

**AGREEMENT BETWEEN THE CITY OF YAKIMA
OFFICE OF NEIGHBORHOOD DEVELOPMENT SERVICES
AND DEVELOPER – Vaughn Bay Construction**

1. DEVELOPER: TH Stonewood 1 LP
2. Address: 1205 E. Spruce St., Yakima, WA 98901
3. Phone: 253-460-3000
4. Contact Person: Bruce W. Kilen, TH Stonewood 1 GP LLC.
5. Title of Service or Program being funded: Stonewood Apartments located at: 1205 E. Spruce St., Yakima WA, 98902
6. Amount of Contract Award: \$50,000.00 (HOME) CFDA Contract # 14.239
7. The term of this Contract shall commence upon the execution date of DEVELOPERS' receipt of "Letter to Proceed" from City of Yakima Office or Neighborhood Development Services and the project will begin construction within twelve months of entering this agreement and will be completed by June 1, 2020 at midnight, unless sooner terminated by either party in accordance with Section XXII of Exhibit "A", attached hereto and incorporated herein by this reference. This agreement will be in effect throughout the affordability period established in Exhibit "A".
8. This contract award and the rights and obligations of both parties hereto shall be subject to and governed by the following:
 - (a) "Terms and Conditions" attached hereto as Exhibit "A" and incorporated herein by this reference; and
 - (b) Operating budget including the funding sources and uses statement and the work plan, attached hereto as Exhibit "B" and incorporated herein by this reference.
 - (c) City of Yakima Resolution No. R-2019-_____, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference.
9. Final Contract payment shall be subject to satisfactory completion of the project described in Exhibit "B", and satisfaction of all contract terms and conditions, including, but not limited to, the submission of the final report and billing invoice information within thirty (30) days of the contract closing date, and as stated in Exhibit "A", Exhibit "B" and Exhibit "C".

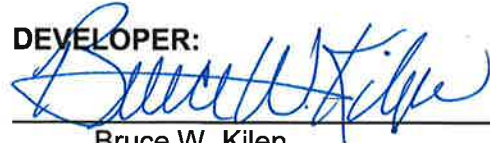
This written document, together with all of the incorporated Exhibits hereto, constitutes the entire Contract and terms of agreement between the parties hereto.

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

CITY OF YAKIMA

Cliff Moore, City Manager

DEVELOPER:



Bruce W. Kilen

Title: Manager, TH Stonewood I GP LLC.

Date: _____

Date: 4/17/19

Joan Davenport, CDD Director

Date: _____

ATTEST

Sonya Claar Tee, City Clerk

City Contract No:

EXHIBIT "A"

TERMS AND CONDITIONS

WITNESSETH

WHEREAS, the CITY is the recipient of HOME Investment Partnerships Program Funds from the U.S. Department of Housing and Urban Development (HUD), The City of Yakima, hereby designates the AWARDEE to undertake, and the AWARDEE hereby agrees to undertake that certain community development or housing assistance project described in Exhibit "B", Scope of Work (hereinafter "the project").

NOW, THEREFORE in consideration of the mutual covenants and obligations herein contained, including the Attachments, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

Section I – Definitions

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

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

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

D. **PROJECT** – is defined in Section IV below.

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

Section II – Term

The DEVELOPER expressly agrees to complete all work required by this agreement in accordance with the timetable set forth.

Milestone Deadline

Project Start Date: Date of signature.

Project Completion Date: Date of final draw down, or June 1, 2020, whichever is earlier.

