

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT: Community Services

DATE: 04/18/16

REQUESTED ACTION: That the County Manager approve a contract with Vancouver Veterans Residences, LP to partially-fund Freedom's Path at Vancouver.

Consent Hearing County Manager

BACKGROUND

As a participating jurisdiction, Clark County annually receives federal HOME Investment Partnerships Program (HOME) funds from the U.S. Department of Housing and Urban Development (HUD). HOME is the largest Federal block grant to state and local governments designed exclusively to create affordable housing for low-income households. HOME funds can be used to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing.

This \$121,742 HOME contract with Vancouver Veterans Residences, LP leverages an additional \$12 million dollars in federal VA and tax credit funding to create 50 new units of housing for Clark County veterans who are low-income. The newly constructed complex, known as Freedom's Path, will include 14 efficiency and 36 one-bedroom units, each with a private bath. The four-story building is constructed on the Veterans Administration campus at 1601 E. 4th Plain Blvd., Vancouver, WA so that veterans will be able to easily access needed support services.

Units will be available for occupancy in late summer 2016. Twenty units will be affordable to households earning less than 30% of area median income (AMI), 15 units will be affordable to those earning between 31-40% AMI and 15 units will be available for households earning 41-60% AMI. The affordability requirements will remain in place for 25 years.

The Clark County HOME funds are provided to the Contractor as a 25-year amortized loan at 2.00% per year. Annual payment will be approximately \$6,235.68.

- This is a new project
- This is a continuation of an existing project

COUNCIL POLICY IMPLICATIONS

There are no known Council policy implications.

ADMINISTRATIVE POLICY IMPLICATIONS

There are no known administrative policy implications.

COMMUNITY OUTREACH

A Request for Applications was published October 2014 for HOME Investment Partnerships Program funding. In March 2015, the Urban County Policy Board, in a public meeting, selected this program for funding. In April 2015, a newspaper advertisement described the project and requested public comment during a 30-day comment period. In May 2015, the project was presented to the Board of County Councilors for approval and public comment. No public comment was received, and the Board of County Councilors approved the project.

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

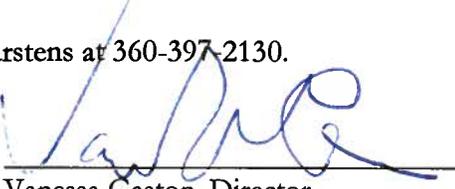
Local Fund Dollar Amount	\$0
Grant Fund Dollar Amount	\$121,742 (HUD HOME Grant M15-UC530204)
Account	Fund 1938 (HOME)
Company Name	Vancouver Veterans Residences, LP (Contract 2015-HOME-15H1)

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

For questions please contact Michael Torres or Jay Carstens at 360-397-2130.


4-15-16
Jay Carstens, Management Analyst


Vanessa Gaston, Director

APPROVED: _____
CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: _____

SR# _____

APPROVED: 
Mark McCauley, Acting County Manager

DATE: 4/25/16

BUDGET IMPACT ATTACHMENT – NONE

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Total	\$0	\$0	\$0	\$0	\$0	\$0

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total	\$0	\$0	\$0	\$0	\$0	\$0

CONTRACT # 2015-HOME-15H1

between

CLARK COUNTY, Department of Community Services
PO Box 5000, Vancouver, WA 98666

and

VANCOUVER VETERANS RESIDENCES, LP
191 Edgewood Avenue, SE, Atlanta, GA 30303

Program/Services Being Funded: Freedom's Path at Vancouver
Contract Period: Upon County Signature through December 31, 2016
Budget Authority: \$121,742
Funding Source: Fund 1938 (Federal HUD)
DUNS Number: 780825761
CFDA Number: 14.239

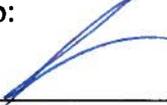
Contractor Program Contact	Contractor Fiscal Contact	County Program Contact	County Fiscal Contact
Judith Caira 404-876-5895 judith.caira@ahshome.org	David Esserman 941-929-1270 x 114 david.esserman@beneficial.com	Michael Torres 360-397-2075 x 7801 michael.torres@clark.wa.gov	John Jokela 360-397-2075 x 7883 john.jokela@clark.wa.gov

Clark County, hereinafter referred to as the "County," and Vancouver Veterans Residences, LP, hereinafter referred to as the "Contractor," agree to the terms and conditions of this Contract by signing below:

FOR CLARK COUNTY:

FOR VANCOUVER VETERANS
RESIDENCES, LP, a Florida limited
partnership:

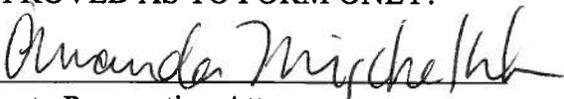

Mark McCauley, Acting County Manager


Donald W. Paxton, Manager of CFV Vancouver
Veteran Residences LLC, General Partner

4/25/16
Date

4/12/16
Date

APPROVED AS TO FORM ONLY:


Deputy Prosecuting Attorney

**BUDGET SUMMARY
 CONTRACT # 2015-HOME-15H1
 VANCOUVER VETERANS RESIDENCES, LP**

Source	Fund Amount
A. HOME Funds - Clark County	\$121,742
B. Vancouver HOME Funds	\$121,742
C. U.S. Dept. Veterans Administration	\$1,866,400
D. Applicant	\$25,141
E. Low Income Housing Tax Credits	\$9,625,943
F. Federal HOME Loan Bank	\$700,000
PROJECT TOTAL	\$12,695,232

Contract Year through 12/31/16

ITEMIZED COST	TOTAL COST	A.	B.	C.	D.	E.	F.
Construction	\$8,195,880	\$121,742	\$121,742	\$1,866,400		\$6,324,138	
Legal, Application, Loan Fees, Reserves, and Development	\$4,257,252				\$25,141	\$3,301,805	\$700,000
PROJECT TOTALS	\$12,695,232	\$121,742	\$121,742	\$1,866,400	\$25,141	\$9,625,943	\$700,000

**2015-HOME-15H1
STATEMENT OF WORK
FREEDOM'S PATH AT VANCOUVER**

1. PROJECT DESCRIPTION

Freedom's Path will consist of a four-story building of approximately 49,260 square feet. The building includes 14 efficiency and 36 one-bedroom units, each with a private bath. Twenty units will be affordable to households earning less than 30% AMFI, 15 units will be affordable to those earning between 31-40% AMFI and 15 units will be available for households earning 41-60% AMFI. The building is located on the Veterans Administration campus at 1601 E. 4th Plain Blvd., Vancouver, WA 98661. The building will be LEED Silver certified, include universal design, include an elevator, and community room.

In consideration of the benefits to be derived from this Agreement, the County agrees to provide HOME funds to the Contractor for the project described herein and in the Contractor's proposal and according to the project budget and terms in this Agreement.

