the fraction whose numerator is the Original Principal (OP) amount and whose denominator is the TODC:  $SA = (NP - TODC) \times (OP / TODC)$ .

The Project's Total Original Development Costs (TODC) shall be the same as the final total Project cost amount from the Certified Final Total Development Cost that the CONTRACTOR shall provide to the DEPARTMENT in accordance with Section 1.18. Certified Project Final Development Costs.

Net Proceeds (NP) shall be calculated as follows:

The value as determined by an appraisal satisfactory to the DEPARTMENT in the event the Property is not sold to a bona fide third party or the sales price if sold to a bona fide third party, any balance remaining in the escrow account for replacement and operating reserves established pursuant to this Contract, and any insurance or condemnation proceeds received. For this purpose, bona fide third party is defined as an Eligible Organization that is eligible to receive Housing Trust Fund funds, has experience managing Housing Trust Fund properties, and intends to continue the purpose and use stated in Attachment B – Scope of Work of this Contract.

Less the actual reasonable approved costs of sale (if the Property is sold), including appraisal, real estate commissions, real property excise tax, escrow fees, recording fees, title, and insurance premiums.

Therefore, the DEPARTMENT's Shared Appreciation percentage is the Original Principal divided by Total Original Development Costs.

**Example:**

Original Principal (OP) =	\$1,000,000
Total Original Development Costs (TODC) =	\$3,000,000

Calculation to Determine the Shared Appreciation Percentage:  $OP/TODC = SA\%$ .

Using the example above:  $\$1,000,000 / \$3,000,000 = 33.33\%$ .

In this example, 33.33% is the Shared Appreciation percentage the DEPARTMENT shall utilize to calculate its shared appreciation value of the Property.

With regard to this Contract and Project specifically, the **Shared Appreciation percentage** is **66.7%**, based on an **Original Principal amount of \$1,000,000.00 divided by Total Original Development Costs of \$1,500,000.00**. The above number representing Total Original Development Costs is an estimated amount. At the time any Shared Appreciation is due, Total Original Development Costs will be based on actual final project costs as described in **Section 1.18 Certified Project Final Development Costs**.

### **1.15. ENVIRONMENTAL REVIEW**

The CONTRACTOR shall comply with the environmental requirements under the State Environmental Policy Act (SEPA). If this Project is funded in part or in full by the HOME, 24 CFR 58, or the National Housing Trust Fund, 24 CFR 93, programs, then the CONTRACTOR shall also comply with requirements under the National Environmental Policy Act (NEPA).

### **1.16. CERTIFIED PROJECT FINAL DEVELOPMENT COSTS**

The CONTRACTOR agrees to submit to the DEPARTMENT a third-party certification of the Project's Final Total Development Cost no more than 90 days from the time the Project is placed in service, in a format required by the DEPARTMENT. See Section 1.23 for placed in service procedures. If the Project is also financed by the Low-Income Housing Tax Credit program, the 90 day requirement may be extended if the reason for the delay is to comply with procedures or requirements of the Low-Income Housing Tax Credit program.

Alternatively, the CONTRACTOR has the option to obtain the third-party certification of the Project's Final Total Development Cost as part of their organization's annual audit. If such option is selected, the third-party certification of the Project's Final Total Development Cost shall be submitted to the DEPARTMENT no later than 90 days from the end of the organization's fiscal year that is being audited. For example, if the organization's fiscal year ends on December 31, the third-party certification of the Project's Final Total Development Cost shall be submitted to the DEPARTMENT no later than March 30 the following year.

The cost to obtain the third-party certification is reimbursable under this Contract and may be included in the Project's development budget.

### **1.17. HISTORICAL OR CULTURAL REVIEW, HUMAN REMAINS**

Prior to approval and disbursement of any funds awarded under this Contract, CONTRACTOR shall complete the requirements of the Governor's Executive Order 21-02, or shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. CONTRACTOR agrees that the CONTRACTOR is legally and

financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the DEPARTMENT and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract. The DEPARTMENT shall not expend funds for acquisition, demolition, or construction until the Governor's Executive Order 21-02 review and consultation process is complete.

In addition to the requirements set forth in this Contract, CONTRACTOR shall, in accordance with Governor's Executive Order 21-02, coordinate with the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and *prior to title transfer as well as construction* to determine the existence of any tribal cultural resources affected by Project. CONTRACTOR agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The CONTRACTOR agrees that if historical or cultural resources are discovered during construction, the CONTRACTOR shall immediately stop construction and notify the local historic preservation officer and the state's historic preservation officer at DAHP. If human remains are uncovered, the CONTRACTOR shall stop work, report the presence and location of the remains to the coroner and local law enforcement immediately, and contact DAHP and the concerned tribe's cultural staff or committee.

The DEPARTMENT is responsible for holding all records related to the Tribal consultation process and is required to demonstrate that the Tribal consultation was completed and must be able to demonstrate compliance by providing such records to DAHP.

In addition to the requirements set forth in this Contract, CONTRACTOR agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the CONTRACTOR finds it necessary to amend the construction work performed under this Contract, the CONTRACTOR may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

The CONTRACTOR shall require this provision to be contained in all subcontracts for work or services resulting from this Contract.

### **1.18. LICENSING, ACCREDITATION AND REGISTRATION**

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

## **1.19. CODE REQUIREMENTS**

All construction and rehabilitation Projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building department.

## **1.20. PREVAILING WAGE LAW**

The CONTRACTOR hereby certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable, including but not limited to the filing of the “Statement of Intent to Pay Prevailing Wages” and “Affidavit of Wages Paid” as required by RCW 39.12.040. The CONTRACTOR shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW and shall make such records available for the DEPARTMENT’s review upon request.