In addition, this project is subject to an affordability compliance period of Twenty (20) years from the date the project is completed. The project is considered completed when the final drawdown of HOME funds have been drawn by the City. The

DEVELOPER will assure continued compliance with HOME 92.504(c)(3)(vi), 92.504(d), requirements. For rental projects this includes ongoing property standards inspections, occupancy requirements; rent limits established by HUD, income determination annually reviewed by the City. For homebuyer units this includes monitoring units for principal residency and recapture of funds at time of resale. HOME 92.504(c)(3)(ii) specifies that a deed restriction will also be in place throughout the affordability period. Timely completion of the work specified in this agreement is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and could result in the loss of the Federal funds. By the acceptance and execution of this agreement, it is understood and agreed by the DEVELOPER that the PROJECT will be completed as expeditiously as possible and that the DEVELOPER will make every effort to ensure that the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and the revocation of HOME funds. Since it is mutually agreed that time is of the essence as regards this agreement, the DEVELOPER shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this agreement, in order to ensure that the PROJECT will be completed according to the timetable set forth. It is intended that such provisions inserted in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the CITY and enforceable by the CITY against the DEVELOPER and its successors and assigns to the project or any part thereof or any interest therein.

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

Section III – Scope of Work

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

It is understood that the DEVELOPER will provide a specific working budget and realistic timetable as relates to: acquisition, construction/rehabilitation, soft costs, development fees and other allowable costs/activities prior to any fund usage. Said budget shall identify all sources and uses of funds, and allocate HOME and non-HOME funds to activities or line items. The aforementioned Work tasks will be performed in essentially the manner proposed in the DEVELOPER's proposal as received by the AGENCY on October 11, 2018. The aforementioned document will be considered to be a part and portion of this agreement fully incorporated herein.

Section IV – Reimbursement of Expenses & Developer Fees

A. GENERAL.

Project expenses (excluding developer fee) shall be paid based on vouchers for

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

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

B. PAYMENT AND DISBURSEMENTS:

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

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

The Contractor shall submit written claims for reimbursement of services performed under this Agreement.

- C. No payment shall be made for any service rendered by the Contractor except for services within the scope of a category set forth in the budget in Exhibit "B" of this Contract, and all funds received must be used for service as identified in Exhibit "B" of this Contract.
- D. The Contractor shall submit to the City of Yakima ONDS a written request for approval of budget revision when a proposed revision would result in an increase or decrease of ten percent (10%) or more per home, from what has been set forth in the approved budget subject category. The City's written budget revision approval must be received by the Contractor prior to the Contractor incurring any expenditures against the revised budget subject categories.

When the revision of the Contractor budget does not exceed ten percent (10%) of an approved budget subject category, the Contractor must submit a revised budget to the City of Yakima ONDS prior to the submittal of claims against the budget.

- E. CITY reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. The CITY also reserves the right to hold payment until adequate documentation has been provided and reviewed.
- F. Within thirty (30) days of the contract closing date, DEVELOPER shall submit a final invoice that includes all unpaid invoices and a final report. Final payment shall be made only after the CITY has determined that all services have been rendered, files and documentation delivered (including the final invoices and final report), and units have been placed in service in full compliance with HOME regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions. If the final invoices and report are not received within thirty (30) days of the contract closing date, DEVELOPER understands and agrees that it will not receive any payment for any final pending unpaid invoices.
- G. CITY shall have the right to review and audit all records of the DEVELOPER pertaining to any payment by the CITY. Said records shall be maintained for a period of the HOME required affordability period.

Section V – Project Requirements

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

- A. No HOME project funds will be advanced, and no costs can be incurred, until the City has conducted an environmental review of the proposed project site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the project. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a release of funds from the U.S. Department of Housing and Urban Development [or the State of Washington] under 24 CFR Part §58. Further, the DEVELOPER will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under the agreement.
- B. Any HOME funds advanced to the PROJECT will be secured by a note and mortgage, and in the case of a rental project, a deed covenant as required by 24 CFR Part 92.
- C. The DEVELOPER will ensure that any expenditure of HOME funds will be in compliance with the requirements at 92.206, and acknowledges that HOME funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed.
- D. If the project is to be owner-occupied, the DEVELOPER will ensure that all HOME assisted units will be in compliance with 24 CFR 92.254, including documenting that the property is eligible under 92.254(a)(1) – (2), and will maintain compliance during

the minimum compliance period. (If the property also contains a rental unit assisted with HOME funds, the DEVELOPER will ensure that occupancy complies with the requirements of 92.254(a)(6).) If the project is to be a rental, the DEVELOPER will ensure that that project is eligible under 92.214, and that it will meet the applicable standards of 24 CFR 92.252 253 at occupancy and for the minimum compliance period.