2. CONTRACT PERIOD

- 2.1. The contract period is shown on the face sheet of this contract. Services must be provided, all HOME funds must be expended, and billable costs incurred within the contract period.
- 2.2. The Contractor shall have an additional 30 days following the expiration of the contract to submit reports and to complete non-billable end-of-contract activities.

3. PROJECT BUDGET AND TIMELINE

- 3.1. The County will provide the Contractor with funds in an amount not to exceed the amount shown on the first page of the Contract, and on the Budget Summary, for purposes of completing the project described herein. The use of these funds shall be expressly limited to the activities described in this Contract.
- 3.2. Construction shall be completed within two years of the date of final signature on this Contract.
- 3.3. Any material reduction in the total budget authority will be done after consultation with the Contractor and will require a modification of this Agreement. Any funds unspent at the end of the Agreement period will be retained by the County for allocation to another HOME project.

4. LOAN TERMS

These funds are provided to the Contractor as a loan. \$121,742 shall be a 25-year amortized loan at 2.00% per year. The first 20 years shall be the HOME Program

affordability period and the remaining 5 years shall only be a local Clark County affordability period. Annual payment is approximately \$6,235.68.

5. PAYMENT PROVISIONS

5.1. The County will pay the Contractor on a cost reimbursement basis. The Contractor shall submit an invoice, including a quarterly summary of program progress and accomplishments, and other required documentation. The invoice shall include the following:

5.1.1. A summary of expenses incurred in support of all cost reimbursement statements of work, by statement of work number, and accompanied by general ledger detail.

5.1.1.1. For direct costs, detail will include:

5.1.1.1.1. If applicable, Salaries and benefits: name or employee ID number, salary/benefits paid, and dates;

5.1.1.1.2. Other direct costs: vendor names, dates of service and amount.

5.1.1.2. For allocated costs, the Contractor shall provide a copy of an allocation method or plan to the County for review and approval by the Department of Community Services Finance Staff prior to the first invoice being reimbursed. Approval will be in writing and copied to both the Contractor and the contract file. The Contractor will submit one of the following documents to meet this requirement:

5.1.1.2.1. Cost Allocation Plan that defines how direct, shared, and administrative costs are allocated; or

5.1.1.2.2. A Cost Allocation methodology that defines how direct, shared, and administrative costs are allocated.

5.1.1.3. For administrative costs, the Contractor shall comply with federal, state, and local regulations. The basis for administrative costs shall be those described at 2 C.F.R. §200.

No administration costs are covered under this Contract.

5.1.2. For services that are also funded by a third party, the Contractor shall provide a detailed cost itemization by cost center and funding source. Detail shall identify which service or work was funded by the County

and by other parties.

- 5.2. Payment Provisions for Construction Projects where Federal Labor Standards Apply, and Change Orders. For construction projects subject to Federal Labor Standards Provisions (Davis-Bacon), the County shall reserve the final 10% of grant funds budgeted on the construction line item (as specified in the Budget Summary) pending the County's receipt of a complete and correct set of certified payrolls from project contractor(s). The final billing for retainage shall include copies of all executed change orders and the final project cost.
- 5.3. The Contractor agrees to allow the County to make adjustments to the individual budget lines of this Contract when necessary and in the interests of both parties. In the event that the County needs to adjust the stated budget amounts specified in the Statements of Work of this Contract, the Contractor grants the County the right to unilaterally modify said budget lines by issuing a contract amendment that, provided the total contract amount remains unchanged, will not require the signature of the Contractor.

PROJECT SCHEDULE
PROJECT: Freedom's Path at Vancouver

The Contractor shall plan and administer the project in accordance with this project schedule, unless otherwise modified by the County Program Contact in writing.

ACTIVITY	COMPLETION DATE
Apply for building permits	February 2015
Obtain financing	March 2015
Begin construction	April 2015
Construction completed	December 2016
Project completed	February 2017

**SPECIAL TERMS AND CONDITIONS
HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)**

The County is a participating jurisdiction applicant for HOME Investment Partnerships Program funds under the Cranston-Gonzalez National Housing Affordable Housing Act of 1990 (the Act), Pub. L. 93-383, as amended, and receives HOME funds for the purpose of carrying out eligible housing activities under the Act and under regulations issued by the Department of Housing and Urban Development (HUD) under 24 C.F.R. §92. The County and various cities within Clark County have agreed to cooperate in the undertaking of essential housing assistance activities, and the County desires to have services performed by the Contractor as described within this Agreement and the Contractor's proposal for the purpose of implementing eligible activities under the Act and HUD regulations.

1. ACCESS, MONITORING AND INSPECTIONS

- 1.1. The County, and duly authorized officials of the State and Federal government, shall have the right of access to and the right to examine or transcribe any records, books, financial statements, papers and documents relating to the project. The records and documents with respect to all matters covered by this Agreement will be subject at all times to inspection, review or audit by the County, Federal or State officials so authorized by law during the performance of this Agreement and during the period of retention specified in these Special Terms and Conditions. This may include contracts and agreements the Contractor has with other entities in fulfillment of this Agreement.
- 1.2. The Contractor agrees to cooperate and participate in the County's monitoring and evaluation process. Monitoring and evaluation may be conducted to ensure program and fiscal accountability and effective use of funds. The Contractor will be notified in advance of any monitoring and/or evaluation site visits; however, the County reserves the right to conduct on-site visits without prior notification to the Contractor as deemed necessary. Copies of the monitoring and program evaluation instruments will be provided to the Contractor upon written request.

2. ACCESSIBILITY

- 2.1. All work must conform to the International Code Council/American National Standards Institute A117.1-2003 Accessible and Usable Buildings and Facilities (Federal Register October 24, 2008 Page 63610 or 24 C.F.R. § 100).
- 2.2. New construction or rehabilitation projects shall have a minimum of five percent of the total project units (but not less than one) accessible to persons with mobility impairments and an additional two percent minimum of the units (but not less than one) accessible to persons with sensory impairments.

3. ACQUISITION AND RELOCATION

- 3.1. The Contractor shall ensure that it has taken all reasonable steps to minimize the

displacement of persons, (families, individuals, businesses, nonprofit organizations and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling unit in the building/complex upon completion of the project.

- 3.2. The Contractor shall comply with Section 104(d) of the Housing and Community Development Act of 1974, which requires the one-for-one replacement of all occupied or vacant occupiable low/moderate-income dwelling units demolished or converted to a use other than low/moderate-income dwelling units as provided in 24 C.F.R. §42.375.
- 3.3. The Contractor shall comply with Section 104(d) of the Housing and Community Development Act of 1974, which requires the one-for-one replacement of all occupied or vacant occupiable low/moderate-income dwelling units demolished or converted to a use other than low/moderate-income dwelling units as provided in 24 C.F.R. §42.375.
- 3.4. Any acquisition, demolition, or conversion to another use of real property assisted under this Agreement shall comply with section 104(d) of the Housing and Community Development Act of 1974. This Act requires the one-for-one replacement of all occupied or occupiable low/moderate-income dwelling units demolished or converted to another use with a low/moderate-income dwelling unit as provided at 24 C.F.R. §42.301.
- 3.5. A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 USC 4201-4655) and 49 C.F.R. §24. A displaced person must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.
- 3.6. Any acquisition of real property for any activity assisted under this Agreement which occurs on or after the date of the County's submission of its application to HUD will comply with Title III of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (hereinafter referred to as the Uniform Act) (40 USC section 4601) and the Regulations at 24 C.F.R. §92.353.
- 3.7. The Contractor shall follow the applicable sections of 24 C.F.R. §42 and 24 C.F.R. §92.353 regarding displacement and relocation. The Contractor shall notify the County at least 45 days before any acquisition, demolition or conversion of any housing unit when HOME funds are involved.

