

EXHIBIT B

STANDARD CITY CONTRACT TERMS

In accordance with Section 12, Number 6 of the City of Walnut Creek Affordable Housing Subsidy Request for Proposals (“RFP”), any final contract between the selected respondent (referred to as the “Developer” below) and the City will include the following terms, which may be tailored as appropriate depending on the specific contract content. By submitting a proposal to the RFP, the respondent represents that it is capable of meeting all of the following terms and agree to comply with them.

Insurance Requirements

Proof of insurance comprised of certificates of insurance and original endorsements of comprehensive general liability, auto liability and workers’ compensation insurance written by one or more responsible insurance companies licensed to do business in California.

- Certificate of Insurance
 - General Liability policy
 - \$2,000,000 per occurrence
 - \$4,000,000 general aggregate
 - Certificate Holder:
City of Walnut Creek
1666 North Main Street
Walnut Creek, CA 94596
 - Automobile Liability
 - \$1,000,000 combined single limit per accident for bodily injury and property damage
 - Workers’ Compensation policy as required by the Labor Code of the State of California and Employers Liability Insurance
 - \$1,000,000 per accident
 - \$1,000,000 per disease or injury
 - Errors and Omissions Liability/Professional Liability
 - \$1,000,000 per claim and annual aggregate

ALL Certificates of Insurance MUST have accompanying Endorsements

- Endorsement(s) for General Liability and Automobile Liability
 - An original Additional Insured Endorsement naming in its entirety:

“The City of Walnut Creek, its officials, officers, directors, employees, agents and volunteers”

as additional insured in respect to liability arising out of activities performed by or on behalf of Company and MUST reference the applicable policy number on the endorsement.

- Primary and Non-Contributory
- Completed Operations
- Waiver of Subrogation

- Waiver of Subrogation for Workers' Compensation policy (if applicable)
 - The Waiver of Subrogation endorsement MUST reference the policy number.

The certificates and endorsements are to be on ISO-approved forms. The City will not accept a Certificate of Insurance alone as proof of insurance coverage.

Indemnification and Hold Harmless Obligation

The [respondent/developer] shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of the arising from the Agreement and any development project thereunder, including but not limited to Developer's performance of the Agreement or default thereunder, except to the extent caused by the active gross negligence or willful misconduct of the City.

For the purposes of the foregoing, "City" means the City, its officials, officers, agents, employees and volunteers; Developer means the Developer, its employees, agents and subcontractors; "Claims" includes claims demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

Affordable Housing Agreement Terms

Development of the Affordable Housing Project

- Developer will be responsible for developing the Affordable Housing Project in accordance with a Scope of Development attached to the Agreement, and in compliance with the terms and conditions of all City and other governmental approvals, entitlements, permits, environmental mitigation measures, and conditions of approval. Developer will submit to the City detailed construction plans for the Affordable Housing Project for City's approval.
- The Agreement does not constitute City approval of entitlements, approvals, and permits for the construction of the Affordable Housing Project.
- Developer will be solely responsible for payment of all customary and usual fees and charges of City in connection with the Affordable Housing Project.
- Developer will be responsible for all costs of the Affordable Housing Project and the costs of acquiring the land for the Affordable Housing Project.
- Developer will be required to obtain land use approvals and permits, obtain all required financing, commence and complete construction of the Affordable Housing Project and perform all other obligations of the Agreement within the time periods set forth in a Schedule of Performance attached to the Agreement.
- The City will have the right to inspect the Affordable Housing Project and the books and records of the Affordable Housing Project.
- City is under no obligation to review, supervise, or inspect the progress of construction or the operation of the Affordable Housing Project. City will not be responsible to Developer or to any third party for any defect in the construction plans or for any structural or other defect in any work done pursuant to the construction plans.

- If required by state and federal prevailing wage laws, Developer and its contractors and agents will be required to pay prevailing wages for the construction of the Affordable Housing Project, and perform all other labor law obligations. City will not make any representations to Developer as to the applicability of the prevailing wage law to the construction of the Affordable Housing Project, and Developer will be solely responsible for determining whether the prevailing wage law is applicable to the construction of the Affordable Housing Project. Developer will be required to indemnify and defend the City against claims relating to prevailing wage law requirements.
- Developer will be required to carry out and will cause its contractors to carry out the construction of the Affordable Housing Project in conformity with all applicable federal, state and local laws.
- Developer will not be allowed to place any lien or stop notice on the Property on account of materials supplied to or labor performed on behalf of Developer. The City will have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense, and Developer must immediately reimburse City for such paid liens or stop notices.

City Financial Assistance

- Developer will be required to execute a promissory note to the City for any loan amount. The terms of the repayment of the promissory note will generally provide for the annual repayment of the loan from a portion of the residual receipts of the Affordable Housing Project. The City will share pro rata in the residual receipts with other governmental lenders.
- City construction and permanent loans will be secured by a deed of trust recorded on the Developer's interest in the property. City predevelopment loans will be secured by such mechanisms as an assignment of plans and specifications, and/or a guaranty. The City deed of trust may be subordinated to senior construction and permanent financing approved by the City. The City will obtain a lender's policy of title insurance for the City loan.
- Developer will provide City with a financing plan for the Affordable Housing Project which describes (i) the estimated costs of development of the Affordable Housing Project, (ii) an operating pro forma, and (iii) identification of sources and uses of acquisition, predevelopment, construction and permanent financing. Developer will provide periodic updates of the financing plan for City approval.
- Developer's obligation to repay the City loan will be nonrecourse, subject to standard exceptions.

Affordability Requirements and Use of the Affordable Housing Project

The Developer and City will execute a Regulatory Agreement that sets forth:

- The number and income level of the required affordable units
- Affordable rent limits, income and rent reporting requirements
- Property management standards and management plan

- Tenant marketing plan
- Maintenance and repair requirements
- Other provisions

The Regulatory Agreement will be recorded simultaneously with loan closing or property acquisition. The City will consider requests for subordination of the Regulatory Agreement to senior financing.

Other Requirements

- City will have reasonable approval rights over Developer transfer of the Property and its rights under the Agreement.
- Construction and permanent loans that comply with the Financing Plan are permitted. Lenders will have customary rights, including a right to notice of Developer defaults and a right to cure defaults. City will have the right to cure Developer loan defaults.
- Developer will be responsible for compliance with all environmental laws and remediation of Hazardous Materials on the property, and will indemnify the City for claims relating to hazardous materials.
- Developer will be required to maintain worker's compensation insurance, commercial general liability insurance, comprehensive automobile liability insurance, builder's risk insurance, and property insurance, with minimum policy limits, maximum deductibles and minimum insurance company Best's ratings determined by City risk management personnel. City will be an additionally insured party on all policies.
- Developer is considered an independent contractor and shall not represent that Developer or its agents, employees or independent contractors are agents or employees of the City. Developer is responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Developer shall obtain no rights to retirement benefits or other benefits that accrue to City's employees, and Developer hereby waives any claim it may have to any such rights. Except as the City may specify in writing, Developer shall have no authority, express or implied, to act on behalf of the City or to bind the City to any obligation.