E. The designated HOME-assisted units of this PROJECT will meet the affordability requirements as found in 24 CFR 92.252 (rental) or 92.254 (owner-occupied) as applicable. The DEVELOPER shall collect and maintain Project beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low and moderate-income benefit in a cumulative and individual manner. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD ***Technical Guide for Determining Income and Allowances Under the HOME Program***.

F. In the selection of occupants for PROJECT units, the DEVELOPER shall comply with all nondiscrimination requirements of 24 CFR 92.350. If the project consists of 5 or more units, the DEVELOPER will implement affirmative marketing procedures as required by 24 CFR 92.351. Such procedures are subject to approval of the AGENCY.

G. If the PROJECT is occupied at the time of this commitment, the DEVELOPER will comply with the relocation requirements of 24 CFR 92.353.

H. DEVELOPER shall assure compliance with 24 CFR 92.251 as relates to Property Standards and Housing Quality Standards (HQS), Accessibility Standards under 24 CFR 92.251(a)(3) as applicable, and Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35.

I. If the PROJECT is to be owner-occupied, the DEVELOPER shall assure that any NOTES and MORTGAGES recorded for homebuyers shall be in compliance with 24 CFR 92.254 and that the DEVELOPER will monitor each unit for principal residency (under 92.254(a)(3)) and resale/recapture (under 92.254 (a)(4) – (5)).

J. DEVELOPER will provide any documentation required by the AGENCY regarding match as may be required to document match for purposes of the HOME program.

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

L. If the property is sold through a lease-purchase agreement, the DEVELOPER will ensure compliance with 92.254(a)(7), as modified by the 1999 Appropriations Act, Section 599B.

M. DEVELOPER will be monitored by the AGENCY for compliance with the regulations of 24 CFR 92 for the compliance period specified above. The DEVELOPER will provide reports and access to project files as requested by the AGENCY during the PROJECT and for the length of the HOME required affordability period.

Section VI – Repayment of Loan

A. All HOME funds are subject to repayment in the event the PROJECT does not meet the Project Requirements as outlined above.

B. It is understood that upon the completion of the PROJECT, any HOME funds reserved but not expended under this agreement will revert to the CITY.

C. If the PROJECT is for owner-occupancy, the DEVELOPER shall lend the HOME funds to the individual buyers in an amount sufficient to make the purchase affordable. Any HOME funds that reduce the price of the property below the fair market value of the property shall be secured by a HOME note and mortgage as required in 92.254(a)(5)(ii), using the note and mortgage prescribed or approved by the AGENCY (and consistent with the method of recapture identified in the CITY's "Consolidated Plan"). All net sales proceeds from the sale of units are considered to be CHDO proceeds that may be retained by the DEVELOPER and used in conformance with 24 CFR 92.300(a)(2), to be retained by the CHDO and used to further affordable housing for qualified first time home buyers within the City of Yakima.

Section VII – Procurement Standards

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

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

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

1. Property records shall be maintained accurately and provide for: A description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of HOME funds used in the purchase of property; location, use, and condition of the property.
2. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.
3. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of the property shall be investigated and fully documented.
4. Adequate maintenance procedures shall be implemented to keep the property in good condition.
5. If the Contractor elects to capitalize and depreciate such nonexpendable personal property in lieu of claiming the acquisition cost as a direct item of cost, title to such property shall remain with the Contractor. An

election to capitalize and depreciate or claim acquisition cost as a direct item of cost shall be irrevocable.