4. ADMINISTRATIVE REQUIREMENTS

The Contractor shall comply with 2 CFR Part 200.

5. AFFORDABILITY / HOME UNIT RENTS

- 5.1. This project has two, one-bedroom HOME-assisted units. For properties with

five or more HOME-assisted units, at least 20% of HOME-assisted units shall not exceed the Low HOME Rents and the remaining HOME-assisted units cannot have rents exceeding the High HOME Rents.

COUNTY HOME ASSISTED UNITS				
High HOME Rent	Low HOME Rent	Fixed/Floating Units	Non-HOME Units	Total Project Units
2	0	Floating	48	50

- 5.2. The Contractor shall provide the County with the address of each HOME assisted unit by the time the occupancy permit is obtained.
- 5.3. The Contractor shall annually inspect each HOME unit and the Contractor shall provide the County with certification that the unit is suitable for occupancy.
- 5.4. The County will inspect the HOME units during construction, at project completion, and every three years thereafter throughout the affordability period. The County will charge a reasonable rental monitoring fee during the period of affordability. The length of the HOME affordability period is 20 years, and the HOME affordability period terminates September 30, 2037.
- 5.5. HOME rental units must achieve initial occupancy within 18 months of project completion. If the units are not leased within six months, the Contractor shall report marketing efforts and, if requested by the County, submit an enhanced marketing plan.
- 5.6. **Income Threshold.** All funds used for rental housing shall assist households who have an annual income that is 60% of the area median income or less. Annually, Clark County shall provide updated HOME program maximum income and rent limits as established by the U.S. Department of Housing and Urban Development.
- 5.7. If the tenant pays utilities, the maximum allowable HOME rents charged to HOME assisted units shall be reduced by the amount of tenant paid utilities. The Contractor may use only utility allowances prepared by the Vancouver Housing Authority, and utility allowances shall be updated annually.
- 5.8. **Review of Tenant Income.** The Contractor shall, on an annual basis, collect, review and maintain tenant income information and provide a copy to the County. At move in and every sixth year, the Contractor shall examine source documents evidencing annual income for the family. This will include at least two months of source documentation.
- 5.9. **Annual Review and Approval of Rent.** The County will review HOME assisted units rents annually and must approve any rent increase for HOME assisted units.

- 5.10. Increases in Household Income. Households whose incomes rise above 80% of the AMI shall pay a rent not greater than 30% of their income for housing provided a) the rent they pay does not exceed the Fair Market Rent (FMR) established by HUD and b) the amount they pay for rent is not less than the greater of their current rent or the monthly rent that was set in their prior year's lease agreement. Adjusted income shall be calculated according to the rules for the Section 8 Program. Any resulting increase in rent is subject to the provisions of outstanding leases, and in any event, households shall be given not less than thirty days prior written notice of any increase.
- 5.11. Recaptured or Repaid HOME Funds. Any repaid or recaptured HOME funds must be returned to the County. The affordability requirements will be imposed by deed restrictions and covenants.

6. CERTIFICATION REGARDING LOBBYING

By signing this Agreement, the Contractor certifies that to the best of their knowledge and belief:

- 6.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of the Contractor, a Member of Congress, an officer or employee of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.
- 6.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the Contractor, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 6.3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 6.4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

7. COMMENCEMENT OF PROJECT

Upon release of project-related funds by HUD pursuant to 24 C.F.R. Part 58 (Environmental Review Procedures), the County will furnish the Contractor with written notice to proceed. No work on the project shall occur prior to the Notice to Proceed without prior written approval from the County.

8. CONFLICT OF INTEREST

8.1. Interest of Officers, Employees, or Agents. The Contractor shall ensure that no employee, agent, consultant, elected or appointed official, or officer who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

8.2. No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

9. CONSTRUCTION DOCUMENTS

9.1. The Contractor will submit to the County all project components, including plans, specifications, bid documents, RFPs, RFQs and estimates that will be paid with HOME funds for review and comment at least ten (10) working days prior to requesting bids for construction.

9.2. All specifications and drawings will be in conformance with current engineering and design standards of the jurisdiction where the project is located, and with the general specifications set forth in the Contractor's application for this project. All plans, specifications, and drawings shall be completed, stamped and signed by a licensed professional architect, landscape architect, or engineer.

- 9.3. The Contractor shall obtain all necessary and appropriate land use permits, zoning approvals, and any other permits and approvals required by local, county, state and federal law.
- 9.4. Energy Star Appliances. All appliances in HOME-assisted units shall have earned the Energy Star rating (Energy Star appliances).
- 9.5. In the event not all improvements can be made with the project funds, the County, in consultation with the Contractor, shall determine the priority of the improvements to be made.
- 9.6. The Contractor will provide documentation to the County at project completion showing that the project activities were completed in accordance with this Agreement and the specifications of the Construction Documents, and will provide a copy of the cost certification.
- 9.7. Inspections. The County shall be invited to all construction progress inspections.

10. COPYRIGHT

If this Agreement results in any copyright material, the County reserves the right to royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.

11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION

11.1. This certification is required by the regulations set forth in Title 2 C.F.R. Part 180. The terms “covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,” as used in this clause, have the meanings set out in Title 2 C.F.R. Part 180.

11.2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction

LOWER TIER COVERED TRANSACTIONS

- a) The lower tier Grantee certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b) Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such Grantee shall attach an explanation to this Grant.

11.3. Before entering into a “covered transaction” with another party at the next lower

tier, the Contractor agrees by signing this Contract that it will first verify that the person or party with whom it intends to do business is not excluded or disqualified. The Contractor may do this by:

- 11.3.1. Checking the federal Excluded Parties List System at sam.gov; or
 - 11.3.2. Collecting a certification from the person or party; or
 - 11.3.3. Adding a clause or condition to the covered transaction with that person or party that fully meets the requirements set out in Title 2 C.F.R. Part 180.
- 11.4. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person or party who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
- 11.5. The certification in this clause is a material representation of fact upon which reliance is placed at the time of Contract execution and at the time of any subsequent modification(s). If it is at any time determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 11.6. Before hiring any new employee, the Contractor shall conduct a search of the Federal Excluded Parties List System referenced above to ensure that the individual is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The search must be conducted by the Contractor *prior to* making an employment offer. Evidence of search results must be maintained in the employee's personnel file.
- 11.7. The Contractor shall maintain written documentation of its compliance with the above-stated requirements and make said documentation available to Clark County for review upon request.