If the funding under this Contract is in the form of a repayable loan that is incurring interest, is not forgivable, and is required to be repaid in full, this loan in and of itself is not expected to trigger a requirement that state prevailing wages be paid on the Project. Notwithstanding the foregoing, the CONTRACTOR acknowledges that the full set of facts for its Project must be considered to ascertain the applicability of Prevailing Wages law, Chapter 39.12 RCW, and a definitive determination can only be obtained from the Washington State Department of Labor and Industries. If the Project is receiving other public funds and/or the CONTRACTOR is a public entity (e.g., a city, county, housing authority), the CONTRACTOR may be required to pay prevailing wages on the Project. The CONTRACTOR agrees that the CONTRACTOR is responsible for determining if Prevailing Wages laws, Chapter 39.12 RCW, apply to the Project and that the DEPARTMENT shall not make such a determination.

The CONTRACTOR shall be responsible for any prevailing wage payments that may be required by law. The DEPARTMENT strongly recommends that the CONTRACTOR consult with the Washington State Department of Labor and Industries and/or private legal counsel to determine whether or not prevailing wages must be paid on the Project and, if so, what wage rates apply. The CONTRACTOR acknowledges that failure to secure a determination from the Washington State Department of Labor and Industries prior to commencement of work on the Project can result in significant additional cost to the Project.

If the funding provided under this Contract is in whole or in part a grant or a forgivable loan, the CONTRACTOR agrees that Prevailing Wages on Public Works, Chapter 39.12 RCW, shall apply to the Project, and all contractors and subcontractors performing work on the Project shall consult with Washington State Department of Labor and Industries, as necessary, and file the “Statement of Intent to Pay Prevailing Wages” and “Affidavit of Wages Paid” as required by RCW 39.12.040.

## **1.21. PERFORMANCE REPORTING**

### **A. Annual Reporting**

Annual performance reports must be completed by the CONTRACTOR and submitted to the DEPARTMENT in a form and manner as prescribed by the DEPARTMENT. The DEPARTMENT reserves the right to change the reporting requirements, in which case the DEPARTMENT shall notify the CONTRACTOR within a reasonable



period of time. Reserve account balances shall be carried forward each year and reserve account activity shall be identified in the Annual Report. Failure to file timely annual performance reports in accordance with DEPARTMENT requirements may result in penalties that may include, but are not limited to, the termination of this CONTRACT, a notice of default, and/or the DEPARTMENT denying the CONTRACTOR's application in future funding rounds.

## **1.22. PROJECT CLOSEOUT**

### **A. Placed In Service**

The CONTRACTOR shall comply with placed in service procedures as outlined in Housing Trust Fund Handbook. The placed in service procedures shall be completed within the timeframe identified in Attachment D – Project Schedule.

### **B. Final Contract Close Out**

Upon the expiration of the Commitment Period and, if applicable, payment in full of the Promissory Note(s), the DEPARTMENT shall complete a Contract Close Out. Any Deed(s) of Trust and Covenants recorded against the Property shall be reconveyed and the Promissory Note(s) shall be marked "Paid" or "Released" as applicable and returned to the CONTRACTOR of record at the time the Commitment Period expires. Any excess HTF monies that may be in the CONTRACTOR's possession shall be returned by the CONTRACTOR to the DEPARTMENT.

## **1.23. SUBCONTRACTING**

The parties anticipate that the CONTRACTOR shall subcontract work contemplated under this Contract. The CONTRACTOR shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the DEPARTMENT in writing may: (a) require the CONTRACTOR to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the CONTRACTOR from subcontracting with a particular person or entity; or (c) require the CONTRACTOR to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The CONTRACTOR is responsible to the DEPARTMENT if its Subcontractors fail to comply with any applicable term or condition of this Contract. The CONTRACTOR shall appropriately monitor the activities of its Subcontractors to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the CONTRACTOR to the DEPARTMENT for any breach in the performance of the CONTRACTOR's duties.

Every subcontract shall include a condition that the DEPARTMENT and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

## **1.24. CONTRACTOR ORGANIZATION INSURANCE**

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the DEPARTMENT should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the CONTRACTOR or Subcontractor, or agents of either, while performing under the terms of this Contract.

The insurance required shall be issued by an insurance company authorized to do business within the State of Washington. The insurance shall name the State of Washington Department of Commerce, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall instruct the insurers to give DEPARTMENT thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The CONTRACTOR shall submit to DEPARTMENT, within fifteen (15) calendar days of the Contract start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, the CONTRACTOR shall provide renewal certificates if requested prior to expiration of each policy required under this section.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

### **A. Commercial General Liability Insurance Policy**

Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000.00 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

### **B. Automobile Liability**

In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the CONTRACTOR or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000.00 per occurrence, using a Combined Single Limit for bodily injury and property damage.

### **C. Professional Liability, Errors and Omissions Insurance**

In the event the CONTRACTOR provides professional services, the CONTRACTOR shall maintain Professional Liability Insurance in such limits as are appropriate in light of the type and extent of services provided. The CONTRACTOR shall maintain Errors and Omissions Insurance, minimum limits of no less than \$1,000,000.00 per occurrence to cover all activities by the CONTRACTOR and licensed staff employed or under contract to the CONTRACTOR. The State of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

### **D. Fidelity Insurance**

Every officer, director, employee, or agent who is authorized to act on behalf of the CONTRACTOR for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000.00 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the DEPARTMENT as beneficiary.
- Subcontractors that receive \$10,000.00 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the CONTRACTOR as beneficiary.
- The CONTRACTOR shall provide, at the DEPARTMENT's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered, the amounts, the period of coverage, and that the DEPARTMENT shall be provided thirty (30) days advance written notice of cancellation.