6. Nonexpendable personal property purchased by the Contractor under the terms of this Contract, in which title is vested in the City of Yakima or Federal Government shall not be rented, loaned, or otherwise passed to any person, partnership, corporation, association or organization without the prior express approval of the City of Yakima ONDS.
7. Any nonexpendable personal property furnished to, or purchased by, the Contractor, title to which is vested in the City of Yakima ONDS or federal government shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of activities defined in this Contract.
8. As a condition prerequisite to reimbursement for the purchase of nonexpendable personal property, title to which shall vest in the City of Yakima ONDS or federal government, the Contractor agrees to execute such security agreements and other documents as shall be necessary for the City of Yakima ONDS or federal government to perfect its interest in such property in accordance with the "Uniform Commercial Code-Secured Transactions" as codified in Article 9A of RCW Chapter 62A.
9. The Contractor shall be responsible for any loss or damage to the property of the City of Yakima ONDS or federal government (including expenses entered thereunto) which results from negligence, willful misconduct, or lack of good faith on the part of the Contractor to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the City of Yakima ONDS or federal government in like condition to that in which condition the property was acquired by purchase, fair wear and tear excepted.

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

Section III – Conflict of Interest Provisions

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

- Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the DEVELOPER, or the proceeds thereunder; or

- Any unit benefits or financial assistance associated with HOME projects or programs administered by the DEVELOPER, including:

Occupancy of a rental housing unit in a HOME-assisted rental project;

Receipt of HOME tenant-based rental assistance;

Purchase or occupancy of a homebuyer unit in a HOME-assisted project;

Receipt of HOME homebuyer acquisition assistance; or

Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of the DEVELOPER who occupies a HOME assisted unit as the on-site project manager or maintenance worker. In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the Participating Jurisdiction shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program. Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by the DEVELOPER in writing to the Participating Jurisdiction. The DEVELOPER must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The Jurisdiction may grant exceptions or forward the requests to HUD as permitted by 24 CFR 92.356, 85.36 and 84.42, as they apply.

Section IV – City Responsibilities

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

A. CITY shall provide to the DEVELOPER information regarding its requirements for the PROJECT.

B. CITY will provide the DEVELOPER with any changes in HOME regulations or program limits affecting the project, including but not limited to income limits, property value limits and rent limits.

C. CITY will conduct progress inspections of work completed to protect its interests as lender and regulatory authority for the project, and will provide information to the DEVELOPER regarding any progress inspections or monitoring to assist it in ensuring compliance. CITY's review and approval of the WORK will relate only to overall compliance with the general requirements of this Agreement and HOME regulations, and all CITY regulations and ordinances. Nothing contained herein shall relieve the DEVELOPER of any responsibility as provided under this Agreement.

Section X – Equal Employment Opportunity

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

A. DEVELOPER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). The DEVELOPER will take affirmative action to ensure the applicants are employed, and

that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the CITY setting forth the provisions of this nondiscrimination clause.

B. DEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of the DEVELOPER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. DEVELOPER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the CITY's contracting officer, advising the labor union or worker's representative of the DEVELOPER's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. DEVELOPER will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. DEVELOPER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

F. In the event the DEVELOPER is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the DEVELOPER may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.

G. DEVELOPER will include the provisions of paragraphs (a) through (g) of this agreement in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The DEVELOPER will take such action with respect to any subcontract or purchase order as the AGENCY may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the DEVELOPER becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the AGENCY, the DEVELOPER may request the United States to enter into such litigation to protect the interest of the United States.

Section XI – Labor, Training & Business Opportunity

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

A. It is agreed that the WORK to be performed under this agreement is on a project assisted under a program providing direct Federal financial assistance from the US Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u, as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low and moderate income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the project area.

B. DEVELOPER shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder as well as any and all applicable amendments thereto prior to the execution of this contract as well as during the term of this contract. The DEVELOPER certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.