12. DOCUMENTS INCORPORATED BY REFERENCE

In addition to the other documents and circulars referenced throughout this Contract, each of the documents listed below are by this reference incorporated into this Contract as though fully set forth herein, including any amendments, modifications or supplements thereto:

- 12.1. The Basic Interagency Agreement with Clark County.
- 12.2. Contractor's Clark County HOME Project Application.
- 12.3. Current version of HUD income limits.

12.4. Environmental review record (ERR) for the project.

12.5. HUD General Conditions for Construction.

13. DUPLICATION OF COSTS

The Contractor certifies that work performed under this Agreement does not duplicate any work to be charged against any other Agreement, Contract, Statement of Work, or other source.

14. EMPLOYMENT VERIFICATION PROGRAM

14.1. If the amount of this Contract is equal to or greater than \$25,000, the Contractor shall enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security (DHS) agreeing to participate in the E-Verify Program. The Contractor shall submit a copy of the MOU to the County prior to starting work under this Contract and shall verify employment eligibility using the E-Verify website throughout the term of the Contract.

14.2. If the Contractor has sub-contracts in an amount equal to or greater than \$25,000 working in support of this Contract, the Contractor is responsible for ensuring that the sub-contractor provide a DHS MOU or proof of pending application (followed by an MOU) within 30 days after the contract start date.

14.3. Pre-employment searches must be conducted by the Contractor (and its covered subcontractors) *prior to* making offers of employment. Evidence of search results must be maintained in each employee's personnel file. Upon completion of this Contract, the Contractor shall provide the County with a written document certifying the authorized employment status of its employees and those of any sub-contractors assigned to the perform work under the Contract.

14.4. E-Verify program and enrollment information is available at the Department of Homeland Security website: <http://www.uscis.gov/e-verify>.

15. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of the terms hereto, and any oral representations or understanding not incorporated herein are excluded. Further, any modification of this Contract shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein, which continues beyond notice, grace and cure period, if available, shall constitute material breach of contract and cause for termination. Both parties recognize that time is of the essence in the performance of this Contract. The parties agree that the forgiveness of non-compliance with any provision of this Contract does not constitute a waiver of the provisions of this Contract.

16. ENVIRONMENTAL REVIEW

16.1. National Environmental Policy Act and Related Laws and Authorities as Implemented.

Clark County has completed an environmental review for the project in accordance with the National Environmental Policy Act (NEPA), as implemented by HUD's Environmental Review Procedures (24 C.F.R. §58). The ERR is made part of this Agreement by reference. The Contractor shall ensure that all activities related to this Agreement (including those that are paid for entirely with local or other funds) including property acquisition, construction, and use of the property/facilities are conducted in accordance with the project scope, as defined in the ERR, and in accordance with the conditions set out in the ERR.

16.2. In the event of an inadvertent discovery of potentially significant archaeological materials (bones, shell, stone tools, hearths, etc.) and/or human remains during project activities, all work in the immediate vicinity should stop, the area must be secured, and the discovery must be reported to the Department of Archaeology and Historic Preservation (DAHP) (360-586-3056) and all relevant Native American tribes. In the event human remains are identified, local law enforcement, the county medical examiner, State Physical Anthropologist at DAHP (360-586-3534), the Clark County planning office, and the affected Tribes should be contacted immediately. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Contractor shall include this language in its contract with the general contractor.

16.3. Environmental Mitigation Measures

16.3.1. In the event environmental mitigation measures are required by the environmental review process, the Contractor shall include the requirements within the construction contract between the Contractor and its selected General Construction Contractor.

16.3.2. All of the following environmental mitigation measures shall be completed before the construction contract is awarded or property is acquired:

There are no mitigation measures.

17. FAITH-BASED ACTIVITIES

The Contractor shall comply with the requirements of 24 C.F.R. §92.257 and shall ensure that funds provided under this Agreement shall not be utilized for inherently religious activities such as worship, religious instruction, or proselytization.

18. FIRE PROTECTION AND SAFETY STANDARDS

Any HOME housing assistance including multi-family housing units of less than four stories and single family housing shall be protected by a hard-wired or battery operated

smoke detector installed in accordance with NFPA 72. Section 31(e) of the Fire Administration Authorization Act of 1992 (P.L. 102-522) provides that the Federal requirements mandated by the Act shall apply, unless the State or local jurisdiction in which the property is located has more stringent prevention and control standards.

19. FISCAL AUDIT

- 19.1. The Contractor shall comply with Generally Accepted Accounting Principles (GAAP) and/or Governmental Generally Accepted Accounting Principles (GGAAP), as applicable, and meet the financial management systems requirements of the contract.
- 19.2. The above requirement may be demonstrated either by submission of an annual independent auditor's report, review report, or by the submission of semi-annual financial reports based upon the mid-point and end of the Contractor's fiscal year.
- 19.3. If an annual audit or review by an accountant is not performed, financial statements shall be submitted within ninety (90) days of the mid-point and end of the Contractor's fiscal year. The financial reports shall include:
 - 19.3.1. Non-Profit Contractors – A Statement of Financial Position, Statement of Activities, and Statement of Changes in Net Assets and Statement of Cash Flows.
 - 19.3.2. For-Profit Contractors – A Balance Sheet, Income Statement, and Statement of Cash Flows.
 - 19.3.3. Public Entities are exempt from the semi-annual financial reporting requirement.
- 19.4. If the Contractor is a non-profit organization or public entity, and expends federal funds or has federally-funded loan balances at the end of the Contractor's fiscal year, the Contractor shall prepare a Schedule of Expenditures of Federal Awards (SEFA) in accordance with 2 C.F.R. §200.508. The Contractor shall submit the SEFA to Clark County within ninety (90) days of the end of the Contractor's fiscal year.
- 19.5. If the Contractor expends \$750,000 or more in federal funds during the fiscal year, a single audit is required. The Contractor shall provide the County with a Corrective Action Plan for any audit findings as well as a copy of any Management Letter, SAS 114, or Governance Letter within thirty (30) days of issuance by the auditor. Failure to fulfill this requirement may result in corrective action, including withholding payment until the financial information or audit is received.
 - 19.5.1. Non-Profit Contractors and Public Entities – The audit report must meet the requirements of 2 C.F.R. §200 with assurances of financial record-keeping that identifies all federal funds received and expended

by the OMB Catalog of Federal Domestic Assistance number. 2 C.F.R. §200 requires the Contractor to provide the auditor with a Schedule of Expenditures of Federal Awards (SEFA) for the fiscal year(s) being audited. Audits for fiscal years that include this Contract shall be completed and submitted to the County within nine (9) months from the end of the Contractor's fiscal year unless otherwise approved by the County in writing.

