



TOWN OF JACKSON

AGENDA DOCUMENTATION

SUBMITTING DEPARTMENT: Joint Housing

PRESENTER: April Norton

MEETING DATE: June 15, 2020

SUBJECT: Low-Income Multifamily Developer Consultant Contract with Summit Housing Group

STATEMENT/PURPOSE

Town Council ("Council") will consider the developer consultant contract with Summit Housing Group to develop low-income multifamily rental housing.

BACKGROUND/ALTERNATIVES

Low-income rentals are one of the largest gaps in the community housing portfolio and they serve some of the most marginalized members of the community. The Housing Department's Intake Form data as of January 2020 shows that over 280 households (616 people) are earning less than half of median family income. On average, adults in these households work 1.13 jobs and over 60% of the households are paying more than 30% of their monthly income towards housing. These are the families and individuals who will qualify for low-income rental housing.

The Workforce Housing Action Plan Initiative 4C directs staff to seek state and federal funding and to provide technical assistance to private entities applying for state and federal funds for low income housing. The plan specifically identifies tax credits as a funding tool to be sought.

The RFQ was approved by Council March 23, 2020 and released the following day. (The staff report from the March 23 meeting is attached.) The RFQ included a scope with four tasks: 1) property identification; 2) Qualified Allocation Plan ("QAP") study and opportunity assessment, preliminary design; 3) project application; and 4) project development. The RFQ asked for pricing/fees for the first three tasks.

On May 18, 2020 Council directed staff to negotiate a contract for services with Summit Housing Group. The attached contract includes tasks one, two, and three from the RFQ. If the application is successful and receives funding, then a Development Phase Services contract will become effective. This contract will be drafted as part of task three: application to WCDA and will be reviewed by Council prior to the application deadline and submission.

COMPREHENSIVE PLAN ALIGNMENT

Comprehensive Plan Policy:

- House at least 65% of the workforce locally. 5.1.a
- Focus housing subsidies on full-time, year-round workers. 5.1.b
- Provide a variety of housing options. 5.2.a

Housing Action Plan Initiative:

- Provide land as a public subsidy and build development partnerships. 2B
- Seek and support grants, tax credits, loans, and other sources of funding. 4C

STAKEHOLDER ANALYSIS

Stakeholders include Town taxpayers, local working individuals and families, and business owners.

FISCAL IMPACT

The Town currently has \$1,094,845 in the Housing Supply Fund and \$12,493 in mitigation fees. Staff anticipates using these funds to cover costs related to this RFQ. For tasks 1-3, the developer has a not to exceed amount of \$58,610 if the application is unsuccessful and a not to exceed amount of \$37,110 if the application is successful.

STAFF IMPACT

This project will require extensive time from the Housing Director. The Planning Director and Community Development Director will both be involved with the project from a planning and development perspective. In late summer legal support will be required to draft a ground lease for the project.

LEGAL REVIEW

Ongoing as needed.

ATTACHMENTS

- Developer Consultant Contract

RECOMMENDATION

Staff recommends approving the contract as presented today.

SUGGESTED MOTION

I move to approve the developer consultant contract with Summit Housing Group as presented today.

DEVELOPER CONSULTANT CONTRACT

THIS DEVELOPER CONSULTANT CONTRACT (“Contract”) is made and entered into effective as of the ____th day of June, 2020, by and between Summit Housing Group, Inc., a Montana corporation (“DEVELOPER”) whose address is 283 W Front St., Ste. 1, Missoula, MT 59802, and Town of Jackson , a Wyoming municipal corporation (“Town”) whose address is 150 E Pearl Avenue, Jackson, WY 83001.

RECITALS

WHEREAS, the TOWN issued a Request for Qualifications (“RFQ”) on March 24, 2020 seeking the services of a qualified developer to develop low-income multifamily housing within the Town of Jackson utilizing a combination of Low-Income Housing Tax Credits, HOME Investment Partnerships Program Funds, National Housing Trust Funds, Town funding and private funding; and

WHEREAS, DEVELOPER responded to the RFQ on April 24, 2020 and was selected by the TOWN on May 18, 2020 to complete the tasks set forth in the RFQ, which are, as more specifically described and set forth herein, 1) Property Identification, 2) Qualified Allocation Plan Study and Opportunity Assessment, 3) Application to the Wyoming Community Development Authority for Low-Income Housing Tax Credits, HOME Investment Partnerships Program Funds, and/or National Housing Trust Funds, and 4) Development of low-income multifamily housing, (each a “Task”); and