C. DEVELOPER will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the CITY, take appropriate action pursuant to the subcontractor upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, in 24 Code of Federal Regulations. The DEVELOPER will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 code of Federal Regulations and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.

D. Compliance with the provisions of Section 3, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder prior to the execution of the contract shall be a condition precedent to federal financial assistance being provided to the PROJECT as well as a continuing condition, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the DEVELOPER or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations as well as with any and all applicable amendments thereto.

Section XII – Compliance with Federal, State & Local Laws

A. GENERAL. The DEVELOPER covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, as well as all requirements set forth in 24 CFR 92 of the HOME INVESTMENT PARTNERSHIP PROGRAM. The DEVELOPER covenants and warrants that it will indemnify and hold the City forever free and harmless with respect to any and all damages whether directly or indirectly arising out of the provisions and maintenance of this contract. DEVELOPER agrees to comply with

all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of this section in every non-exempt subcontract in excess of \$100,000. DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

B. PROCUREMENT AND CONSTRUCTION OR REPAIR PROJECT REQUIREMENTS.

The following federal provisions may apply, among others, to this Contract:

1. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- (a) DEVELOPER, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
- (b) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- (c) Have not within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- (d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
 - (i) Have not within a three-year period preceding the signing of this Agreement had one or more public transactions (Federal, State, or local) terminated for cause of default.
 - (ii) Where the DEVELOPER is unable to certify to any of the statements in this Agreement, the DEVELOPER shall attach an explanation to this Agreement.
 - (iii) The DEVELOPER agrees by signing this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

(iv) The DEVELOPER further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

(e) LOWER TIER COVERED TRANSACTIONS

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

(ii) Where the lower tier contractor is unable to certify to any of the statements in this Agreement, such contractor shall attach an explanation to this Agreement.

2. Office of Federal Contract Compliance Programs regulations, 41 CFR Part 60, Executive Order 11246 as amended by Executive Order 12086, and 24 CFR 570.601 (Discrimination prohibited).

3. The Lead Based Paint Poisoning Prevention Act, 42 USC Section 4831 et seq., and HUD regulations implementing the Act, 24 CFR Part 35, where, residential structures are involved. The Contractor shall provide whatever assistance is necessary to enable the City of Yakima's Building Official to carry out its inspection and certification responsibility under those regulations.

4. Historic and Archaeological Preservation requirements as set forth in 24 CFR Section 570.604.36 CFR Part 800, RCW 27.44.010 (Native American Burial Law), RCW 27.53.010-.090 (Protection of Archaeological Resources), and RCW 43.51.750-.820 (Preservation of Historic Properties).

5. Architectural Barriers Act of 1968 as amended, 42 USC Section 4151 et seq., implementing regulations, and Chapter 70.92 RCW.

6. Accessibility Standard as set forth in 92.251(a)(3).

7. Clean Air Act as amended, 42 USC Section 1857 et seq; Water Pollution Control Act, as amended, 33 USC Section 1251 et seq.; and Environmental Protection Agency regulations, 40 CFR Part 15.

8. Section 3 of the Housing and Urban Development Act of 1968 (12 USC Section 1701u) and 24 CFR Part 135 (Employment opportunities for project area businesses and low income persons).

9. Contract Work Hours and Safety Standards Act, 40 USC Sections 327-333, (Overtime Compensation).

10. Davis-Bacon Act, as amended, 40 USC Sections 276a – 276a – 5, and RCW Chapter 3 – 12 (Prevailing Wage Rates).

11. Attachment O of the Office of management and Budget Circular, A-102

(Procurement Standards) and Federal Management Circular, FMC 74-4.

12. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and regulations contained in 24 CFR Parts 42 and 570.

13. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) as amended, and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor, the County, the City, and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor, in undertaking its obligation in carrying out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

14. Age Discrimination Act of 1975 (24 CFR 146).

15. Fair Housing Act (24 CFR 100, CFR 107 and 24 CFR 1).

16. Washington State/Local Building Codes/Housing Quality Standards (24 CFR 882.109).

17. WBE/MBE (24 CFR 85.36 (e)).

Section XIII – Suspension & Termination

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

If, through any cause, the DEVELOPER shall fail to fulfill in timely and proper manner its obligations under this contract, or if the DEVELOPER shall violate any of the covenants, agreements, or stipulations of this contract, the CITY shall thereupon have the right to terminate this contract by giving written notice to the DEVELOPER of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, the DEVELOPER may be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder to the date of said termination if all necessary documentation is provided to the CITY. Notwithstanding the above, the DEVELOPER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the DEVELOPER and the CITY may withhold any payments to the DEVELOPER for the purpose of setoff until such time as the exact amount of damages due the CITY from the DEVELOPER is determined whether by court of competent jurisdiction or otherwise.

Section XIV – Termination for Convenience of the CITY

The CITY may terminate for its convenience this contract at any time by giving at least thirty (30) days notice in writing to the DEVELOPER. If the contract is terminated by the CITY, as provided herein, the City will reimburse for any actual and approved expenses

incurred, including those costs involved in terminating the contracts and shutting down the work as of the date of notice, and the DEVELOPER will be paid as a FEE an amount which bears the same ratio to the total compensation as the services actually performed bear to the total service of the DEVELOPER covered by this contract, less payments of compensation previously made. Claims and disputes between the parties will be submitted to the American Arbitration Association for resolution. Award or judgment may be entered in any court having jurisdiction thereof.

Section XV – Default-Loss of Grant Funds

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

Section XVI – Reporting Responsibilities

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

Section XVII – Inspection, Monitoring & Access to Records

CITY reserves the right to inspect, monitor, and observe work and services performed by the DEVELOPER at any and all reasonable times. CITY reserves the right to audit the records of the DEVELOPER any time during the performance of this Agreement and for a period of ten (10) years after final payment is made under this Agreement. If required, the DEVELOPER will provide the AGENCY with a certified audit of the DEVELOPER's records representing the Fiscal Year during which the PROJECT becomes complete whenever the amount listed in SECTION VII is at or exceeds \$500,000, pursuant to the requirements of OMB Circular A-133. Access shall be immediately granted to the CITY, HUD, the Comptroller General of the United States,

or any of their duly authorized representatives to any books, documents, papers, and records of the DEVELOPER or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Section XVIII – General Conditions

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

City address:	City Manager Yakima City Hall 129 North 2 nd Street Yakima, Washington 98901
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DEVELOPER address:	Vaughn Bay Construction 1911 65 th Ave. W Tacoma, Washington 98466
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B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.

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

E. The parties hereto agree that this Agreement shall be construed and enforced according to the laws of the State of Washington.

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

G. DEVELOPER shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the AGENCY of Labor Regulations (29 CFR Part 3), as amended.

H. DEVELOPER shall comply with the provisions of sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.

I. DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of paragraphs (G) through (H) of this section in every

nonexempt subcontract. The DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

J. The obligations undertaken by DEVELOPER pursuant to this Agreement shall not be delegated or assigned to any other person or agency unless CITY shall first consent to the performance or assignment of such service or any part thereof by another person or agency.

K. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.

L. DEVELOPER shall defend, indemnify and hold harmless the CITY, its elected and appointed officials, officers, employees, and volunteers, from (1) claims, demands, liens, causes of action, lawsuits, administrative and other proceedings, (including reasonable costs and attorneys' fees) and (2) judgments, awards, losses, liabilities, damages, penalties, fines, costs and expenses of any kind claimed by third parties arising out of, or related to, any death, injury, damage or destruction to any person or any property to the extent caused by any negligent act, action, default, error or omission, or willful misconduct, arising out of DEVELOPER'S performance under this Agreement.