- 19.5.2. For-Profit Contractors – An independent audit, an independent limited scope audit, or other evidence negotiated with and approved by the County that provides positive assurance of meeting GAAP or GGAAP. Independent audits for fiscal years that include this Contract shall be completed and submitted to the County within nine (9) months from the end of the Contractor's fiscal year unless otherwise approved by the County in writing. Failure to fulfill this requirement may result in corrective action, including withholding payment until the financial information or audit is received.

20. HOUSING QUALITY STANDARDS

- 20.1. Housing that is assisted with HOME funds shall, at a minimum, meet the housing quality standards of 24 C.F.R. §982.401. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances.
- 20.2. Housing rehabilitated with HOME funds shall meet all applicable local codes for rehabilitation, and the Clark County Housing Rehabilitation Policies and Procedures and General Conditions and Standards.
- 20.3. The following are considered suitable for HOME-assisted housing: built in dishwasher, washer/dryer, refrigerator, stove, air conditioner, and furnace. Blinds, draperies, furniture, lamps, icemakers, stand-alone freezers, jetted bathtubs, and other such items are not eligible for HOME funding.

21. INSURANCE

- 21.1. At the execution of this contract, the Contractor must provide an original ACORD Form with the Commercial General Liability (CGL) Insurer or Business Owners Policy (BOP), or if materials for construction are present, a Builders All Risk Policy, all or either with broker of record, insurance limits(s), renewal dates, deductible less than or equal to \$5,000 unless authorized otherwise by Risk Management), and \$1,000,000 of annually renewing occurrence based coverage. A "Claims Made Policy" is not acceptable. In the case where the underlying insurance policy is expended due to excessive defense and/or indemnity claims, before renewal, the Contractor warrants and guarantees the coverage limit(s), to include indemnity and defense up to the listed limit, from its own resources regardless of coverage status due to cancellation, reservation of rights, or any

other no-coverage-in-force reason. Coverage shall not contain any endorsement(s) excluding nor limiting contractual liability or cross liability.

- 21.2. At the execution of this contract, and assuming vehicles are used in the Contractor's business, an ACORD Form shall be provided with \$1,000,000 in annually renewing occurrence based coverage for all vehicles owned, used, or leased by the Contractor. If vehicles are not used, on letterhead, a letter to Clark County must state the same. This coverage may be added to the above CGL, BOP, or Builders All Risk ACORD Form(s).
- 21.3. At the execution of this contract, Contractor shall provide proof of statutory workman's compensation insurance for all its employees that is acceptable and in compliance with Labor and Industries Workers' Compensation Division in the State of Washington. The Contractor will defend Clark County against any third party subrogation claims from Labor and Industries as if the injured Contractor employee belonged to Clark County, Washington.
- 21.4. The Contractor shall require any architect, engineer, land surveyor, or other licensed professional to obtain and maintain a professional Errors and Omissions insurance policy to protect against legal liability arising out of Contract activity. Such insurance shall provide a minimum of \$1,000,000 per occurrence, with a \$3,000,000 aggregate, with a maximum deductible of \$25,000. It should be an occurrence based policy. However, if the policy is a claims-made policy, then tail coverage must be provided for three years after the end of the contract or completion of the project. This coverage is exempt from the above stated "Additional Insured" endorsement.
- 21.5. The Contractor shall purchase and maintain fire and extended coverage insurance policies for all structures improved or constructed with funds under this Contract. The fire and extended coverage insurance policies shall be in the amount of 100% of the insurable value of the structure and improvements
- 21.6. It is the Contractor's responsibility to provide evidence of continuing coverage during the overlap periods of the policy and the Contract and to notify the County of any change in its insurance.
- 21.7. Additional Insured: The Contractor agrees to endorse Clark County as an "Additional Insured" on the Commercial General Liability Policy (CGL), BOP, or Builders All Risk policies with the following, or similar endorsement providing equal or broader additional insured coverage, the CG2026 07 04 Additional Insured – Designated Person or Organization endorsement; or the CG2010 10 01 Additional Insured – Owners, Contractor, or Subcontractor or the CG2010 07 04 Contractor or Subcontractor endorsement, including the "additional insured" endorsement of CG2037 10 01 Additional Insured – Owners, Contractor, or Subcontractor – Completed Operations, shall be required to provide back coverage for the Contractor's "your work" as defined in the policy and liability arising out of the products-completed operations hazard. The Additional Insured Endorsement shall read "Clark County Washington".

- 21.8. All insurers used must have an AM Best's Rating of A-VII or better. The Contractor shall provide its own insurance protection at its own expense for any property (contents or personal property) maintained on the premises. In addition, Contractor shall insure the real property and all fixtures and improvements for its full insurable replacement value against loss or damage by fire and other hazards included within the term "extended coverage." All policies and renewals on the real property shall be in a form and with a carrier acceptable to Clark County. The address for all certificates will be written as follows: Clark County Washington, PO Box 5000, Vancouver, WA 98666-5000.
- 21.9. Should the Contractor provide an umbrella or excess coverage for any of the associated coverage(s), they shall be written in a "Follow Form" manner and Clark County Washington shall be listed and endorsed as an additional insured.
- 21.10. Clark County Washington reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverage's and/or endorsements, or to reject any insurance policies which fail to meet any one or more of the criteria stated herein. This ability to selectively reject may also include the capacity and or financial position or reputation of the insurer. Should Clark County not receive the ACORD form renewal during the active project, payment to the Contractor may be held up or suspended until coverage with an additional insured endorsement is reestablished.

22. INTERPRETATION OF CONTRACT

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

- 22.1. Applicable federal laws and regulations
- 22.2. State laws and regulations
- 22.3. Special Terms and Conditions contained in this Agreement
- 22.4. Statement of Work in this Agreement
- 22.5. Exhibits or attachments indicated in this Agreement
- 22.6. Contractor's Clark County HOME Project Application
- 22.7. Current version of HUD income limits
- 22.8. Any other material incorporated herein by reference

23. LABOR STANDARDS

- 23.1. Contractor agrees that all laborers, workers, or mechanics employed by it or by

any contractor or subcontractor in the work of this Contract will be paid not less than the prevailing rate of wage for an hour's work in accordance with the provisions of the Revised Code of Washington, Chapter 39.12, and all rules and regulations promulgated pursuant thereto. The State of Washington prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

- 23.2. In case any dispute arises as to what the State of Washington prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.
- 23.3. The Contractor, by its signature on this agreement, agrees to defend and hold harmless the County from any claims based on alleged failure to pay prevailing wages.
- 23.4. The Contractor will require that project construction contractors and subcontractors pay their laborers and mechanics minimum wage rates in accordance with the Davis-Bacon Act (40 USC Sections 3141-3144, 3146, and 3147) and HUD requirements as pertinent to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 C.F.R. Parts 3 and 5, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, of the requirements of 29 C.F.R. 5.5.

24. LEAD-BASED PAINT POISONING

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856) and implementing regulations at 24 C.F.R. §35.

