

RESOLUTION NO. 129 -23
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

A Resolution Authorizing the Yavapai-Apache Nation Tribal Housing
Department to enter into a Contract with Perlman Architects of Arizona, to
Provide Architectural and Engineering Services for Development of the
Yavapai-Apache Homes VIII LIHTC Project

WHEREAS: The Yavapai-Apache Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”) and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation (“Constitution”) as provided by Article V(a) of the Constitution; and

WHEREAS: The Council is authorized to “manage all tribal economic affairs and enterprises” and to “appropriate and regulate the use of tribal funds” as provided by Article V (i) and (k), respectively, of the Constitution; and

WHEREAS: The Council is responsible for providing quality housing for the Nation’s members; and

WHEREAS: The Council has previously authorized Yavapai-Apache Nation Tribal Housing (“YANTH”) to proceed with development of a new housing project known as the Yavapai-Apache Homes VIII LIHTC Project (the “Project”) located within the Nation’s Tunlii community; and

WHEREAS: The Council, on recommendation of the YANTH Executive Director, desires to authorize YANTH to retain the services of Perlman Architects of Arizona (“Perlman”), to provide Architectural and Engineering Services for development of the Project in accordance with the terms and conditions of the Agreement Between YANTH and Architect for Architectural and Engineering Services – Yavapai-Apache Homes VIII LIHTC Project (the “Agreement”), a copy of which is attached to this Resolution as **Exhibit A**, together with the contract documents referenced in the Agreement; and

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Nation Tribal Council, in Council assembled, at which a quorum is present, hereby authorizes the Yavapai-Apache Nation Tribal Housing Department to enter into a contract with Perlman Architects of Arizona, in accordance with the terms and conditions set out in the form of Agreement attached to this Resolution as **Exhibit A**, together with the Contract Documents referenced in the Agreement, with compensation paid to Perlman under the Agreement **Not To Exceed Two Hundred Four Thousand Five Hundred 00/100 Dollars (\$204,500.00)** without further Council approval as set forth in an amendment to the Agreement.

BE IT FURTHER RESOLVED that the Nation's funds shall be used to fund compensation paid to Perlman under the Agreement and shall be appropriated from funds received under the Yavapai-Apache Homes VIII LIHTC Project fund award.

BE IT FURTHER RESOLVED that the YANTH Executive Director is authorized to execute the above referenced Agreement on behalf of YANTH.

BE IT FINALLY RESOLVED that the Chairwoman, and Vice Chairman, or either of them, are authorized to take such further action as deemed necessary to carry out the intent and purposes of this Resolution.


CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on August 9 2023, by a vote of 8 8 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.



Tanya Lewis, Chairwoman

ATTEST:



Karla Reimer, Council Secretary

Approved as to Form:



Office of the Attorney General

EXHIBIT A

Contract – Perlman Architects of Arizona
Yavapai-Apache Homes VIII LIHTC Project

August 9, 2023

Agreement between YANTH and Architect for Architectural and Engineering Services – Yavapai-Apache Homes VIII LIHTC Project

This Agreement for Architectural and Engineering Services (the “Agreement”) made as of the 1st day of July 2023 (the “Effective Date”), is

Between YANTH:

Yavapai-Apache Nation Tribal Housing
1500 E Cherry Creek Rd
Camp Verde, AZ 86322
(Referred to in this Agreement as “YANTH”)

And the Architect:

Perlman Architects of Arizona
2929 N Central Ave, Suite 1600
Phoenix, AZ 85012

(Referred to in this Agreement as “Architect”)

For the following Project: Architect will provide complete architectural, engineering, and design services for 40 housing units (mix of single family and duplex units consisting of 2, 3, and 4 bedroom units) at the Nation’s Tunlii community (“the “Project”); including the following Phases as specified in this Agreement: (a) Phase 1 - Schematic Design, (b) Phase 2 - Design Development, (c) Phase 3 - Construction Documents, (d) Phase 4 - Bidding and Negotiation, (e) Phase 5 - Construction Administration (f) Phase 6 - Consultant Phase, and (g) Additional Services as may be mutually agreed between Architect and YANTH, all of which Services shall be provided by Architect for the Project to be built by the Nation as part of the Nation’s Tunlii Community located within the Yavapai-Apache Nation Middle Verde Reservation at Camp Verde, Arizona and known as “Yavapai-Apache Homes VIII LIHTC Project”, collectively the “Work” or “Project.”