#### **E. Contractors and Local Governments that Participate in a Self-Insurance Program**

A CONTRACTOR that participates in a Self-Insured/Liability Pool or Self-Insured Risk Management Program may seek approval from the DEPARTMENT to have the above liability/fidelity/property insurance requirements met under a self-insured/liability pool or self-insured risk management program satisfactory to the DEPARTMENT. In its request to the DEPARTMENT, the CONTRACTOR shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles.

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

- 1) Governmental Accounting Standards Board (GASB),
- 2) Financial Accounting Standards Board (FASB), and
- 3) Washington State Auditor's annual instructions for financial reporting.

A CONTRACTOR that participates in a joint risk pool shall maintain sufficient documentation to support the aggregate claim liability information reported its own balance sheet reporting its assets and liabilities. If the pool is prohibited from naming third parties as additional insureds, the State of Washington, its agents, and employees need not be named as additional insured, provided sufficient proof of such prohibition is provided to the DEPARTMENT.

CONTRACTOR shall provide to the DEPARTMENT annually, on the anniversary of the start date of this Contract, a summary of coverages and a letter of self-insurance, evidencing continued coverage under CONTRACTOR's self-insured/liability pool or self-insured risk management program.

### **1.25. CASUALTY, CONDEMNATION, ETC.**

In the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, the CONTRACTOR shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefore, provided that:

- A. Such proceeds are sufficient to keep the loan in balance and rebuild the Property in a manner that provides adequate security to the DEPARTMENT for repayment of the loan, or if such proceeds are insufficient to provide adequate security or to keep the loan in balance, then the CONTRACTOR has funded any deficiency,
- B. The DEPARTMENT shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and such approval shall not be unreasonably withheld, and
- C. No uncured material default then exists under this Contract, the Promissory Note, the Deed of Trust or the Covenant. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then such insurance and/or condemnation proceeds may be used for partial rebuilding and partial repayment of the loan in a manner that provides adequate security to the DEPARTMENT for repayment of the remaining balance of the Contract Amount.

The DEPARTMENT shall specifically be named as a lender loss payee on all policies, and all policies shall be primary to any other valid and collectable insurance.

### **1.26. NON-RECOURSE AWARD**

Notwithstanding anything to the contrary herein, the CONTRACTOR, its assigns and their respective members, partners, officers, directors, employees, agents and subcontractors shall have no personal liability for payment of the indebtedness evidenced hereby or performance of the covenants set forth in the Promissory Note, in the Deed of Trust or in this Contract, and the sole recourse of the holder of the Promissory Note shall be confined to the exercise of its rights under the Deed of Trust, provided that nothing shall diminish the CONTRACTOR's liability for damages or deficiencies resulting from theft, waste, fraud, material misrepresentation and misuse of rents.

### **1.27. PROJECT AND RELATED PRESS RELEASES**

The CONTRACTOR shall identify the DEPARTMENT as a Project financier or capital funder on any press releases about the Project. If signage is erected during construction or rehabilitation, signage shall identify the Project as one funded by the "Washington State Department of Commerce" and "Washington State Housing Trust Fund."

The CONTRACTOR may affix, in a publicly viewed common area, a plaque or other approved permanent signage that identifies the DEPARTMENT, program, and housing as an investment of the people of the State of Washington.

### **1.28. AUDIT**

Except as otherwise approved by the DEPARTMENT, the CONTRACTOR shall provide the DEPARTMENT with annual audits that meet the requirements of the Housing Trust Fund Handbook.

### **1.29. RECEIPT OF OTHER PUBLIC OR PRIVATE FUNDING**

The CONTRACTOR shall notify the DEPARTMENT, upon receipt and in its Annual Report, of any other public or private subsidy for the Project at any time during the Commitment Period. Such written notification shall explain the source of the funds, conditions and the effect upon the Project. The DEPARTMENT reserves the right to amend, reduce, and restructure its Contract Amount to the CONTRACTOR based upon the CONTRACTOR's receipt of additional project funding.

### **1.30. STORED MATERIALS FOR CONSTRUCTION AND REHABILITATION PROJECTS**

The DEPARTMENT may withhold any disbursement for materials or fixtures ("Stored Materials") for the Project until such time as the same have been incorporated into the improvements and permanently affixed to the real property. Any disbursement of funds, in whole or in part, to pay for any Stored Materials will be made on a case-by-case basis and will be subject, in addition to satisfaction of the other conditions to disbursements contained in this Contract, and to the DEPARTMENT's receipt of evidence reasonably acceptable to the DEPARTMENT that such:

- A. Stored Materials are included within the coverages of insurance policies carried by the CONTRACTOR in accordance with this Contract;
- B. Stored Materials have been, or upon disbursement of the requested advance will be, fully paid for with the ownership thereof vested in the CONTRACTOR free of any liens or claims of third parties;
- C. Stored Materials are stored either on the Property or in a bonded warehouse;
- D. Stored Materials are suitably protected against casualty, theft or damage; and
- E. Stored Materials, if they are finished components, are ready for installation and are appropriate for purchase during the current stage of construction.

### **1.31. NONDISCRIMINATION**

The CONTRACTOR shall make the Project facilities available in a manner that assures fair, equal, and non-discriminatory treatment to all persons. During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, including but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination; Chapter 51-50 WAC, Washington State's Building Code; 42 U.S.C. 12101 et seq., the American with Disabilities Act ("ADA"); and Title VII of the Civil Rights Act of 1964, Public Law 88-352 the Federal Fair Housing Act; and 24 CFR Part 100, Housing for Older Persons Act of 1995.