25. LOW-INCOME HOUSING TAX CREDIT PROJECTS

- 25.1. If HOME funds are provided at below the market interest rate, to qualify for the 9% credit, at least 40% of the assisted units must be reserved for households with incomes at or below 60% of area median income.
- 25.2. Otherwise, at least 20% of the units must serve households with incomes at or below 50% of area median income (to meet HOME requirements).
- 25.3. For units to qualify as both LIHTC and HOME-assisted units, rents cannot exceed

either program limit. Low HOME rent units are subject to Low HOME rents and LIHTC limits and High HOME rent units are subject to High HOME rents and LIHTC.

26. NATIONAL FLOOD INSURANCE

The Contractor may not receive HOME funding for acquisition or construction for use in any area that has been identified as having special flood hazards and is not participating in the National Flood Insurance Program, as provided by Section 3(a) and 202(b) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and the Regulations thereunder (44 C.F.R. §1 and §24 C.F.R. §92.352).

27. NONDISCRIMINATION

- 27.1. **General.** The Contractor will comply with all federal, state and local laws prohibiting discrimination on the basis of age, sex, sexual orientation, gender identity, marital status, race, color, national origin, religion, disability, or familial status. These requirements are specified in Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VI; Civil Rights Act of 1968, Title VIII; Executive Order 11063; Executive Order 11246; Age Discrimination Act of 1975; Architectural Barriers Act of 1968; Americans with Disabilities Act; Federal Register, February 3, 2012, Page 5661, Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity; and Section 3 of the Housing and Urban Development Act of 1968. Specifically, the Contractor is prohibited from taking any discriminatory actions defined in the HUD Regulations at 24 C.F.R. §6.
- 27.2. **Program Benefit.** The Contractor will not discriminate against any resident of the project service area by denying benefit from or participation in any block grant funded activity on the basis of race, color, sex, sexual orientation, gender identity, national origin, disability, age, marital status and familial status. (Civil Rights Act of 1964, Title VI; Civil Rights Act of 1968, Title VII; Architectural Barriers Act of 1968; Americans with Disabilities Act; Title II of the Cranston-Gonzales National Affordable Housing Act; Federal Register, February 3, 2012, Page 5661, Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity; and the Rehabilitation Act of 1973 as amended).
- 27.3. **Fair Housing.** The Contractor will take necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government. (Civil Rights Act of 1968, Title VIII as amended, Executive Order 11063, as amended by Executive Order 12259, implemented at 24 C.F.R. §107.) The Contractor's website shall contain a link to the County's Fair Housing information: <http://www.clark.wa.gov/commserv/fairhousing/index.html>. The Contractor will also ensure that the Equal Housing Opportunity notice is posted in the leasing office and include the Equal Housing Opportunity logo in information or advertisements for this project.

- 27.4. **Employment.** In all solicitations under this Agreement, the Contractor will state that all qualified applicants will be considered for employment. The words “equal opportunity employer” in advertisements will constitute compliance with this section.
- 27.5. **Limited English Proficiency.** The Contractor shall take necessary and appropriate actions to assist clients with limited English proficient persons, Executive Order 13166 and the HUD Notice “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons” (Federal Register, January 22, 2007 pages 2731- 2754).
- 27.6. **Section 3**
- 27.6.1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 (hereafter “Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- 27.6.1. The Contractor shall comply with HUD’s regulations in 24 C.F.R. §135, which implement Section 3. As evidenced by its execution of this Agreement, the Contractor certifies that it is under no contractual obligation or other impediment that would prevent it from complying with the Part 135 regulations.
- 27.6.1. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining Agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and shall post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice should contain: (1) the number of jobs and the job titles subject to hire, (2) availability of apprenticeship and training positions and qualifications for each; (3) the name and location of the person(s) taking applications for each of the positions; and (4) the anticipated date the work shall begin.
- 27.6.1. The Contractor agrees to require this Section 3 clause in every subcontract subject to compliance with 24 C.F.R. §135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that a subcontractor is in violation of 24 C.F.R. §135. The Contractor shall not subcontract with any subcontractor where the Contractor has

notice or knowledge that the subcontractor has been found in to be in violation of 24 C.F.R. §135.

27.6.1. By signature to this Agreement, the Contractor certifies that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. §135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. §135.

27.6.1. Noncompliance with 24 C.F.R. §135 may result in sanctions, termination of this Agreement, and debarment or suspension from future HUD-assisted contracts.

27.7. The Contractor shall provide each applicant, participant, and beneficiary of activities funds by this Agreement with information to apprise such persons of the protections against discrimination covered by the above Acts, Executive Orders, and regulations. The HUD Notice 928-1 found online at:

<http://www.hud.gov/utilities/intercept.cfm?http://www.hud.gov/offices/ftheo/promotingfh/928-1.pdf> and the Clark County ADA and Section 504 of the Rehabilitation Act of 1973 Notice as attached provide such information.

28. NONPARTICIPATION IN POLITICAL ACTIVITIES

The Contractor agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act (USC Title V, Chapter 15).

29. NON-SUBSTITUTION FOR LOCAL FUNDING

The Contractor shall not use funds provided under this Contract to supplant local, state or other federal funds. The Contractor shall not use these funds to replace funding that would otherwise be made available to the Contractor had this funding not been provided.

30. OPERATING BUDGET

The Contractor will apply the funds received from the County under this Agreement in accordance with the Budget Summary. Any itemized cost category expenditure subtotal that will exceed 10% of its allocated HOME funding will require an Agreement modification. Requests for budget revisions will be in writing and will specifically state the reasons for the requested increase and, if applicable, a justification for the corresponding decrease in another category.

31. OPERATION/MAINTENANCE

The Contractor agrees to maintain and operate the project/facility for eligible activities pursuant to HUD regulations. In the event the Contractor fails to so maintain and operate

the project, the County may, at its option, take possession of the project and operate and maintain it for any lawful purpose.

32. PROCUREMENT

- 32.1. The project was funded by the Urban County Policy Board based on the information supplied in the Contractor's HOME Project Application submitted in response to the 2015 HOME RFA.
- 32.2. In awarding contracts pursuant to this Agreement, the Contractor will comply with all applicable requirements of local and state law for awarding contracts, including but not limited to procedures for competitive bidding, contractor's bonds, and retained percentages. In addition, the Contractor will comply with the Uniform Administrative Requirements as described in 24 C.F.R. §92.504 and with Executive Order 11246 - Nondiscrimination in Employment by Government Contractors and Subcontractors.
- 32.3. A cost or price analysis shall be made and documented in connection with every procurement action, and shall be submitted to the County for review. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices, and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

33. PROGRAM INCOME

- 33.1. The Contractor shall follow the requirements of 24 C.F.R. §92.503 regarding program income. The receipt and expenditure of program income shall be recorded as a part of the financial transactions of the project(s) funded under this Agreement. Program income shall be reported with each voucher request and substantially disbursed for the benefit of the project(s) funded by this Agreement. The County shall determine whether income is being used to continue or benefit a project or projects authorized by this Agreement. Program income remaining when the Agreement expires, or received after the Agreement's expiration, shall be repaid to the County.
- 33.2. Despite the termination or expiration of this Contract, the Contractor shall retain records of program income as long as program income is generated by a HOME financed activity, subject to state and federal record retention schedules.

