

Low-Income Housing Development Cooperation Agreement

This Low-Income Housing Development Cooperation Agreement is entered into on the date of last signature below (which is the “effective date”) by and between the City of Olympia, a Washington Municipal Corporation (“the City”) and Daniel Stusser, a single person (“Developer”).

Background

- Developer is in the process of acquiring property at 2021 Boulevard Road SE in Olympia, WA, parcel number 12824411300 (“the Property”).
- Developer wishes to develop the Property into low-income housing (“the Project”). The parties anticipate that Developer will create a formal project scope document within six months, which Developer will share with the City for review and approval. Once approved by the City, the project scope becomes a part of this Agreement.
- Developer reached out to the City, seeking the City’s support and assistance with his plan to develop the Property into low-income housing, specifically with assistance from the City in obtaining federal and state grant funding.
- Because Developer is not a qualifying organization, he is unable to apply for grant funding from the City’s Home Fund or many state and federal grants.
- The Property is currently very underutilized, so a project like the one proposed by Developer is a perfect match and can help meet the City’s housing development goals.
- To encourage Developer’s proposed development of the Project and the growth of the number of low-income housing units in Olympia, the City wishes to assist Developer with applications for federal and state grants, and with other funding opportunities.

Based on the foregoing, the City and Developer agree as follows:

Agreement

1. Developer’s creation of scope document. Developer shall, within six months of the effective date of this Agreement, create a formal project scope document, which must include a timeline for the Project, and share the document with the City for review and approval. Once approved by the City, the project scope document becomes a part of this Agreement.
2. Developer’s Development of the Project. Developer shall acquire the property and begin the Project, as outlined in the project scope document as approved by the City, in 2023. Developer shall develop the Property with maximum reasonable density of units, as allowed by law, and shall lease or sell units to persons earning below 80 percent of area median income (AMI).
3. City’s Assistance with Grant and Other Funding Acquisition. The City shall make reasonable efforts to assist Developer with acquiring grant funding, and other available funding, to fund part of the cost of completing the Project.
4. Duration of Agreement; Ratification. The term of this Agreement commences on the effective date and ends upon completion of the Project, unless earlier terminated as provided below.

Any work performed prior to the effective date that falls within the scope of this Agreement and is consistent with its terms is hereby ratified and confirmed.

5. Termination. Failure to comply with any of the provisions of this Agreement constitutes material breach of contract and cause for termination. Time is of the essence in the performance of this Agreement.

If Developer fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available to it. In addition, the Liquidated Damages provision, below, applies.

- A. Termination for Cause. If Developer fails to comply with the terms and conditions of this Agreement, the City may terminate this Agreement in whole or in part, and shall notify Developer of the termination, the reasons for the termination, and the effective date of the termination, but the effective date may not be prior to notification to Developer.
 - B. Termination for Other Grounds. This Agreement may also be terminated in whole or in part by the mutual agreement of the parties, in which case the termination must be in writing, signed by both parties, and must include the conditions for termination, the effective date, and in the case of termination in part, that portion of the Agreement to be terminated.
6. Liquidated Damages for Developer's Breach. The Parties acknowledge that Developer's failure to acquire the Property and complete the Project, as described in the project scope document, within the timeline on the project scope document, will cause the City to incur losses, in the form of lost staff time and other resources, and foregone opportunities to provide assistance to others in furtherance of the City's low-income housing goals, in amounts that are impossible to compute and ascertain with certainty as a basis for recovery by the City of actual damages, and that liquidated damages represent a fair, reasonable, and appropriate estimate thereof. Accordingly, in lieu of actual damages for such failure, Developer agrees that liquidated damages may be assessed and recovered by the City as against Developer, in the event of Developer's failure to acquire the Property and develop the Project within the required timeline, without the City being required to present any evidence of the amount or character of actual damages sustained by reason thereof. Therefore, Developer is liable to the City for payment of liquidated damages in the amount of One Thousand Dollars (\$1,000) for Developer's failure to meet its obligations under this Agreement. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Developer shall pay them to the City without limiting City's right to terminate this Agreement for default as provided elsewhere in this Agreement.
7. Compliance with Laws. Developer, in performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances.
8. Changes and Modifications. Any amendment to this Agreement must be in writing and signed by both parties.
9. Non-Discrimination. In performing any act required by or related to this Agreement, Developer shall not unlawfully discriminate against any person based on any legally protected class status including, but not limited to: race, color, creed, religion, national origin, age, sex, marital status,

veteran status, gender identity, sexual orientation, or the presence of any disability; provided that the prohibition against discrimination in employment because of disability does not apply if the particular disability prevents the performance of the essential functions required of the position.

10. Relationship of the Parties. The parties intend that an independent contractor relationship is created by this Agreement. Neither Developer nor any agent, employee, volunteer, or representative of Developer may be deemed to be an employee, agent, servant, or representative of the City for any purpose, and neither Developer nor any employees of Developer are entitled to any of the benefits City provides for City employees. Developer is solely and entirely responsible for Developer's acts and for the acts of Developer's agents, employees, servants, representatives, subcontractors, or otherwise during the performance of this Agreement.

No joint venture is created by this Agreement.

11. Hold Harmless/Indemnification. Developer shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the acts, errors, or omissions of Developer in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Developer and the City, its officers, officials, employees, and volunteers, Developer's liability, including the duty and cost to defend, hereunder is only to the extent of Developer's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes Developer's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section survive the expiration or termination of this Agreement.

12. Jurisdiction, Venue. This Agreement is made in and governed by laws of the State of Washington, both as to interpretation and performance. Any action arising out of or related to this Agreement must be instituted and maintained only in Thurston County, Washington, State Superior Court.

13. Severability.

- A. If any part, term, or provision of this Agreement is held by a court to be illegal, the validity of the remaining provisions is not affected, and the rights and obligations of the parties must be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If any provision of this Agreement is in conflict with any Washington statute, the conflicting provision must be deemed inoperative and null and void insofar as it may be in conflict, and must be deemed modified to conform to such statute.

14. **Entire Agreement.** This Agreement is the complete expression of the terms related to the Services and any oral representations or understandings not contained in this Agreement are excluded.
15. **Counterparts.** This Agreement may be executed in a number of identical counterparts which, taken together, constitute collectively one Agreement; but in making proof of this Agreement, it is not necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, or an electronic or digital signature where permitted by law, must be deemed to be an original signature for all purposes. All executed counterparts of this Agreement are originals, but all such counterparts, when taken together, constitute one and the same Agreement.

CITY OF OLYMPIA

By: Richard T. Hoey
Rich Hoey
Interim Assistant City Manager
P.O. Box 1967
Olympia WA 98507-1967
Date of Signature: 01/20/2023

APPROVED AS TO FORM:

Michael M. Young
Deputy City Attorney

DEVELOPER

By: Daniel Stusser
Daniel Stusser
PO Box 4008
Olympia, WA 98501
360-259-5000
danny@stusser.com
Date of Signature: 01/20/2023