WHEREAS, the TOWN and DEVELOPER will enter into this Contract to provide for the first three RFQ Tasks only, hereinafter the “Pre-construction Phase Services,” with provisions for adding the fourth Task, hereinafter “Development Phase Services,” which may only be added through an Amendment to this Contract. Alternatively to that Amendment, the TOWN may choose not to continue the Contract beyond the completion of Pre-construction Phase Services, reserving all rights to terminate the Contract; and

WHEREAS, the TOWN requires a developer competent to perform all Work necessary to complete the duties and obligations of this Contract in accordance with its terms and conditions, and able to do so within the Contract Time allocated herein; and

WHEREAS, the DEVELOPER asserts that it is competent and prepared to perform all Work necessary to complete the duties and obligations of this Contract in accordance with its terms and conditions, and that it is able to do so within the Contract Time allotted herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, including these Recitals, and for other good and valuable consideration identified herein, the TOWN and the DEVELOPER agree as follows:

ARTICLE 1

GENERAL CONTRACT PROVISIONS; DEFINED TERMS

1.1 Incorporation of Recitals – The foregoing Recitals incorporated herein and made a part hereof for all purposes as if fully set forth, constitute additional promises, representations and warranties of the Parties.

1.2 Applicable Version of Law or Standard – All Work shall be performed in accordance with the Applicable Laws and Regulations.

1.3 Defined Terms - Defined terms utilized in this Contract are set forth in this Article. Other definitions may be found in the individual Articles of this Contract to which they apply.

1.3.1 Amendment – A written modification of the Contract, identified as an Amendment, and executed by the DEVELOPER and the TOWN.

1.3.2 Applicable Laws and Regulations – Collectively, whether local, state, or federal, the "laws," "acts," "rules," "statutes," "codes," "regulations," "ordinances," and the like, specifically including those of the Wyoming Community Development Authority, that apply to this Contract and Work performed hereunder. In each case Applicable Laws and Regulations is understood to be the current version in effect.

1.3.3 Contract Completion Date – September 30, 2020, unless extended by properly and formally executed Amendment.

1.3.4 Contract Time – The amount of time allowed under this Contract to complete all Work, calculated from the Effective Date to the Contract Completion Date, as the latter may be amended.

1.3.5 Contract Records - All information in any way relating to the Work, the Project or performance of the Contract, including but not limited to all:

- Financial and accounting records and information; and
- Correspondence, including internal communications, emails, field notes, file notes, diary entries, communications among the Town, the DEVELOPER, subcontractors and any governmental authorities; and
- Notices, orders, permits, opinions; and
- Survey data, including survey drawings, reports, maps, original computations and other data; and
- Ant materials, environmental and Project site testing records and certifications; and
- Work Product.

1.3.6 Development Phase Services – All Work, other than Pre-construction Phase Services, consisting of construction-related activities of the DEVELOPER for the physical development contemplated in Task 4; provided it is explicitly understood that the Development Phase Services and this definition will be set forth in the Amendment contemplated herein and in the Development Services Agreement.

1.3.7 Pre-construction Phase – The period commencing on the date of Effective Date of the Contract and ending on September 30, 2020. It is explicitly understood and agreed by the Parties that this end date may not be amended.

1.3.8 Project – The physical development contemplated in Task 4 and associated work; provided it is explicitly understood that the Project and this definition will be set forth in the Application to the Wyoming Community Development Authority that comprises Task 3 and in the Development Services Agreement.

1.3.9 Work – The furnishing of all labor, equipment, and incidentals necessary to successfully complete any individual Task or the entire Contract and the discharge of all duties and obligations imposed by the Contract.

1.3.10 Work Product – Contract Plans and Specifications, drawings, and all other documents, analysis, computations, models, computer programs, and information obtained or developed for the Project or in performance of the Contract, in or capable of being reduced to tangible paper-based, electronic, audio, or video format, whether or not designated as a deliverable under the Contract.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 Contract Documents - For valuable consideration as stated herein, TOWN and the DEVELOPER agree to the terms of the agreement that are set forth in the Contract Documents, which include this Contract, the Development Services Agreement, and any Amendments or Addendums hereto.

2.2 Effective Date - The Contract shall become effective on the first date on which every party has signed this Contract.