34. PROJECT

- 34.1. For purposes of this Agreement, "Project" means a site together with any buildings or sites upon which the building or buildings are located, that are under common ownership, management, and financing, and are to be assisted with HOME funds, under a commitment by the owner. It includes all the activities associated with the site and building.

34.2. Housing that accounts for less than one hundred percent of the dwelling units in a project qualifies as affordable housing if it meets the affordability criteria set established at 24 C.F.R. §92.252 or 92.254. Each building in the project must contain housing that meets these standards.

35. PROMISSORY NOTE, DEED OF TRUST AND COVENANT

35.1. The Contractor shall enter into a Promissory Note, Leasehold Deed of Trust and Covenant with the County that runs with the land pursuant to a ground lease for the HOME period of affordability, for repayment of the loan and shared equity. The Leasehold Deed of Trust shall require the Contractor to operate the facility for the original purpose for which it received HOME funds.

35.2. The Leasehold Deed of Trust and Promissory Note will impose conditions, including the maintaining of property insurance to full insurable value of the structure, which the County determines are necessary to protect the HOME funds. The Contractor shall keep the property free and clear of all other charges, liens, or encumbrances impairing the security of the Leasehold Deed of Trust, subject to encumbrances created pursuant to this Contract and shown in the budget attached to this agreement, any loan documents related to the project, and regulatory agreements related to the sources of the financing.

36. PUBLIC INFORMATION

36.1. In all news releases and other public notices related to projects funded under this Agreement, the Contractor should include information identifying the source of funds as the Clark County HOME Investment Partnership Program.

36.2. During construction projects, the Contractor shall erect a durable and adequately visible sign at the construction site, identifying the source of funds.

37. RECORDS

In the event the Contractor sponsors multiple projects, each project will be maintained under a separate file system and kept in a manner recommended by the County. The Contractor will maintain all records identified in the Required Records section of this Agreement, in accordance with 24 C.F.R. §92.508.

38. REPORTING

38.1. The Contractor will submit quarterly progress reports. The reports will be due to the County on the 15th day after the end of the quarter, starting with the quarter in which the Agreement was signed. The dates are:

Quarter 1	April 15, 2016
Quarter 2	July 15, 2016
Quarter 3	October 15, 2016

- 38.2. The Contractor will provide documentation to the County at project completion showing that the project activities were completed in accordance with this Agreement.
- 38.3. In addition to the records referred to in the Records Section of this Agreement, if construction is covered by the Davis-Bacon Act, the Contractor will maintain records of the hours worked and rates of compensation for all personnel performing work under this Agreement. These records will be kept for a period of six years from the date of the submission of the final performance report under this Agreement.
- 38.4. The Contractor will provide documentation to the County at project completion showing that the sources and value of its contribution to the project are equal to those specified in the Budget Summary in the Statement of Work.
- 38.5. The Contractor will perform all necessary and appropriate community information activities as directed by the County.
- 38.6. Reports (including financial reports) that enable the County to determine the financial condition and continued financial viability for rental projects with more than 10 units.
- 38.7. The Contractor shall provide the County a copy of its latest Equal Employment Opportunity Commission, State and Local Government Information (EEO-4), EEOC Form 164.
- 38.8. The Contractor shall provide certification to the County by January 31 of each year during the HOME affordability period that each building and all HOME-assisted units are suitable for occupancy.

39. REQUIRED RECORDS

- 39.1. Financial Management - Such records will identify adequately the source and application of funds for activities within this Agreement, in accordance with the provisions of 24 C.F.R. §85.20. These records will contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
- 39.2. Citizen Participation - Narrative and other documentation describing the process used to inform citizens concerning the amount of funds available, the ranges of project activities undertaken, and opportunities to participate in funded block grant projects.

- 39.3. Relocation - Indication of the overall status of the relocation workload and separate relocation record for each person, business, organization, and farm operation displaced or in the relocation workload.
- 39.4. Equal Opportunity – The Contractor shall maintain and provide records containing the following information for each applicant and each assisted person. This is to show the extent people have participated in, or benefited from, the activities carried out under this Agreement.
 - 39.4.1. Name of the household or person assisted;
 - 39.4.2. Income category (i.e. very low-income (0-30% of MFI), low-income (31 to 50% of MFI), or low/mod-income (50 to 80% of MFI));
 - 39.4.3. Racial/ethnic data (White, Black/African American, Asian, American Indian/ Alaskan Native, Native Hawaiian/Other Pacific Islander, American Indian/Alaskan Native & White, Asian & White, Black/African American & White, American Indian/Alaskan Native & Black/African American, Other/multi-racial);
 - 39.4.4. The above racial/ethnic categories shall also document Hispanic or non-Hispanic;
 - 39.4.5. Gender data;
 - 39.4.6. Female head of household; and
 - 39.4.7. Disability.
 - 39.4.8. The Contractor will also maintain data which records its affirmative action in equal opportunity employment, and its good faith efforts to identify, train, and/or hire lower-income residents of the project area and to utilize businesses that are located in or owned in substantial part by persons residing in the area of the project.
 - 39.4.9. The Contractor shall provide the County a copy of its latest Equal Employment Opportunity Commission, State and Local Government Information (EEO-4), EEOC Form 164.
- 39.5. Compensation Paid - Records of the hours worked and rates of compensation for all personnel performing work under this Agreement.
- 39.6. Property Acquisition – If the project involves property acquisition, the Contractor’s files must contain the following records, if applicable:
 - 39.6.1. Official Determination to Acquire - A citation of the action that constitutes the official determination to acquire, the date of the action,

and the applicable HUD grant number.

- 39.6.2. Notice of Intent to Acquire the Property - A copy of the notice, citation of the date of transmittal to owner, and evidence of receipt by the owner.
 - 39.6.3. Invitation to Accompany Appraiser - Evidence that owner was invited to accompany each appraiser on his inspection of the property.
 - 39.6.4. Appraisal Reports - A copy of each appraisal report, on which determination of just compensation was based.
 - 39.6.5. Review Appraisal - Arrange for a review appraisal to assure appraisal meets applicable standards.
 - 39.6.6. Determination of Just Compensation - A copy of the resolution, certification, motion or other document constituting the determination of just compensation.
 - 39.6.7. Purchase Offer - A copy of written purchase offer of just compensation, including all basic terms and conditions of such offer, and a citation of the date of delivery to the owner.
 - 39.6.8. Purchase Agreement, Deed, Declaration of Taking, Tenant Waivers - A copy of each such document and any similar or related document utilized in conveyance.
 - 39.6.9. Settlement Cost Reporting Statement - A copy of the statement.
 - 39.6.10. Purchase Price Receipt - Evidence of owner receipt of purchase price payment.
 - 39.6.11. Ninety Days Notice to Surrender Possession of Premises - A copy of the notice. As an alternative, a copy of this notice may be included in the relocation or property management files.
 - 39.6.12. As provided in 24 C.F.R. 570.606, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and HUD's implementing regulations in 24 C.F.R. 42 apply to all real property acquisition by a grantee for an assisted program activity, regardless of the source of funding for the acquisition itself.
- 39.7. Miscellaneous - Such other records as may be required by the County and/or HUD.