The funds provided under this Contract shall not be used to fund religious worship, exercise, or instruction. The CONTRACTOR shall not require persons to participate in any religious services as a condition of receiving shelter, housing, or any other housing-related assistance.

### **1.32. COMPLIANCE WITH THE HOUSING TRUST FUND HANDBOOK**

The parties acknowledge and agree that the work under this Contract is subject to the Housing Trust Fund Handbook, which is a set of program policies and guidelines available on the DEPARTMENT's website (currently at <http://www.commerce.wa.gov/htf>), and that the Housing Trust Fund Handbook may be amended by the DEPARTMENT from time to time. The DEPARTMENT reserves the right to require changes to an approved Management Plan, reporting requirements, placed in service procedures, or other requirements or procedures identified in this Contract, consistent with amendments to the Housing Trust Fund Handbook.

### **1.33. CONSTRUCTION OF CONTRACT, ENTIRE AGREEMENT**

All Parts, terms and provisions in this Contract, as well as the Attachments, shall be construed in accordance with their ordinary and customary meaning.

This Contract including Attachments represents all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### **1.34. RIGHTS AND OBLIGATIONS**

All rights and obligations of the parties to this Contract shall be subject to and governed by all Parts contained in the text of this Contract instrument including all Attachments. Furthermore, the following are incorporated into this Contract by reference:

- HTF Income Limits found on the DEPARTMENT's website.
- The CONTRACTOR's Housing Trust Fund application for funds (if any).
- The DEPARTMENT's Deed(s) of Trust, including all renewals, modifications and extensions thereof, if applicable.
- The DEPARTMENT's Promissory Note(s), including all renewals, modifications and extensions thereof.
- The DEPARTMENT's Low Income Housing Covenant Agreement(s), including all renewals, modifications and extensions thereof, if applicable.
- The Housing Trust Fund Handbook, as it may be modified or amended from time to time.
- The Priority and Subordination Agreement, if applicable.
- The Assignment, Assumption and Consent Agreement, if applicable.

## **PART 2 – GENERAL TERMS AND CONDITIONS**

### **2.1. ALL WRITINGS CONTAINED HEREIN**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### **2.2. AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **2.3. AMERICANS WITH DISABILITIES ACT (ADA)**

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **2.4. APPROVAL**

This Contract shall be subject to the written approval of the DEPARTMENT's authorized representative and shall not be binding until so approved. This Contract may be altered, amended or waived only by a written amendment executed by both parties.

### **2.5. ASSIGNMENT**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the DEPARTMENT.

### **2.6. ATTORNEYS' FEES**

Unless expressly permitted under another provision of this Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney's fees and costs.

### **2.7. AUDIT**

#### **A. General Requirements**

The CONTRACTOR is to procure audit services based on the following guidelines.

- The CONTRACTOR shall maintain its records and accounts to facilitate audits and shall ensure that Subcontractors also maintain auditable records.

- The CONTRACTOR is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.
- DEPARTMENT reserves the right to recover from the CONTRACTOR all disallowed costs resulting from the audit.
- Responses to any unresolved findings and disallowed or questioned costs shall be included with the audit report. The CONTRACTOR must respond to DEPARTMENT requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

**B. State Funds Requirements**

In the event an audit is required, if the CONTRACTOR is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of nonprofit organizations are to be conducted by a certified public accountant selected by the CONTRACTOR.

The CONTRACTOR shall include the above audit requirements in any subcontracts.

In any case, the CONTRACTOR’s records must be available for review by the DEPARTMENT.

**C. Documentation Requirements**

The CONTRACTOR must send a copy of any audit report no later than nine (9) months after the end of the CONTRACTOR’s fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or a hard copy to:

**Department of Commerce**  
 ATTN: Audit Review and Resolution Office  
 1011 Plum Street SE  
 PO Box 42525  
 Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the CONTRACTOR must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by DEPARTMENT.
- Copy of the Management Letter and Management Decision Letter, where applicable.

If the CONTRACTOR is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to DEPARTMENT; no other report is required.

**2.8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. “Confidential Information” as used in this section includes:

- All material provided to the CONTRACTOR by the DEPARTMENT that is designated as “confidential” by the DEPARTMENT;
- All material produced by the CONTRACTOR that is designated as “confidential” by the DEPARTMENT; and



- All personal information in the possession of the CONTRACTOR that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The CONTRACTOR shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The CONTRACTOR shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the DEPARTMENT or as may be required by law. The CONTRACTOR shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the CONTRACTOR shall provide the DEPARTMENT with its policies and procedures on confidentiality. The DEPARTMENT may require changes to such policies and procedures as they apply to this Contract whenever the DEPARTMENT reasonably determines that changes are necessary to prevent unauthorized disclosures. The CONTRACTOR shall make the changes within the time period specified by the DEPARTMENT. Upon request, the CONTRACTOR shall immediately return to the DEPARTMENT any Confidential Information that the DEPARTMENT reasonably determines has not been adequately protected by the CONTRACTOR against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The CONTRACTOR shall notify the DEPARTMENT within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **2.9. CONFORMANCE**

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

## **2.10. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Contract shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by the DEPARTMENT. The DEPARTMENT shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, the CONTRACTOR hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the DEPARTMENT effective from the moment of creation of such Materials.