ARTICLE I

A. BASIC PROJECT INFORMATION

1. The Project’s objective is: As specified in this Agreement, including the attached **Appendices A, B, and C**, Architect will provide Architectural and Engineering services for the proposed Yavapai-Apache Nation Tribal Housing (“YANTH”) **Yavapai-Apache Homes VIII LIHTC Project** development, to be located at the Tunlii Community on the Yavapai-Apache Nation Middle Verde Reservation at Camp Verde, Arizona (“Project”). The Project will be constructed entirely within the Nation’s Reservation.
2. YANTH’s Development Program is: YANTH will determine how to proceed with further development and construction of the Project following completion of Architect’s work under this Agreement.
3. The financial parameters are as follows:
 - (a) The Amount of YANTH’s overall budget for the Project agreed upon as Architect’s compensation for the work under this Agreement, is: **Two Hundred Four Thousand Five Hundred 00/100 Dollars (\$204,500.00).**

4. The Project time parameters are: The architectural and engineering work for the Project, as specified under this Agreement shall be completed within **a total of Sixty (60) days from the effective date of this Agreement.**

5. The procurement or delivery method for construction of the Project will be determined by YANTH in consultation with the Architect.

6. Other Project parameters are: None

B. PROJECT TEAM

1. YANTH's Designated Representative is:

Sharie Benson
Executive Director - Yavapai-Apache Nation Tribal Housing
1500 E. Cherry Creek Rd.
P.O. Box 3310
Camp Verde, AZ 86322

2. The persons or entities, in addition to YANTH's Designated Representative, who are required to review the Architect's submittals to YANTH, are: Dave Schreiner – YANTH Project Manager

3. YANTH's other consultants, contractors, and principle contacts for the Project are: (a) Travois, Inc. – Tax Credit Consultant, and (b) Herbert Trujillo – YAN Utility Department Director.

4. Architect's Project Manager and Designated Representative is:

Nathanael Maki - Director
Perlman Architects of AZ Inc.
2929 N Central Ave, Ste. 1600
Phoenix, AZ 85012
480-951-5900

5. Other important initial information is: None

6. The information contained in this Article 1 may be reasonably relied upon by YANTH and Architect in determining Architect's compensation. Both parties, however, recognize that such information may change depending on YANTH's wishes and, in that event, YANTH and the Architect shall negotiate appropriate adjustments in schedule, compensation and Changes in Services, all of which shall be set out in a written amendment to this Agreement.

ARTICLE II

A. RESPONSIBILITIES OF THE PARTIES

1. YANTH and Architect shall cooperate with each other to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project Team.

B. YANTH'S RESPONSIBILITIES

1. Unless otherwise provided under this Agreement, YANTH shall provide full information in a timely manner regarding requirements for and limitations on the Project. YANTH shall be responsible for providing, and Architect may rely on, the accuracy and

completeness of all requirements, instructions, reports, data, and other information provided by YANTH to Architect under this Agreement. Architect may use all such information in performing the work under this Agreement.

2. YANTH shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work under this Agreement, as necessary to reflect agreed-upon changes to Architect's Scope of Services and compensation hereunder. YANTH shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the written agreement of Architect to a corresponding change in the Project scope.

3. YANTH's Designated Representative, identified in Article I.B.1 above, is responsible for interacting with Architect and advising YANTH with respect to the Project. YANTH, acting through its Designated Representative, in consultation with YANTH's Consultant (if any), shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4. YANTH shall provide for the services of consultants (if any), other than those designated in Article I, Section B 3 above, or may authorize Architect to furnish them as a Change in Services when such services are reasonably required by the scope of the Project.

5. Unless otherwise provided in this Agreement, YANTH shall furnish such tests, inspections and reports as may be required by law or under the Project's Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and test for hazardous materials.

6. YANTH shall furnish all of its own legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet YANTH's needs and interests.

7. YANTH shall provide prompt written notice to Architect if YANTH becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in Architect's Instruments of Service (plans, drawings and specifications produced by Architect for the Project under this Agreement).

C. ARCHITECT'S RESPONSIBILITIES

1. The Planning and Design services performed by the Architect, Architect's employees and Architect's associates/consultants shall be as enumerated in Article III of this Agreement, including Appendices A and B, which are incorporated herein by reference. In providing services under this Agreement, Architect shall endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the State of Arizona. Architect hereby certifies that it is licensed to practice Architecture in the state of Arizona in accordance with the laws of the State of Arizona.

2. Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project under the schedule of work agreed upon with YANTH as follows; except for the Construction Bidding Phase

and Construction Phase Work, the design Work under this Agreement shall be completed within a total of **Sixty (60) Calendar days from the date of issuance of the Notice To Proceed**. Architect shall submit for YANTH's approval a schedule for the performance of the Architect's services, the scope of which shall be consistent with the scope of services as established in **Appendix B** (Architect's proposed Owner and Architect Agreement dated January 4, 2023) attached hereto and which may be adjusted as to time and scope, if necessary, as the Project proceeds. **Appendix B**, Architect's proposed Owner and Architect Agreement dated January 4, 2023, is incorporated into this Agreement as set forth fully herein, except that in the case of any inconsistency between this Agreement and **Appendix B**, the terms of this Agreement shall govern resolution of said inconsistency. This schedule shall include allowances for periods of time required for YANTH's review, for the performance of work by YANTH's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by YANTH shall not, except for reasonable cause, be exceeded by Architect or YANTH. As provided hereinbelow, Architect's Work during the Construction Phase shall be coterminous with construction of the improvements designed under this Agreement.

3. Architect's Designated Representative identified in Article I, Section B 4 shall be authorized to act on Architect's behalf with respect to the Project.

4. Architect shall strictly maintain the confidentiality of information specifically designated as confidential by YANTH, unless withholding such information would violate the law or a valid order of a court having jurisdiction to order release of the information. Architect shall require its associates and consultants to agree to maintain the confidentiality of information specifically designated as confidential by YANTH.

5. Except with YANTH's knowledge and consent, Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Architect's professional judgment with respect to this Project or otherwise result in a conflict of interest.

6. The Architect shall review and apply all laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by the governmental authorities having jurisdiction over the Project (the Yavapai-Apache Nation). YANTH and Architect acknowledge that the governing authority for the Project is the Yavapai-Apache Nation, subject to the applicability of any federal law and regulations made applicable to the Project under policies of the United States Indian Health Service (IHS).

7. As provided under Article II B 1 above, Architect is entitled to rely on the accuracy and completeness of the services and information furnished by YANTH. Architect shall provide prompt written notice to YANTH if Architect becomes aware of any errors, omissions or inconsistencies in such services and information provided by YANTH or of any errors, omissions or inconsistencies in the work provided by Architect.

ARTICLE III

A. AGREEMENT DOCUMENTS, SCOPE OF SERVICES AND TIME FOR COMPLETION OF WORK

1. **Documents Comprising the Agreement.** Except as otherwise provided herein, this Agreement represents the entire and integrated agreement between YANTH and the

Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a further written instrument signed by both YANTH and Architect. **This Agreement was prepared with reference to and is comprised of the following documents which are incorporated into and made a part of this Agreement by this reference as fully as if set forth verbatim herein except as otherwise modified by this Agreement:**

(a) **YANTH's Request for Proposals for Architectural and Engineering Services (RFP)** issued by YANTH on December 16, 2022, and attached to this Agreement as **Appendix A**.

(b) **Architect's Response to YANTH's RFP dated January 4, 2023**, submitted as Architect's proposed "Owner and Architect Agreement", and attached to this Agreement as **Appendix B**.

2. Scope of Services. The Scope of Services ("services" or "work") for the performance and delivery of the work by the Architect under this Agreement is set out in this Agreement and in the above referenced **Appendices A and B**, with particular reference to **Appendix A – YANTH's RFP of December 16, 2022**, and **Appendix B – Architect's Response to YANTH's RFP, dated January 4, 2023**. In the event of a conflict between the Terms of this Agreement and **Appendices A and B**, the Terms of this Agreement shall control the resolution of said conflict and shall supersede any such conflict and inconsistencies found in **Appendices A and B**. Architect's Services are broken out by Project Phases as follows:

(a) **Phase 1 - Schematic Design.** Architect:

- i. The purpose of the Schematic Design is to refine the approved Concept Design.
- ii. Architect shall attend a maximum of two (2) Schematic Design meetings with YANTH for input and review (virtual meetings when possible). Additional meeting requested by YANTH will be billed as an Additional Service.
- iii. Once YANTH has approved program/concept design Architect shall refine the schematic design in conjunction with YANTH and prepare one (1) set of schematic design site plans, unit plans, building floor plans, and exterior elevations.
- iv. Architect shall ensure that all preliminary designs meet the 2022-2023 ADOH Qualified Allocation Plan including the Exhibit A Design Requirements. Requirements must be coordinated in preliminary design through final construction documents with confirmation at project completion.
- v. Architect should obtain YANTH approval to proceed with Design Development phase.

