

# DRAFT AIA® Document A101™ – 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the **TBD** day of **TBD** in the year 2023  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

Valley Safe Harbor Limited Partnership  
c/o Valley Residential Services  
1075 Check Street, Suite 100  
Wasilla, Alaska 99654  
(907) 357-0256

and the Contractor:  
(Name, legal status, address and other information)

**TBD**

for the following Project:  
(Name, location and detailed description)

23T-DV-104 Old Matanuska Housing Development Phase II  
Section 18, Township 17N, Range 1E, Lot B5  
Wasilla, Alaska 99654

The scope of work includes, but not limited to, utilities, site and civil improvements, landscaping, hardscape, and construction of (6) 4-plex townhouse-style buildings consisting of (24) units.

The Architect:  
(Name, legal status, address and other information)

Spark Design, LLC  
5401 Cordova Street, Suite 301  
Anchorage, Alaska 99518  
(907) 344-3424

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

Each of the Contract Documents is an essential part of the agreement between the parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complimentary and to describe and provide for a complete agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

- 1. Change Order(s)
- 2. Addenda
- 3. Executed Agreement
- 4. Supplemental Conditions
- 5. General Conditions
- 6. Specifications
- 7. Drawings
- 8. Other Documents as listed in Section 9.1.7

Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e. it is not possible to comply with both requirements). In addition, information referenced in the Contract Documents shall be deemed incorporated into the Contract Documents to the extent that it is so referenced, with the same order of priority as the Contract Document in which the reference occurs.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

[  ] The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows: *(Insert a date or a means to determine the date of commencement of the Work.)*

The commencement date shall be fixed in a Notice to Proceed or by a series of Limited Notices to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

The Contractor shall achieve Substantial Completion of the Work as noted below, which shall include all Owner and Design Team punch list items complete and the buildings being in lease-up and move-in ready condition as evidenced by Owner approval, and at least receipt of PUR 102 conditional substantial completion, and City of Wasilla and Fire Marshall Conditional Certificate of Occupancy (CCO).

Two (2) four plex residential buildings, as evidenced by Owner approval and approval by authorities having jurisdiction shall be completed and delivered to the Owner no later than June 28, 2024.

Two (2) four plex residential buildings, as evidenced by Owner approval and approval by authorities having jurisdiction shall be completed and delivered to the Owner no later than July 31, 2024.

Two (2) four plex residential buildings, as evidenced by Owner approval and approval by authorities having jurisdiction shall be completed and delivered to the Owner no later than August 30, 2024.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set follows:

For damages incurred by the Owner related to the Owner's inability to rent units thereby generating rental revenue and satisfying Low Income Housing Tax Credit (LIHTC) credit delivery obligations the Owner will be making to the limited partner (the equity investor), the Owner shall assess Liquidated Damages if the Contractor fails to achieve Substantial Completion of the entire Work as noted below. These Liquidated Damages do not represent and are not a substitute for any other type or form of damage to the Owner other than for damage related to project financing. The Contractor shall still be liable to the Owner for any damages incurred by the Owner as a result of any acts or omissions, including delays or other impacts, by the Contractor, for all other forms and types of damage not related to project financing.

The Contractor acknowledges that Liquidated Damages are not a penalty but rather are a reimbursement for damages that the Owner will sustain by reason of delayed Substantial Completion.

For purposes of assessing Liquidated Damages, Substantial Completion achievement after the last day of the month shall constitute a delivery as if delivered on the 1st day of the following month. Liquidated Damages will be as follows: Buildings delivered after the last day of the month for which approval is required as enumerated above – Contractor shall pay Owner the lump sum amount of \$30,000.00 per month for each 30 day period Substantial Completion is delayed beyond the dates enumerated above.

## ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (TBD), subject to additions and deductions as provided in the Contract Documents.

### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Alternate #1 Additive Alternate to substitute Plastic Laminate (PL-1) and MDF window sills with Solid Surface (SS-1)	
Alternate #2: Deductive Alternate to omit Landscaping as outlined on sheet G0.01 and corresponding documents.	