M. DEVELOPER and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the CITY, and shall not attain any rights or benefits under the civil service or pension ordinances of the CITY, or any rights generally afforded classified or unclassified employee; further they shall not be deemed entitled to state Compensation benefits as an employee of the CITY.

N. Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

Exhibit "B"

Stonewood-Apartments

A.) PROPOSAL SUMMARY/PROJECT ABSTRACT:

Phase 1 Construction of a 60 unit low-income apartment community. 59 units will be set-aside for households at or below 50% AMI. 45 units will be set-aside for qualified Farmworkers & 12 units for disabled persons.

B.) ASSESSMENT OF NEED/PROBLEM STATEMENT:

Yakima has a growing need for affordable housing, especially low-income and disabled persons housing serving people at or below the 50% AMI.

C.) PROGRAM GOAL AND OBJECTIVES:

Construction of 60 new low-income multi-family apartment units to be rented to qualified applicants at or below 50% AMI. At least one floating unit will be monitored through a HUD mandated 20 year affordability period by the City of Yakima Office of Neighborhood Development Services.

The Project must "Break Ground" no later than one year after the signing of said contract, with the construction and rent up completed within "Three years" from the beginning of this contract.

D.) MITIGATION MEASURES AND CONDITIONS [CFR 1505.2(C)]:

All mitigation measures adopted by the Responsible Entity to reduce, avoid or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the HUD-assisted projects in conformance with [24 CFR Part 58]

Mitigation required to address the "Noise Assessment Study" conducted by PLSA Engineering and Surveying as received by Vaughn Bay Construction on 10/26/2018.

Mitigation will be conducted as per outlined by SSA acoustics in the "Environmental Noise Report" as received by Vaughn Bay Construction on December 12, 2018. To include and not limited to Building Envelope Design to address reduction of exterior noise to a DNL 45 within the interior living spaces.

Mitigation design and construction to be implemented by qualified professionals and inspected to meet the City of Yakima adopted building codes and as outlined and engineered in SSA acoustics mitigation report.

A full mitigation completion report will be submitted with the signature of a qualified and licensed inspector to accompany the final billing invoice as

submitted for payment to the City of Yakima Office of Neighborhood Development Services. Furthermore this final billing will be submitted within thirty (30) days of the completion of construction to include the rent-up of a floating unit by a qualified low income applicant.

E.) Budget:

As requested in the attached Proposal received from TH Stonewood I LP on October 11, 2018.

The sum of \$50,000 in HOME Investment funds will be granted per the adoption of a resolution by the Yakima City Council for the construction of 60 units of low-income apartments as outlined in this contract.

Submission of an invoice shall be remitted to the Office of Neighborhood Development Services within Thirty (30) days of construction completion (to include the final mitigation report of completion) and rental of one floating unit on a reimbursement basis.

TH Stonewood I LP
2522 N Proctor, Suite 84
Tacoma, WA 98406

October 11, 2018

The City of Yakima
112 S. 8th Street
Yakima, WA 98901

Re: Stonewood

To Whom It May Concern:

The purpose of this correspondence is to request \$50,000 in HOME Funds for Stonewood Apartments. Stonewood is a proposed 60-unit, new construction, affordable housing community to be developed in Yakima off East Spruce Street.

Stonewood's nonprofit General Partner, Trillium Housing Services, will set aside 75% (45) of the units for Farmworkers and 20% (12) units set aside for Mentally or Physically Disabled Persons leaving the remaining units available for qualified households.

Other financing sources will include a \$750,000 loan from the Federal Home Loan Bank of Des Moines, 9% Low-Income Housing Tax Credits and a construction loan from Banner Bank.

Construction is scheduled to start in April 2019.

Sincerely,

TH Stonewood I LP

By: TH Stonewood I GP LLC
Its General Partner

By: Trillium Housing Services
Its Manager



Bruce W. Kilen, President

EXHIBIT "C" RESOLUTION