(b) **Phase 2 - Design Development.** Following YANTH's acceptance of the Schematic Design Work under 2 (a) above, selection by YANTH of any alternatives recommended by Architect, designation by YANTH of any modifications or changes in the scope, extent, or design of the Project, and on YANTH's written authorization, Architect shall:

- i. The purpose of the Design Development Phase is to describe the various design components of the Project and establish a framework from which the final construction documents will be coordinated and developed.
- ii. After approval of Schematic Design drawings, the Architect shall complete the preparation of design development drawings consisting of scaled layout drawings (AutoCAD format) for site plans, unit plans, building plans and community

- building plans, exterior elevations, roof plans, building sections, draft room finish schedules, draft window & door schedules, and draft specifications.
- iii. Assist YANTH in the preparation of preliminary product criteria establishing material and construction standards.
- iv. Architect shall provide design development drawings to YANTH for review, comment, and use.
- v. YANTH and Architect will rely on Project Manager to ensure Project's Feasibility from a construction risk standpoint (i.e., budget, schedule, warranty, maintenance, constructability, etc.)
- vi. Architect shall attend a maximum of one (1) Design Development meeting with YANTH (Virtual Meetings when possible). Additional meeting requested by YANTH will be billed as an Additional Service.
- vii. Upon YANTH review and approval of the Design Development Drawings, the Architect shall obtain YANTH authorization to proceed with the Construction Document Phase

(c) Phase 3 - Construction Documents (100% Design). Following YANTH's acceptance of the Design Development Phase under 2 (b) above, architectural services for the vertical design (including preliminary designs, full plans, & specifications, MEP and Structural engineering, bidding & contract documents), Architect shall:

- i. Upon approval of the design development documents, YANTH authorizes Architect to prepare a set of construction documents. Construction documents shall be prepared to meet local building codes, YANTH's financing requirements, Fair Housing Act requirements, Arizona Department of Housing yea 2022-2023 Mandatory Design Guidelines for Multifamily Rental Housing and requirements of the applicable local or state governing agencies having jurisdiction over the Project.
- ii. YANTH and Architect will rely on Project Manager to ensure Project's Feasibility from a construction standpoint.
- iii. It is YANTH's responsibility to notify Architect of perceived errors or omissions in the plans. Written instructions addressing perceived errors or omissions to the Architect should be received prior to subcontractor proceeding with work. YANTH will be responsible for any defects during construction.
- iv. Architect will review the work of the consultants for conformance with a visual design concept.
- v. Architect will assist YANTH in filing documents required for the approval of governmental authorities having jurisdiction over the project.
- vi. Architect shall attend a maximum of two (2) Construction Document meetings with YANTH. Additional meetings requested by YANTH will be billed as an Additional Service.
- vii. The scope of services under this contract is limited to providing the standard of care required by members of the same profession, practicing under similar circumstances. The set of construction documents is sufficient to obtain a building permit; however, all materials and methods of construction necessary to complete the project are not necessarily described in the construction documents. The implementation of the plans requires an Owner/contractor thoroughly knowledgeable with the applicable building codes and methods of construction.
- viii. Upon substantial completion of the construction documents for submission to government (e.g., Building Department), the Architect shall review and check all drawings in an effort to minimize errors and ensure that the drawings are in general compliance with industry standards for completeness and accuracy.

- ix. It is YANTH's responsibility prior to or during construction to notify Architect in writing of any perceived errors or omissions in the plans and specifications of which a contractor thoroughly knowledgeable with the building codes and methods of construction should reasonably be aware. Written instructions addressing such perceived errors or omissions should be received from the Architect prior to the Owner or Owner's subcontractors proceeding with the work. The Owner will be responsible for any defects in construction if these procedures are not followed.
- x. The Architect shall review the work of the following consultants for conformance with the visual design concept of the project:
 - a. Structural Engineer
 - b. Mechanical/Plumbing Engineer
 - c. Electrical Engineer
 - d. HERS Rater/Tester (under separate Contract directly with Owner)
 - e. Geotechnical Report (provided by Owner)
 - f. Fire Sprinkler Engineer (Provided by Owner or Contractor)
- xi. The Architect will assist the Owner in filing documents required for the approval of governmental and quasi-governmental authorities having jurisdiction over the Project. However, such assistance does not include submittal/permit fees, the preparation of special research studies, variances, special documentation of surveys, special tests or environmental studies and submissions, which services, if provided by the Architect, shall be compensated as Additional Services.

(d) PHASE 4 - Bidding and Negotiation. The Architect, following the Owner's approval of the Construction Documents (100% Set), shall assist the Owner with the Owner's Bidding & Negotiation Process tasks: 1) Invitation to Bid, 2) Bid Document Printing/Distribution Coordination, 3) Bid Clarification/Addenda, 4) Pre-Bid Meeting, 5) Bid Package Collection, 6) Bid Package Review & Contractor Selection.