“Materials” means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. “Ownership” includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under this Contract, but that incorporate pre-existing materials not produced under this Contract, the CONTRACTOR hereby grants to the DEPARTMENT a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that the CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the DEPARTMENT.

The CONTRACTOR shall exert all reasonable effort to advise the DEPARTMENT, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The CONTRACTOR shall provide DEPARTMENT with prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any Materials delivered under this Contract. The DEPARTMENT shall have the right to modify or remove any restrictive markings placed upon the Materials by the CONTRACTOR.

## **2.11. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the DEPARTMENT, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the CONTRACTOR’s name, address, and Contract number; and
- be mailed to the Director and the other party’s (respondent’s) Contract Contact within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor’s statement to both the Director or the Director’s designee and the requestor within five (5) working days. The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties. The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties’ choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

## **2.12. DUPLICATE PAYMENT**

The CONTRACTOR certifies that work to be performed under this Contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

## **2.13. ETHICS/CONFLICTS OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the DEPARTMENT may, in its sole discretion, by written notice to the CONTRACTOR terminate this Contract if it is found after due notice and examination by the DEPARTMENT that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this Contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the State of Washington that worked on the Housing Trust Fund including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the twenty-four (24) month period preceding the start date of this Contract. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by the DEPARTMENT that a conflict of interest exists, the CONTRACTOR may be disqualified for an award.

In the event this Contract is terminated as provided above, the DEPARTMENT shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of this Contract by the CONTRACTOR. The rights and remedies of the DEPARTMENT provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DEPARTMENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

## **2.14. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **2.15. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

## **2.16. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The CONTRACTOR and its employees or agents performing under this Contract are not employees or agents of the State of Washington or DEPARTMENT. The CONTRACTOR shall not hold itself out as or claim to be an officer or employee of DEPARTMENT or of the State of Washington by reason hereof, nor shall the CONTRACTOR make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work shall be solely with the CONTRACTOR.

## **2.17. INDUSTRIAL INSURANCE COVERAGE**

The CONTRACTOR shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DEPARTMENT may collect from the CONTRACTOR the full amount payable to the Industrial Insurance Accident Fund. DEPARTMENT may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by DEPARTMENT under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

## **2.18. LAWS**

The CONTRACTOR shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

### **United States Laws, Regulations and Circulars (applicable if this Contract includes federal funds)**

#### **A. Audits**

2 CFR Part 200

#### **B. Environmental Protection and Review**

Coastal Barrier Resources Act of 1982, 16 U.S.C. 3501 et seq.

HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.

Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846 also 24 CFR 982.401(j).

National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality) Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.

**C. Flood Plains**

Flood Disaster Protection Act of 1973, 42 USC 4001-4128.

**D. Labor and Safety Standards**

All Rental Units Assisted with Federal Funds Must Meet the Section 8 Housing Quality Standards (HQS) and Local Housing Code Requirements for the duration of the Affordability Period.

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Davis Bacon Act, 40 U.S.C. 276a-276a-5.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

Title IV of the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4831, 24 CFR Part 35.

**E. Laws against Discrimination**

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100. Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-19.

Employment under Federal Contracts, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Nondiscrimination under Federal Grants, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq. 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Programs.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

**F. Office of Management and Budget**

2 CFR Part 200.

**G. Other**

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that CONTRACTORS who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

**H. Privacy**

Privacy Act of 1974, 5 U.S.C. 522a.

**I. Relocation**

Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.

Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

**Washington State Laws and Regulations**

- A. Affirmative action, RCW 41.06.020 (1).
- B. Affordable housing program, RCW 43.185A
- C. Boards of directors or officers of nonprofit corporations – Liability - Limitations, RCW 4.24.264.
- D. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- E. Discrimination-human rights commission, Chapter 49.60 RCW.
- F. Ethics in public service, Chapter 42.52 RCW.
- G. Housing assistance program, Chapter 43.185 RCW
- H. Interlocal cooperation act, Chapter 39.34 RCW.
- I. Noise control, Chapter 70.107 RCW.
- J. Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- K. Open public meetings act, Chapter 42.30 RCW.
- L. Prevailing wages on public works, Chapter 39.12 RCW.
- M. Public records act, Chapter 42.56 RCW.
- N. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.

- O. Shoreline management act of 1971, Chapter 90.58 RCW.
- P. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- Q. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- R. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- S. State environmental policy, Chapter 43.21C RCW.
- T. State Executive Order 21-02 Archeological and Cultural Resources.

## **2.19. LICENSING, ACCREDITATION AND REGISTRATION**

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

## **2.20. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

## **2.21. LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, the CONTRACTOR shall participate in local public transportation forums and implement strategies designed to ensure access to services.

## **2.22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the CONTRACTOR shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the CONTRACTOR's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **2.23. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES**

The CONTRACTOR shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The CONTRACTOR shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act

of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications shall include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

#### **2.24. PAY EQUITY**

The CONTRACTOR agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. The CONTRACTOR may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
  - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
  - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the DEPARTMENT, if the DEPARTMENT or the Department of Enterprise Services determines that the CONTRACTOR is not in compliance with this provision.

#### **2.25. POLITICAL ACTIVITIES**

Political activity of the CONTRACTOR employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No Contract Amount funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.



**2.26. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Project costs.

**2.27. PUBLICITY**

The CONTRACTOR agrees not to publish or use any advertising or publicity materials in which the State of Washington or the DEPARTMENT's name is mentioned, or language used from which the connection with the State of Washington's or the DEPARTMENT's name may reasonably be inferred or implied, without the prior written consent of the DEPARTMENT.