ARTICLE 3 WORK OF THE CONTRACT

3.1 Pre-construction Phase Services - DEVELOPER agrees to provide all of the Pre-construction Phase Services. Pre-construction Phase Services shall include three Tasks:

3.1.1 Property Identification – DEVELOPER shall work with the TOWN PM, and other TOWN staff as necessary, to identify an appropriate property for a low-income multifamily housing development. This may include property acquisition and associated due diligence if the land is not already owned by the TOWN, development analysis, and any other due diligence necessary to effectively identify an appropriate property. One or more public hearings may also be required for this phase. If TOWN land is utilized it shall be ground leased to the single purpose ownership entity of the project. This lease

agreement or at a minimum documentation showing site control must be finalized prior to submitting a tax credit application. Site control is a requirement for any application.

3.1.2 Qualified Allocation Plan Study and Opportunity Assessment – DEVELOPER shall review and analyze the Qualified Allocation Plan released by the Wyoming Community Development Authority to identify opportunities to increase scoring, decrease negative points, and leverage changes made to the Qualified Allocation Plan, all in order to increase chances for a successful application and award of credits to the Project. This will include participating in the annual Qualified Allocation Plan training hosted by the Wyoming Community Development Authority. DEVELOPER will work with the TOWN PM, and other TOWN staff as necessary, on a preliminary design concept for the Project and should expect at least one public hearing and one community outreach session for this Task, though more of each or either of these public activities may be required.

3.1.3 Project Application – DEVELOPER shall be solely responsible for submitting a complete application to the Wyoming Community Development Authority for Low-Income Housing Tax Credits and possibly HOME Funds and/or National Housing Trust Funds. At least one public hearing will be required for this Task, though more may be required. TOWN and DEVELOPER will draft a conditional Development Services Agreement conditioned on the Wyoming Community Development Authority awarding credits to the Project.

3.2 Development Phase Services – This Contract shall include Pre-construction Phase Services only unless the Parties’ conditional Development Services Agreement drafted as part of Task 3 is made an Amendment hereto, which is contingent upon, and can only occur after, the Wyoming Community Development Authority awarding credits to the Project. If such credits are awarded, the DEVELOPER agrees to provide the Development Phase Services described in this Article.

Development Phase Services shall include, but are not limited to:

- Physical development of low-income multifamily housing, including DEVELOPER leasing TOWN-owned property, obtaining all necessary permits and approvals from all applicable government agencies, and completing construction of, in accordance with the plans approved by the Town and diligently pursued to attainment of certificate of occupancy, the multifamily housing Project, all as will be more specifically set forth in the Development Services Agreement contemplated in Tasks 3 and 4.
- TOWN understands that a gap in the tax credit financing is likely. DEVELOPER will employ all means and methods to reduce this likely gap. These means and methods would have to comply with all requirements of the Wyoming Community Development Authority, IRS code Section 42 and any other soft funding source that is available. TOWN understands that a partial or conditional award of tax credits could be given, and the amount of that gap would be determined by that partial award amount. TOWN and DEVELOPER would then have to agree upon the amount needed to fill the potential gap and satisfy the Wyoming Community Development Authority and other finance partners in the transaction.

ARTICLE 4
RELATIONSHIP AND ROLES OF THE PARTIES

A basic description of the main roles and responsibilities of the parties is provided below. The Work is to be accomplished in an interactive, team-oriented approach between the TOWN and the DEVELOPER.

4.1 Independent Contractor - The DEVELOPER is an independent contractor and not an officer, employee, or agent of the TOWN.

4.2 Performance of Work - The DEVELOPER covenants with TOWN to cooperate with the TOWN and utilize the DEVELOPER 's professional skill, efforts and judgment in furthering the interests of the TOWN; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers; and to perform the Work in conformance with the terms and conditions of this Contract and in an expeditious and economical manner consistent with the interests of the TOWN.

4.3 Forms and Procedures - The TOWN has developed or may develop procedures and forms for the administration and tracking of the Contract. The DEVELOPER agrees to abide by those procedures and use those forms.

4.4 DEVELOPER'S Key Personnel - The DEVELOPER 's Key Personnel shall consist of the following:

4.4.1 Project Principal – The Project Principal designated as having the lead responsibility for managing the DEVELOPER’s organization for all Tasks is:

Name: Rusty Snow

Address: 283 W. Front Street, Suite 1, Missoula, MT 59802

E-mail Address: rusty@summithousinggroup.com

Phone / Fax Numbers: 406-960-4870 (p) 406-541-0997 (f)

The Project Principal will support the DEVELOPER’s Key Personnel during the Pre-construction Phase and Development Phase Services to ensure the success of the Work and the Project, and will be available to the TOWN to assist in resolution of any issues.