40. RESERVES

- 40.1. Replacement Reserve. Borrower shall establish and maintain a reserve account

from Property rents ("Replacement Reserve") for the replacement of building components, including appliances and mechanical systems. The Replacement Reserve shall be maintained in a separate non-interest-bearing account unless otherwise approved in writing by the County. Any funds withdrawn from the Replacement Reserve shall be used solely for replacement of building components for the Property.

- 40.2. Operating Reserve. Borrower shall establish and maintain a reserve account from Rents ("Operating Reserve") for operating costs. Funds in the Operating Reserve, including interest, shall not be used for any other purpose. The Operating Reserve shall be maintained in a separate non-interest-bearing account unless otherwise approved by County. All funds withdrawn from the Operating Reserve shall be used solely for operating costs of the Property not covered by Property revenues.

41. RETENTION OF RECORDS

Required records will be retained for at least a period of seven years from the date of the submission of the final performance report in which the activity is covered, except as follows:

- 41.1. Records that are the subject of audit findings will be retained for the minimum period or until such audit findings have been resolved, whichever is later.
- 41.2. The retention period for real property and equipment records starts from the date of the disposition, or replacement, or transfer at the direction of HUD.
- 41.3. Any record with a longer retention schedule for purposes of public records disclosure required by the Revised Code of Washington (RCW).

42. SURVIVABILITY

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.

43. TENANT PROTECTION

- 43.1. The written lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by express mutual agreement between the tenant and the owner, and may not contain any of the provisions enumerated at 24 C.F.R. §92.253 (Tenant and Participant Protections). The Contractor shall adopt a written tenant selection policy and criteria that meets the requirements of 24 C.F.R. §92.253.
- 43.2. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional

housing; or for other good cause. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds due to an increase in tenant income. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

- 43.3. Rental project owners are prohibited from charging fees that are not customarily charged in rental housing, except that rental owners may charge reasonable application fees to prospective tenants, parking fees (only if such fees are customary for rental housing projects in the neighborhood) and fees for services, as long as the services are voluntary and fees are charged for services provided.
- 43.4. The written lease may **not** contain any of the following provisions:
 - 43.4.1. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
 - 43.4.2. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
 - 43.4.3. Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - 43.4.4. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
 - 43.4.5. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 - 43.4.6. Agreement by the tenant to waive any right to a trial by jury;
 - 43.4.7. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;
 - 43.4.8. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and,

- 43.4.9. Agreement by the tenant to participate in mandatory supportive services.

44. TERMINATION

- 44.1. The award or continuation of this Contract is dependent upon the availability of future funding. The County's payment obligations are payable only and solely from funds both appropriated and otherwise legally available for this Contract. The absence of appropriated or other lawfully-available funds shall render the Contract null and void to the extent funds are not appropriated or available.

The County shall provide the Contractor with written notice of the failure of the County to make or receive an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or of the reduction of any appropriation to an amount insufficient to permit the County to pay its remaining obligations under the Contract.

- 44.2. The County shall have the right to terminate this Contract, in whole or in part, without cause any time upon ten (10) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to this Contract, with such exceptions, if any, specified in the notice of termination. The County shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purpose, for all goods delivered, services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 44.3. Disposition of Grant Funds upon Termination. Upon termination of this Contract any unexpended balance of Contract funds will remain with the County. If termination occurs for cause, the Contractor shall immediately and without notice of presentment return to the County all funds that were expended in violation of the terms of this Contract.

45. APPLICABILITY OF LAW

- 45.1. All Agreements and contracts are and shall be construed as being executed and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that all Agreements and contracts shall be governed by laws of the State of Washington, both as to interpretation and performance.
- 45.2. Venue shall be Clark County.

46. ASSIGNMENT AND SUBCONTRACTING

- 46.1. The Contractor shall not assign or subcontract for any work required in the contract without the prior written consent of the County, unless specified in the contract or the proposal accepted by the County.
- 46.2. Any subcontract shall be in writing.

46.3. In any event, the County reserves the right to inspect and approve any subcontract document for work described and funded by the contract, and the Contractor agrees to provide a copy of that subcontract to the County no later than 20 days prior to the execution of such subcontract.

46.4. No claim arising under any contract shall be transferred or assigned by the Contractor.

47. FEDERAL FUNDING REQUIREMENTS

Any federal funds received under this agreement will have a Catalog of Federal Domestic Assistance (CFDA) Number identified in the contract. Contractors that receive federal funds shall comply with all grantor requirements including but not limited to those detailed or incorporated into the contract and detailed in the Catalog of Federal Domestic Assistance. The Contractor certifies that it is aware of or will review the appropriate section of the CFDA and the relevant Code of Federal Regulations and other documents referenced in either the CFDA or in the contract that provides guidance to compliance with federal requirements regarding these funds.

48. INDEMNIFICATION

48.1 The Contractor does release, indemnify and promise to defend and save harmless the County, its elected officials, officers, employees and agents from and against any and all liability, loss, damages, expense, action, and claims, including costs and reasonable attorney's fees incurred by the County, its elected officials, officers, employees and agents in defense thereof, asserting or arising directly or indirectly on account of or out of the performance of service pursuant to this Agreement.

48.2 In making such assurances, the Contractor specifically agrees to indemnify and hold harmless the County from any and all bodily injury claims brought by employees of the Contractor and expressly waives its immunity under the Industrial Insurance Act as to those claims that are brought against the County. Provided, however, this paragraph does not purport to indemnify the County against the liability for damages arising out of bodily injuries to person or damages caused by or resulting from the sole negligence of the County, its elected officials, officers, employees and agents.

49. MODIFICATION

Changes to a contract shall not be valid or binding upon either party unless such change is in writing by contract modification and executed by both parties.

50. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term, or provision of an agreement is held by the courts to be illegal, the validity of the remaining provisions shall

not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid. Provided, that if deletion of the invalid provision substantially alters the intent, purpose or effect of the agreement or constitutes a failure of consideration, a contract may be rescinded or terminated by either party. Provided, that nothing herein contained shall be construed as giving precedence to provisions of this agreement, any Statement of Work or any subcontract over any provision of the law.

51. WAIVER OF DEFAULT

If the County waives any breach of this Agreement by the Contractor on any occasion, such waiver shall not be deemed to be a waiver of any subsequent breach of this Agreement by the Contractor.