**2.28. RECAPTURE**

In the event that the CONTRACTOR fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, the DEPARTMENT reserves the right to recapture funds in an amount to compensate the DEPARTMENT for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the CONTRACTOR of funds under this recapture provision shall occur within the time period specified by the DEPARTMENT. In the alternative, the DEPARTMENT may recapture such funds from payments due under this Contract.

**2.29. RECORDS MAINTENANCE**

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

The CONTRACTOR shall retain such records for a period of six (6) years following the termination date of this Contract. At no additional cost, these records, including materials generated under this Contract, shall be subject at all reasonable times to inspection, review or audit by the DEPARTMENT, personnel duly authorized by the DEPARTMENT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

### **2.30. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the CONTRACTOR shall complete registration with the Washington State Department of Revenue.

### **2.31. RIGHT OF INSPECTION**

At no additional cost all records relating to the CONTRACTOR's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the DEPARTMENT, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The CONTRACTOR shall provide access to its facilities for this purpose.

### **2.32. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the execution date of this Contract and prior to its normal completion, the DEPARTMENT may terminate this Contract under the "Termination for Convenience" clause without the ten (10) business day notice requirement. In lieu of termination, this Contract may be amended to reflect the new funding limitations and conditions.

### **2.33. SEVERABILITY**

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

### **2.34. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

### **2.35. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the CONTRACTOR's income or gross receipts, any other taxes, insurance or expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

### **2.36. TERMINATION FOR CAUSE**

In the event the DEPARTMENT determines the CONTRACTOR has failed to comply with the terms and conditions of this Contract in a timely manner, the DEPARTMENT has the right to suspend or terminate this Contract. Before suspending or terminating this Contract, the DEPARTMENT shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, this Contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The DEPARTMENT reserves the right to suspend all or part of this Contract, withhold further disbursement of funds awarded by this Contract, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the DEPARTMENT to terminate this Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the DEPARTMENT provided in this Contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

### **2.37. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, the DEPARTMENT may, by ten (10) business days written notice, beginning on the second (2nd) day after the written notice, terminate or suspend this Contract, in whole or in part. If this Contract is so terminated or suspended, then DEPARTMENT shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination or suspension.

The Washington State Constitution Article 8 Section 4 and RCW 43.88.130 and RCW 43.88.290 prohibit the expenditure or commitment of state funds in the absence of appropriation. In the event that funding or appropriation is not available at the time the request for reimbursement and supporting documentation are submitted, the issuance of payments will be delayed or suspended until such time as funds or appropriation become available.

If the Contract Amount is not fully drawn down and should the Washington State Legislature fail to enact a Capital Budget appropriating funds to fulfill the contractual obligation outlined in this Contract by midnight of June 30 of each odd-number year, the CONTRACTOR shall immediately suspend all reimbursable work under this Contract and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

The DEPARTMENT shall notify the CONTRACTOR immediately upon the lifting of the Contract suspension.

### **2.38. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by an Authorized Representative of the DEPARTMENT.

### **2.39. WORK HOURS AND SAFETY STANDARDS**

If this Contract includes federal funds, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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## **PART 3 – HOMEOWNERSHIP PROJECT REQUIREMENTS**

### **3.1. HOMEBUYER ELIGIBILITY**

The CONTRACTOR shall ensure that only First-time Homebuyers, as defined in Part 1 of this Contract, whose adjusted income is less than eighty percent (80%) of the median family income, adjusted for household size, for the county where the project is located, are eligible for assistance using the Contract Amount under this Contract. Further housing production provided by the CONTRACTOR with program income funds resulting from this Contract may be provided to other Low-Income Homebuyers who need not be First-time Homebuyers, as provided in the Housing Trust Fund Handbook. See Section 3.5. 3.5 Program Income, Accounting Systems.

### **3.2. HOMEBUYER EDUCATION**

The CONTRACTOR shall ensure that all Low-income Homebuyers receiving assistance resulting from this Contract shall complete a pre-purchase homebuyer education program certified by the Washington State Housing Finance Commission, the U.S. Department of Housing and Urban Development, or the Neighborhood Reinvestment Full-Cycle Lending program.

### **3.3. REQUIREMENTS FOR DRAWDOWN OF CONTRACT AMOUNT**

The following is in addition to Section 1.10 in Part 1 of this Contract.

The CONTRACTOR shall provide First-time Homebuyer and real property documentation as specified by the DEPARTMENT relevant to the transaction or the drawdown of the Contract Amount.

Within three (3) years from the execution date of this Contract, the CONTRACTOR shall draw down funds up to the Contract Amount to produce the number of homes required under this Contract, or de-obligate unspent funds from the Contract Amount as identified in the Attachment D – Project Schedule, or the DEPARTMENT shall reduce the Contract Amount by the amount of the unspent funds.

### **3.4. HOMEBUYER LOANS**

Whenever the CONTRACTOR provides funds from the Contract Amount directly to a First-time Homebuyer, those funds shall be provided to the homebuyer as a loan (the “Homebuyer Loan”).

If Homebuyer Loans are provided, the CONTRACTOR may structure the terms of the Homebuyer Loan based on the First-time Homebuyer’s income level and affordability as outlined in the Housing Trust Fund Handbook. Any interest rates charged by the CONTRACTOR on the Homebuyer Loan, shall not exceed three percent (3%). Other fees and charges must be reasonable and customary for the area.

### **3.5. PROGRAM INCOME, ACCOUNTING SYSTEMS**

Any proceeds resulting from this Contract, such as from the sale of any homes, release of leasehold interests, or payments of Homebuyer Loans funded under this Contract that are repaid to the CONTRACTOR (collectively “Program Income”), shall be used to produce additional housing for other eligible Low-income Homebuyers as currently described in Attachment B – Scope of Work.