4.4.2 Project Manager - The DEVELOPER’s representative for all Tasks is the DEVELOPER 's Project Manager (“DEVELOPER PM”):

Name: Chad Householder

Address: 283 W. Front Street, Suite 1, Missoula, MT 59802

E-mail Address: chad@summithousinggroup.com

Phone / Fax Numbers: 406-545-4721 (p) 406-541-0997 (f)

The DEVELOPER's PM will supervise and coordinate all Pre-construction Phase Services and Development Phase Services and participate in all meetings unless otherwise directed by the TOWN. The DEVELOPER represents that the DEVELOPER PM shall have the authority to execute Contract Amendments on behalf of the DEVELOPER.

4.4.3 Architect of Record - The DEVELOPER 's Architect of Record for all Tasks is:

Name: Love Schack Architecture, P.C – Lindsey Love

Address: 285 E Little Ave, Driggs, ID 83422

E-mail Address: llove@loveschack.com

Phone / Fax Numbers: (505)-577-4266

The DEVELOPER's Architect of Record will be Love Schack Architecture, P.C during the Pre-construction Phase Services and Development Phase Services of the Contract on behalf of the DEVELOPER.

4.6 Key Personnel - The DEVELOPER 's Key Personnel identified in this Article shall be considered critical to the success of the Work and the Project and shall not be replaced without the written permission of the TOWN. If the DEVELOPER intends to substitute any Key Personnel, a request must be given to the TOWN at least thirty (30) Calendar Days (or such shorter period as permitted by the TOWN) prior to the intended time of substitution. Once a replacement for any Key Personnel is authorized, further replacement shall not occur without the written permission of the TOWN.

4.7 TOWN Representative and Contact Information – The TOWN's representative is the TOWN Project Manager ("TOWN PM"):

Name: April Norton
Address: Jackson/Teton County Housing Department,
P.O. Box 574, Jackson, WY 83001
E-mail Address: aprilnorton@jacksonwy.gov
Phone Number: (307) 732-0867

ARTICLE 5
DATE OF COMMENCEMENT; CONTRACT COMPLETION DATES

5.1 Commencement of Services – The DEVELOPER is authorized to commence the Work contemplated by the Contract upon the Effective Date.

When Development Phase Services are added to the Contract as contemplated by and set forth in Article 3, a Notice to Proceed ("NTP") will be issued by the TOWN to begin the designated or full Development Phase Services.

5.2 Contract Completion Date – All Work under this Contract shall be completed by September 30, 2020.

5.3 Time is of the Essence - All time limits stated in the Contract are of the essence.

5.4 Time Extensions -The TOWN and the DEVELOPER agree that timely completion of Tasks 1, 2 and 3 is essential to the success of the Project and involves unalterable deadlines of Wyoming state agencies, and that approval for time extension of the Pre-construction Phase cannot and will not be granted.

ARTICLE 6

CHANGES IN THE WORK

6.1 Amendments - Any change in Work proposed by either Party shall be applied to this Contract through an Amendment in accordance with the following procedure:

6.1.1 The Party seeking the change in Work shall submit its request in writing to the other.

6.1.2 The receiving Party shall have 5 business days to provide a written response to the request explaining its acceptance, denial, or acceptance with conditions of the request.

6.1.3 If the request for change in Work is accepted or accepted with conditions, in order to be effectuated, said acceptance shall be memorialized in an Amendment to this Contract.

6.2 Execution by the TOWN - Notwithstanding any provision in the Contract to the contrary, the TOWN PM has no authority to execute Amendments on behalf of the TOWN, and only duly authorized personnel of the TOWN may do so.

ARTICLE 7

SUBCONTRACTS AND OTHER CONTRACTS

7.1 General Subcontracting Requirements: DEVELOPER shall not employ any subcontractor, supplier, or other individual or entity whether initially or as a replacement, against whom Town may have reasonable objection. DEVELOPER shall not be required to employ any subcontractor, supplier, or other individual or entity to furnish or perform any of the Work against whom DEVELOPER has reasonable objection.

7.2 DEVELOPER's Obligations under Subcontracts:

7.2.1 No use of a subcontractor or supplier shall relieve the DEVELOPER of any of its obligations or liabilities under the Contract. The DEVELOPER shall be fully responsible and liable for the acts or omissions of all subcontractors and suppliers including persons directly or indirectly employed by them. The DEVELOPER shall have sole responsibility for managing and coordinating the operations of its subcontractor, supplier, including the settlement of disputes with or between the DEVELOPER and any such subcontractor or supplier.