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Owner not later than the last day of a month and it contains all required documents to enable the Owner to approve the pay application, the Owner shall make payment of the approved amount to the Contractor not later than the ~~thirtieth~~ (30th) day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ~~thirty~~ (30) days after the Owner receives and approves the Application for Payment, which contains all required documentation to enable the Owner to approve the pay application. Payment to the Contractor is also contingent upon receipt and approval of all compliance reporting documentation required under the Contract, including but not limited to: Updated Construction Schedule, Updated Subcontractors List, Lien Releases from the Contractor and Subcontractors, Section 3, MBE/WBE, Certified Payroll and Job Training reports.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with HUD-5370 General Conditions of the Contract for Construction and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~ten~~ percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Clauses 27-29 of HUD 5370 General Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing that is insured, has security and photos are provided), less retainage of ~~ten~~ percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Clauses 27-29 of HUD 5370 General Conditions.

**§ 5.1.7 Retainage**

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due: **Ten percent (10%)**.

If upon completion of fifty percent (50%) of the Work, the Owner determines that the Contractor's performance and progress are satisfactory, the Owner may make the remaining payments without retainage for the Work subsequently completed. If the Owner subsequently determines that the Contractor's performance and progress are unsatisfactory, the Owner shall reinstate the ten percent (10%) retainage until such time as the Owner determines that the performance and progress are satisfactory.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Clauses 27-29 of HUD 5370 General Conditions, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Owner.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Owner's final Certificate for Payment, or as follows:

The Owner's final payment to the Contractor shall be made within sixty (60) days after the Contractor has fully completed the requirements of Specification Section 017700, Closeout Procedures.

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

See Clause 31 of HUD 5370 General Conditions.

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration  
 Litigation in a court of competent jurisdiction  
 Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Clauses 32 - 34 of HUD 5370 General Conditions.

§ 7.2 The Work may be suspended by the Owner as provided in Clause 30 of HUD 5370 General Conditions.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of HUD 5370 General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:  
(Name, address, email address, and other information)

Valley Safe Harbor Limited Partnership  
c/o Valley Residential Services  
John Weaver  
1075 Check Street, Suite 102  
Wasilla, Alaska 99654  
Phone: (907) 357-0256

§ 8.3 The Contractor’s representative:  
(Name, address, email address, and other information)

TBD

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

**§ 8.5 Insurance and Bonds**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in 23T-DV-104 Sections 006113.13 and 006113.16 as well as Section 007316 as it superseded Clause 36 of HUD 5370-General Conditions.

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Type of insurance or bond	Limit of liability or bond amount
Section 007316–Indemnity and Insurance Requirements, Rev 02/06/2023	Section 007316 – Indemnity and Insurance Requirements, Rev 02/06/2023
Performance Bond	100% of the Contract price
Payment Bond	100% of the Contract price

**§ 8.6 Other Provisions**

References to “Public Housing” (PHA) in Section 007316 HUD Form 5370 General Conditions shall mean “Owner.”

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

- 1) Old Matanuska Housing Development Phase II, ITB#23T-DV-104 package including all referenced documents and all addendums.
- 2) Contractor’s Schedule of Values dated (TBD)
- 3) Contractor’s State of Alaska Business License
- 4) Contractor’s State of Alaska Contractor’s License
- 5) Contractor’s City of Wasilla Contractor’s License
- 6) 100% Performance Bond
- 7) 100% Payment Bond
- 8) Geotechnical Report by Northern Geotechnical dated November 2022
- 9) Phase I Environmental Site Assessment by BGES, Inc. dated August 2020
- 10) Storm Water Pollution Prevention Plan
- 11) BEES Energy Rating Report Combined Unit dated 02/07/2023
- 12) Contractor’s Construction Schedule
- 13) Indemnity and Insurance Requirements (Section 007316) – Rev 02/06/2023
- 14) Supplementary Conditions (Section 007300)

.1 Drawings		Title	Date	
Number	85 Sheets	Valley Residential Services – Old Matanuska Townhouse Development – Phase 2 Unit Group 1A/1B	02/10/2023	
Number	91 Sheets	Valley Residential Services – Old Matanuska Townhouse Development – Phase 2 Unit Group 2A/2B/2C/2D	02/10/2023	
.2 Specifications		Title	Date	Pages
Section	Outline Specification	Old Matanuska Phase 2 Townhouse Apartments	02/10/2023	13
Section				
.3 Addenda, if any:		Date	Pages	
Number				



This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

Valley Safe Harbor Limited Partnership  
John Weaver, President/CEO

CONTRACTOR (Signature)

TBD