When producing additional housing using Program Income, the CONTRACTOR shall comply with the then current homeownership policies and guidelines identified in the Housing Trust Fund Handbook.

The CONTRACTOR may use up to ten percent (10%) of the Program Income for loan servicing or program management costs associated with Attachment B – Scope of Work, Project Description and Property Location.

All Program Income must be identifiable in the CONTRACTOR’s program accounting system and reported to the DEPARTMENT. Any Program Income derived from this Contract may be used to fund additional activities as described in Attachment B – Scope of Work in this Contract.

The CONTRACTOR shall maintain an accounting system capable of tracking any Contract Amount provided under this Contract. The accounting system shall clearly identify the expenditure of Contract Amount, as well as any Program Income and its uses, resulting from the activities undertaken or pursuing to this Contract. The CONTRACTOR shall provide annual reports to the DEPARTMENT identifying the status of funds, any Program Income, and all activities resulting from this Contract.

### **3.6. FIRE, HAZARD AND LIABILITY INSURANCE**

The CONTRACTOR shall ensure that each First-time Homebuyer secures fire, hazard, and liability insurance, which is adequate to cover property loss and which names the CONTRACTOR as additional loss payee. The CONTRACTOR shall maintain documentation in the file that the insurance is current during the Commitment Period.

### **3.7. PROMISSORY NOTES, DEEDS OF TRUST, AND LOW-INCOME COVENANTS**

The CONTRACTOR shall be responsible for all documentation of the Homebuyer’s eligibility verifications, Homebuyer Loans, Deeds of Trust and Covenants, and shall make them available to the DEPARTMENT upon request.

#### **A. When the Homebuyer owns the land:**

A Promissory Note, a Deed of Trust, and an Affordability Covenant for a minimum of 25 years in favor of the CONTRACTOR shall be required for each subject property assisted with funds resulting from this Contract. The CONTRACTOR shall include a resale formula in the Affordability Covenant to assure that future home prices will remain affordable to Low-Income Homebuyers for a minimum of 25 years. If during this Contract’s Commitment Period, the CONTRACTOR plans to release or modify, in part or in whole, any Affordability Covenant related to this Contract, the CONTRACTOR shall notify the

DEPARTMENT in writing and seek the DEPARTMENT's approval prior to releasing or modifying said Covenant. Notwithstanding anything to the contrary in the Promissory Note(s) and Deed(s) of Trust from the homebuyer to the CONTRACTOR, the DEPARTMENT reserves the right to require the CONTRACTOR to assign to the DEPARTMENT, without consideration, one or more of such Note(s) and Deeds of Trust, and upon any such demand the CONTRACTOR shall immediately execute and deliver such transfer documents to the DEPARTMENT. Commerce reserves the right to require assignment of one or all Promissory Note(s) and Deed of Trust(s) and reassign as needed.

**B. When the Homebuyer does not own the land:**

For community land trusts or other homeownership program models in which the Homebuyer does not own the land, the Homebuyer shall own the home that is purchased and the CONTRACTOR shall retain ownership of the land or have a long-term ground lease agreement. Deed(s) of Trust and Affordability Covenants for a minimum of 25 years shall be recorded in favor of the DEPARTMENT and shall be required for each subject property assisted with funds resulting from this Contract. A Promissory Note will also be required from the CONTRACTOR in favor of the DEPARTMENT for each subject property.

**C. Condominiums:**

In the case of condominiums, the CONTRACTOR shall record a condominium Affordability Covenant for a minimum of 25 years in favor of the DEPARTMENT which accomplishes the same long-term affordability goal as the ground lease. The Affordability Covenant shall include a resale formula to assure that future home prices will remain affordable to Low-Income Homebuyers. A Promissory Note will also be required from the CONTRACTOR in favor of the DEPARTMENT.

**3.8. PROGRAM AND HOMEBUYER RECORDS**

The CONTRACTOR shall maintain all records related to the Homeownership Program in an orderly and safe manner at the address designated in this Contract for the length of the Commitment Period, unless otherwise approved in writing by the DEPARTMENT. All records related to the homebuyer program, including individual loan files must be available to the DEPARTMENT for inspection and monitoring.

In a timeframe specified by the DEPARTMENT, which shall not be unreasonable, the CONTRACTOR shall provide a completed Homebuyer Information Form on all First-time Homebuyers who receive assistance under this Contract.

**3.9. PROGRAM DISSOLUTION, CONTRACTOR NON-COMPLIANCE**

If the CONTRACTOR's legal entity is dissolved, liquidated or the CONTRACTOR's Homeownership Program is discontinued before the end of the Commitment Period, or if the CONTRACTOR is materially out of compliance with the terms and conditions of this Contract, any funds up to the amount of the Contract Amount and any Program Income funds (if any) shall be returned to the DEPARTMENT within thirty (30) days, and any outstanding Homebuyer Loans shall be assigned, including security instruments, to the DEPARTMENT. The CONTRACTOR shall notify the DEPARTMENT of any action to dissolve, liquidate or discontinue the Homeownership Program in a timely manner.

## ATTACHMENT A – LOAN OR GRANT TERMS

The CONTRACTOR agrees to the following loan and/or grant terms and conditions.

### 1. Contract Amount:

The total Contract Amount is one million and 00/100 Dollars (\$1,000,000.00) and is structured as outlined in the tables below. The CONTRACTOR shall draw down the entire Contract Amount within three (3) years from contract execution date, or the DEPARTMENT may reduce the Contract Amount by the amount of the leftover funds.