7.2.2 The DEVELOPER shall include in each subcontract and require each subcontractor and supplier to include in any subcontract, all provisions necessary to make all of the provisions of the Contract fully effective as applied to subcontractors. The DEVELOPER shall indemnify

the TOWN for any additional cost based on a subcontractor or supplier claim which results from the failure of the DEVELOPER to incorporate the provisions of this Contract in each subcontract. The DEVELOPER shall provide all necessary instructions to its subcontractors and suppliers to enable them to properly perform their work.

ARTICLE 8 ACCOUNTING RECORDS

8.1 Accounting; Audit Access - The DEVELOPER shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to the TOWN. The TOWN shall be afforded reasonable and regular access to the DEVELOPER's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, payroll records, memoranda and all other Contract Records relating to the Contract.

8.2 Periodic and Final Audits – The TOWN may, at its discretion, perform periodic audits of the Contract Records associated with the Contract. The DEVELOPER shall cooperate fully with the TOWN in the performance of such audits.

ARTICLE 9 HOURLY RATES FOR PRE-CONSTRUCTION COSTS; PAYMENTS

9.1 Hourly Rates – Pre-construction Costs shall be payable to the DEVELOPER based on the fixed hourly rates set forth in Article 16 on an actual-hours-worked basis up to a maximum, Not-to-Exceed (“NTE”) sum. The TOWN agrees to compensate the DEVELOPER for all Pre-construction Phase Services Work performed under the Contract for the NTE price identified in Article 16 and according to fixed hourly rates for the personnel identified therein. The Pre-construction Costs are the entire cost of completing the Pre-construction Phase Services in accordance with all Contract requirements and Applicable Laws and Regulations, as contemplated by the Parties under the Contract, and further includes all DEVELOPER overhead and profit. The Pre-construction Costs shall be payable in accordance with this Article.

Unless otherwise provided in an Amendment hereto, if the DEVELOPER's costs for provision of Pre-construction Phase Services exceed the NTE price identified in Article 16, the DEVELOPER shall pay such additional cost without further compensation.

9.2 Payments - Based upon approved invoices submitted, the TOWN shall make payments to the DEVELOPER as provided below.

9.3 Invoices of Pre-construction Phase Services Work Completed:

(a) Hourly Rates – Invoices for Pre-construction Phase Services Work shall show the total hours worked for all personnel identified in Article 16. The cost shall be the total of the hours worked multiplied by the hourly rates identified in Article 16.

(b) **Expenditure Evaluation Progress Report** – The DEVELOPER shall also provide an expenditure evaluation progress report with their invoices summarizing Work accomplished during the month in which the invoiced Work was performed, Work planned for the following month, and progress percentage complete of Work in progress.

ARTICLE 10
FINAL PAYMENT

10.1 Final Payment Accounting – The DEVELOPER shall submit to the TOWN a final detailed accounting of the cost of the Work for Tasks 1, 2 and 3 together with the DEVELOPER's final invoice.

10.2 Effect of Payment - Neither approval of an invoice, a payment, or a final payment shall constitute acceptance of Work not conforming to the Contract Documents, or waiver of the right to assert overpayment or breach of contract or in any way limit the TOWN's remedies provided herein.

ARTICLE 11
TERMINATION

11.1 TOWN's Right to Terminate Prior to Effectuation of the Development Services Agreement - Prior to effectuation of the Development Services Agreement, the TOWN may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the DEVELOPER shall not exceed the Pre-construction Costs payable to the date of termination. If the TOWN terminates under this Article during the Pre-construction Phase, the TOWN shall be entitled to copies of, and shall have the right to use, all Work Product of the DEVELOPER and its subcontractors performed to the date of termination, and the DEVELOPER shall deliver copies of the same to the TOWN on request.

11.2 TOWN's Termination for Default - In the event of termination of this Contract by the TOWN for default, the DEVELOPER may be liable for damages or losses suffered by the TOWN because of the breach. The amount of damages or losses shall be limited to the amount paid to the Developer at that time.

11.3 Defaults - The following shall be considered defaults for which the Contract may be terminated:

11.3.1 The DEVELOPER fails to perform any agreed-upon portion of the Work so as to endanger the DEVELOPER's performance under the Contract in accordance with its terms, and (A) continuance of such breach, default or failure for a period of 10 days after receipt by DEVELOPER of written notice specifying the nature of such breach, default or failure, or (B) if by reason of the nature of such breach, default or failure the same cannot be remedied within said 10 days, the DEVELOPER's failure to commence to cure such breach, default or failure within said 10 days or the failure, after commencing, to diligently pursue such cure to completion.

11.3.2 The DEVELOPER made knowing or reckless misrepresentations, concealed facts, or failed to disclose information in the DEVELOPER's RFQ response, dated April 24, 2020. Such shall

constitute fraudulent inducement, and shall entitle the TOWN to recover reliance damages, in addition to any other available remedies to which it may show itself entitled.

- 11.3.3** Either Party violates any material provision of the Contract and (A) continuance of such violation for a period of 10 days after receipt by the violating Party of written notice specifying the nature of such violation, or (B) if by reason of the nature of such violation the same cannot be remedied within said 10 days, the Party's failure to commence to cure such violation within said 10 days or the failure, after commencing, to diligently pursue such cure to completion.
- 11.3.4** The DEVELOPER fails to comply with Applicable Laws or Regulations or the TOWN PM's instructions.
- 11.3.5** The DEVELOPER refuses or fails to supply enough staff, staff time, or skilled workers for prosecution of the Work in compliance with the Contract.
- 11.3.6** The DEVELOPER makes any assignment for the benefit of its creditors or files a voluntary petition under any bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import.
- 11.3.7** The DEVELOPER otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

11.4 TOWN's Termination of Contract / Non-availability of Funds

- 11.4.1** The TOWN may terminate the Contract, in whole or in part, immediately upon notice to the DEVELOPER, or at such later date as the TOWN may establish in such notice, upon the occurrence of any of the following events:
 - 11.4.1.1** The TOWN fails to receive, or fails to have adequate, funding, appropriations, allotments or other expenditure authority at levels sufficient to pay for the DEVELOPER's Work; or
 - 11.4.1.2** Applicable Laws and Regulations are modified or interpreted in such a way that the Pre-construction Phase Services are prohibited, or the TOWN is prohibited from paying for such services from planned funding source(s).
- 11.4.2** The TOWN reasonably believes that sufficient funds are anticipated to pay all amounts due and contemplated hereunder, and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds, and will use its best efforts to have such budget approved. It is the TOWN's intention to make all payments due hereunder if funds are legally available for such purpose.

11.4.3 If, despite the above, the TOWN is not allotted or does not have sufficient funds for the next succeeding fiscal period by appropriation, limitation, grant, or other funds source lawfully available to it for such purposes to continue the Work and/or Project and make payments hereunder, the TOWN may terminate the Contract, by notice to the DEVELOPER, without penalty, and such termination shall not constitute an event of default under any provision of the Contract. The TOWN will give the DEVELOPER notice of such non-availability of funds within thirty (30) calendar days after it receives notice or determines such unavailability.

11.5 Quality of the Work - In the event of the TOWN's termination of the Contract, regardless of reason, the DEVELOPER shall remain responsible for the quality of the Work performed through the date of termination.

ARTICLE 12 **REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS**

12.1 Representations and Warranties – The DEVELOPER represents and warrants to the TOWN as of the Effective Date of the Contract:

12.1.1 It has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; the DEVELOPER has duly and validly executed and delivered this Contract to the TOWN and that the Contract constitutes the legal, valid and binding obligation of the DEVELOPER, enforceable against the DEVELOPER in accordance with its terms.

12.1.2 No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by the DEVELOPER or its consummation of the transactions contemplated hereby.

12.1.3 There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby.

12.1.4 The DEVELOPER's Project Principal, Project Manager and Architect of Record identified in Article 4 are duly appointed representatives and each has the authority to bind the DEVELOPER to any and all duties, obligations and liabilities under the Contract and any Amendments thereto.

ARTICLE 13 **MISCELLANEOUS**

13.1 Headings - The headings used in this Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

13.2 Integration and Binding Effect - The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The provisions of this Contract shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of TOWN and DEVELOPER.

13.3 Counterparts – This Contract may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

13.4 Joint Ventures and Partnerships – If the DEVELOPER is a joint venture or a partnership, each joint venture member or partner is executing this Contract on behalf of and thereby binds both itself and the DEVELOPER, and each joint venture member or partner shall be jointly and severally liable under this Contract.