Any Recoverable Grants identified below shall have no expectation of repayment subject to the condition that all of the terms and conditions of this Contract have been met through the Commitment Period, as defined in Part 1.

**TABLE A – Recoverable Grant**

Table A-1. Loan/Grant Types, Amounts, Fees & Periods							
Loan/Grant #	Type	Funding Source	Amount	Fees	Loan/Grant Term (Years)	Start Date	End Date
1	Recoverable Grant		\$1,000,000.00	N/A	Not less than 25 years	Date of last signature	25 years from date of sale of last home

Table A-3. Repayment Terms	
Recoverable Grant #	
1	The Recoverable Grant will have no expectation of repayment if the terms and conditions of the Contract have been met through the Commitment Period, as defined in Section 1.1(C.) of this Contract. However, if the Property is sold, refinanced, transferred, the use changes during the Commitment Period, or the CONTRACTOR is materially out of compliance with the terms and conditions of this Contract, the award amount, plus a proportional share of the appreciated value of the Property will be due and payable to the DEPARTMENT within thirty (30) days of such event.



## ATTACHMENT B – SCOPE OF WORK

The CONTRACTOR agrees to perform the scope of work described in this Attachment B.

### 1. PROJECT DEVELOPMENT:

The purpose of this Project is to fund down payment assistance of 20 single family residences for Low Income First-time Homebuyers (the “Project”). All Homebuyers participating in or receiving assistance from the Project shall complete a pre-purchase homebuyer education program as described in Part 3 or this Contract.

### 2. LEGAL DESCRIPTION OF PROPERTY:

To be determined upon house selection.

### 3. TARGET POPULATION TO BE SERVED BY PROJECT ONCE PROJECT IS PLACED IN SERVICE:

The following target population shall be housed on the Property from the time the Property is Placed in Service to the end of the Commitment Period.

Table B-1. Area Median Income (AMI) Counties and Areas	
County	AMI Area
Pierce	Seattle-Tacoma-Bellevue, WA Metropolitan Statistical Area

Table B-2. Income Levels and Target Populations			
Income Levels and Home Counts		Homebuyers Assisted	
% of Area Median Income	Homes	Population Type	Homebuyers
At or Below 80%	20	General population	20
<b>Total =</b>	<b>20</b>	<b>Total =</b>	<b>20</b>

In addition to the definition of "first-time home buyer" in RCW 43.185A.010, for the purposes of this contract only, "first-time home buyer" also includes:

- (I) A single parent who has only owned a home with a former spouse while married;
- (II) An individual who is a displaced homemaker as defined in 24 C.F.R. Sec. 93.2 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and has only owned a home with a spouse;
- (III) An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; or
- (IV) An individual who has only owned a property that is discerned by a licensed building inspector as being uninhabitable.

## ATTACHMENT C – DEVELOPMENT BUDGET

The following is a summary of the anticipated Development Budget approved by the DEPARTMENT at the time of the execution of this Contract. Some variations to the anticipated Development Budget are expected. The CONTRACTOR agrees to submit to the DEPARTMENT a third-party certification of the Project’s Final Total Development Cost in accordance with the terms and conditions of this Contract.

Cost Category	Total Cost	Residential Costs	Non-Residential Costs	HTF Amount (“Contract Amount”)
Acquisition DPA	\$1,000,000	\$1,000,000		\$1,000,000
Construction				
Soft Costs (e.g., -----)				
Pre-Development				
Construction Financing				
Permanent Financing				
Capitalized Reserves				
Other: _____				
Other: _____				
<b>TOTAL DEVELOPMENT COST</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>		<b>\$1,000,000</b>

## ATTACHMENT D – PROJECT SCHEDULE

The following is a summary of the anticipated Project Schedule that was approved by the DEPARTMENT at the time of the execution of this Contract. Some variations to the anticipated Project Schedule are expected. The CONTRACTOR shall notify and consult with the DEPARTMENT whenever an event materially affects the timely completion of the Project.

The entire Contract Amount, less the 5% retainage (if applicable), shall be drawn down by the CONTRACTOR within three (3) years of the Execution date referenced below or the DEPARTMENT may reduce the Contract Amount by the amount of the leftover funds. The CONTRACTOR will have three (3) months from such date to provide all necessary documentation for the contract to be Placed in Service, at such time as all documentation is received and approved by the department, the 5% retainage may be requested and paid. 5% retainage does not apply to DPA only projects.

<b>Table D-1. Summary of Anticipated Project Schedule</b>		
<b>Category</b>	<b>Tasks</b>	<b>Anticipated Date of Completion</b>
Site Control	Purchase & Sale Agreement executed	N/A
	Site closing	N/A
Feasibility/Due Diligence	All required 3 <sup>rd</sup> party reports complete	N/A
	SEPA/NEPA clearance complete	N/A
	Cultural resources/archeological completed	N/A
Relocation	All relocation activities complete (if applicable)	N/A
Financing	Allocation of LIHTC from WSHFC	N/A
	Capital financial closing	N/A
Design/Permitting	Building permits issued	N/A
	Final plans and specs completed	N/A
Construction	Begin construction	N/A
	Construction completion	N/A
	Certificate of Occupancy	N/A
Final Draw Down Date	Funds will be fully drawn down	3 years from contract execution date
Placed in Service	Refer to Housing Trust Fund Handbook	Date of sale of last home or 3 months from last draw
Commitment Period	Start of the Commitment Period	Date of sale of last home or 3 months from last draw
	End of the Commitment Period	25 years from the date of sale of last home