13.5 Notices - All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested or by Federal Express, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

TOWN:

Town of Jackson:
Attn: Town Clerk
P.O. Box 1687
Jackson, Wyoming 83001

DEVELOPER:

Summit Housing Group, Inc
283 W Front St., Ste. 1
Missoula, MT 59802

13.6 Severability - The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

13.7 No Waiver - Neither the failure of the TOWN nor the DEVELOPER to insist upon strict performance of any of the covenants and agreements of this Contract nor the failure by the TOWN or the DEVELOPER to exercise any rights or remedies granted to such Party under the terms of this Contract shall be deemed a waiver or relinquishment (i) of any covenant contained in this Contract or of any of the rights or remedies of the TOWN or the DEVELOPER under this Contract, or (ii) or the right in the future of

the TOWN or the DEVELOPER to insist upon and to enforce by any appropriate legal remedy a strict compliance with all of the covenants and conditions of this Contract.

13.8 Amendment - No waiver, consent, or modification of terms of the Contract shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, or modification, if made, shall be effective only in the specific instance and for the specific purpose given.

13.9 Ownership and Use of Work Product - All Work Product of the DEVELOPER arising from performance of the Contract shall be the exclusive property of TOWN.

13.10 Governmental Immunity – TOWN does not waive its governmental immunity by entering into this Contract and specifically retains immunity and defenses available to it as a governmental entity pursuant to Wyo. Stat. Ann. §1-39-101, et seq., and all other state law.

13.11 Applicable Law and venue– This Contract shall be governed by and construed in accordance with the laws of the State of Wyoming. Jurisdiction and venue for the enforcement of this Contract shall be found exclusively in the courts of Teton County, State of Wyoming. Each of the parties irrevocably submits to the exclusive jurisdiction of such courts in any proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of any proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Contract in any other court.

13.12 Gender and Number - Words of any gender used in this Contract shall be held to include any other gender, and any words in the singular number shall be held to include the plural (and vice versa), when the sense requires.

13.13 Titles - The titles and article or paragraph headings are inserted only for convenience, and are in no way to be construed as a part of this Contract or as a limitation on the scope of the particular provisions to which they refer.

13.14 Execution Authority and Tax Compliance Certification – The individual signing on behalf of the DEVELOPER hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of the DEVELOPER, s/he has authority and knowledge regarding the DEVELOPER's payment of taxes, and to the best of her/his knowledge, the DEVELOPER is not in violation of any Wyoming tax laws.

13.15 Rights and Remedies. The rights and remedies of the Parties hereto shall not be exclusive. In general, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Party aggrieved as against the other Party for a breach or threatened breach of any provisions hereof, it being the intention of this Paragraph to make clear the agreement of the Parties that the respective rights and obligations of the Parties hereunder shall be enforceable in equity as well as to law or otherwise.

ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure Event. If DEVELOPER is delayed or hindered in or prevented from the performance of any act required under this Lease by reason of labor troubles, inability to procure material or labor, failure of power, restrictive governmental laws or regulations, riots, war, epidemics, pandemics, fires, natural disasters, or other reason of a like nature not the fault of the Parties, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. There must be a correlation between the event or circumstance and the obligation sought to be delayed. Where the force majeure event or circumstance substantially frustrates the purpose of this Lease without fault by the parties, the DEVELOPER's obligations may be fully discharged under the Contract.

14.2 Invocation. If a Party seeks to invoke this provision, it shall provide written notice of its intent to do so to the other as soon as practically possible, which notice must include (i) the Party's reason for invoking this force majeure provision, (ii) the correlation between the force majeure event and the obligation sought to be delayed or discharged, and (iii) an estimate as to the length of time the party anticipates being delayed, hindered or prevented from performing under this Contract.

14.3 Notice. No prevention, delay, or stoppage of performance shall be excused unless DEVELOPER notifies TOWN within ninety (90) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Article.

ARTICLE 15

INSURANCE

15.1 Insurance Requirements – DEVELOPER shall maintain professional liability insurance, at its own expense, to protect TOWN from any negligent acts, errors, or omissions on the part of DEVELOPER, which insurance coverage shall not be less than one million dollars (\$1,000,000). DEVELOPER shall furnish and deposit with TOWN certificates of such insurance policies to be maintained by DEVELOPER with evidence of payment of the premiums thereon obtained prior to the Effective Date of this Contract, and copies of all insurance policies obtained at any time thereafter during the term of this Contract.

ARTICLE 16

PRE-CONSTRUCTION PHASE SERVICES; HOURS AND HOURLY RATES

The following negotiated, fixed, hourly rates shall be used for payment to the DEVELOPER for all Pre-construction Phase Services Work. The estimated level of services, shown as estimated hours, will remain flexible within the maximum NTE and are subject to reallocation upon approval by the TOWN; however the hourly rates and the maximum NTE shall remain fixed. The Parties hereto explicitly agree that fees for Summit Housing Group and New West Building Company are only payable in the event the application does not receive an award allocation (“**Unsuccessful**”).

| Task One: Property Identification | | | | | |
|-----------------------------------|-------------------------------------|------------------------------|-----------|--------------|----------------|
| Team Member Name | Team Member Role | Weighted average Hourly Rate | Hours | Percent Work | |
| Summit Housing Group | Developer | \$115 | 20 | 24% | \$2,300 |
| Love Schack Architects | Architect of Record | \$112 | 15 | 18% | \$1,680 |
| Onion Flats | Design Architect | \$200 | 15 | 32% | \$3,000 |
| Beyond Efficiency | Energy/Mechanical/Plumbing Engineer | \$150 | 3 | 5% | \$450 |
| TBD | Electrical Engineer | \$130 | 3 | 4% | \$390 |
| TBD | Civil Engineer | \$130 | 5 | 7% | \$650 |
| TBD | Structural Engineer | \$130 | 0 | 0% | \$0 |
| New West Building Const. | Cost Estimator | \$100waived | 10 | 11% | \$1,000 |
| Totals | | | 71 | 100% | \$9,470 |

| Task Two: QAP Study and Opportunity Assessment/Prelim Design | | | | | |
|--|-------------------------------------|------------------------------|------------|-------------|-----------------|
| Team Member Name | Team Member Role | Weighted average Hourly Rate | # hours | % Work | |
| Summit Housing Group | Developer | \$115 | 20 | 8% | \$2,300 |
| Love Schack Architects | Architect of Record | \$125 | 70 | 30% | \$8,750 |
| Onion Flats | Design Architect | \$200 | 50 | 34% | \$10,000 |
| Beyond Efficiency | Energy/Mechanical/Plumbing Engineer | \$150 | 30 | 15% | \$4,500 |
| TBD | Electrical Engineer | \$130 | 0 | 0% | \$0 |
| TBD | Civil Engineer | \$130 | 10 | 4% | \$1,300 |
| TBD | Structural Engineer | \$130 | 10 | 4% | \$1,300 |
| New West Building Const. | Cost Estimator | \$100waived | 10 | 3% | \$1,000 |
| Totals | | | 200 | 100% | \$29,150 |

Task Three: Application to WCDA

| Team Member Name | Team Member Role | Weighted average Hourly Rate | # hours | % Work | |
|--------------------------|-------------------------------------|------------------------------|------------|-------------|-----------------|
| Summit Housing Group | Developer | \$115 | 60 | 35% | \$6,900 |
| Love Schack Architects | Architect of Record | \$103 | 30 | 15% | \$3,090 |
| Onion Flats | Design Architect | \$200 | 10 | 10% | \$2,000 |
| Beyond Efficiency | Energy/Mechanical/Plumbing Engineer | \$126 | 0 | 0% | \$0 |
| TBD | Electrical Engineer | \$130 | 0 | 0% | \$0 |
| TBD | Civil Engineer | \$130 | 0 | 0% | \$0 |
| TBD | Structural Engineer | \$130 | 0 | 0% | \$0 |
| New West Building Const. | Cost Estimator | \$100 | 80 | 40% | \$8,000 |
| Totals | | | 180 | 100% | \$19,990 |

Pre-Construction Phase Services NTE if Application is Unsuccessful: \$58,610

Pre-Construction Phase Services NTE if Application is Successful: \$37,110

Summit Housing Group, Inc.

A duly organized corporation
of the State of Montana

By: _____

Name: Rusty Snow

Title: President

STATE OF MONTANA)
) ss.
COUNTY OF MISSOULA)

The foregoing instrument was acknowledged before me by Rusty Snow, as the President of Summit Housing Group, Inc., who is personally known to me or has established his identity and authority to me by reasonable proof, this ____ day of _____, 2020.

Witness my hand and official seal.

My commission Expires:

Notary Public

TOWN OF JACKSON,

A municipal corporation
of the State of Wyoming

BY: Pete Muldoon, Mayor

Date: _____

ATTEST: Sandra P. Birdyshaw, Town Clerk

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged before me by Pete Muldoon, as the Mayor of the Town of Jackson, and Sandra P. Birdyshaw, as the Town Clerk for the Town of Jackson, who are each personally known to me or has each established their identity and authority to me by reasonable proof, this _____ day of _____, 2020.

Witness my hand and official seal.

My commission Expires:

Notary Public