(e) Phase 5 - Construction Administration Phase (CA). Architect shall provide Construction contract administration and construction monitoring services as follows:

- i. Construction Administration Services shall consist of the following tasks: 1) RFI responses & Architectural ASI's to clarify or interpret the construction documents, 2) Provide sixteen (16) on-site visits with field report for field observation or Plan Grid punch list report to ascertain whether construction is proceeding in accordance with the architectural design concept, 3) Review contractor submittals/shop drawings (two reviews per submittal item is included- additional reviews will be billed as an additional service), 4) Assist Owner with review of Contractor Change Order Request/Change Orders, 5) Issue Certificates of Substantial Completion based on visual observation and utilization of Contractor supplied "Punch List" and Final Certificate of Completion (Certificates shall state that the work completed is in general conformance with construction documents, except such work as listed on Architect's punch list and/or latent defects. Re-reviews to verify punch list items are completed will be billed as an additional service). Additional site visits, As-built drawings, as requested and approved by the Owner, will be billed as Additional Service.
- ii. Consult with YANTH and act as YANTH's representative to the Contractor throughout the Construction Phase. All of YANTH's instructions to the Contractor will be issued through the Architect. The Architect shall have authority to act on behalf of YANTH in dealing with the Contractor to the extent

- set out in this Agreement, in any supplemental conditions to this Agreement and in any written instructions provided by YANTH to Architect.
- iii. Visit the site and observe the Contractor's work while in progress. Recommend to YANTH the rejection of any of Contractor's Work deemed by Architect to be defective for any reason. Architect's site visits do not extend to or include the review or site inspection of the Contractor's work or performance.
 - iv. Issue necessary clarifications, interpretations of the Contract documents as needed to ensure an orderly completion of Contractor's work.
 - v. The Architect will be available by telephone to answer reasonable inquiries regarding clarification of the design construction documents.
 - vi. Recommend Change Orders and Work Change Directives to YANTH, as appropriate, and prepare Change Orders and Work Change Directives as necessary.
 - vii. Review and approve or take other appropriate actions as to Shop drawings and samples and other information which Contractor is required to submit, so as to ensure conformance with then requirements of the Contract Documents and compatibility with the design of the completed Project as specified in the Contract Documents. Architect shall not be responsible for, nor determine the means, methods, sequences, or procedures of construction. Architect shall meet any of Contractor's submittal schedules that Architect has accepted.
 - viii. The Architect shall provide the Owner with Limited Interior design services for each unit type and the community areas. Basic services include the assistance with the selection of electrical lighting fixtures, one scheme of interior color and finish selections and assistance with the coordination of Owner selected furniture & equipment.
 - ix. Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
 - x. Require such testing and inspection of Contractor's work as deemed necessary, and receive and review all certificates of inspections, tests, and approvals required under law, regulation, and the Contract Documents.
 - xi. Review and recommend for YANTH's approval or denial all of Contractor's applications for payment. Architect shall review the quantity and quality of Contractor's work, taking into account all relevant factors, and shall determine the amounts that Architect recommends to YANTH that Contractor be paid. All such recommendations shall be in writing and will constitute Architect's representation to YANTH that, to the best of Architect's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accord with the Contract Documents (subject to evaluation of the Work as a whole at time of Substantial Completion, to the results of any required testing as required by the Contract Documents, and to any qualification stated by Architect in the recommendation), and that all conditions placed upon Contractor as a prerequisite to payment have been satisfied insofar as such conditions are within Architect's responsibility to observe Contractor's Work. Architect's responsibility to observe and make recommendations concerning Contractor's Work shall not be construed to place any responsibility on Architect to supervise, direct, or in any way control Contractor's Work or to determine the means, methods, techniques, sequences, or procedures of construction employed by Contractor.
 - xii. Architect will receive, review, and transmit to YANTH all maintenance and operating instructions, schedules, guarantees, bonds, certificates, and other evidence of insurance required under the Contract Documents, certificates of

- inspection, tests, and approvals, shop drawings, samples and other data approved as provided under the contract Documents, and all such documents as must be provided by Contractor in order to obtain final payment. The Architect will assist Owner with the review of the O & M Manuals and Construction Close-out forms.
- xiii. Upon notice from Contractor that Contractor considers the entire Work ready for YANTH's intended use, the Architect, together with the YANTH and Contractor, shall conduct an inspection to determine whether the Work is substantially complete. If after considering any objections of YANTH, Architect considers the Work Substantially complete, Architect shall deliver a Certificate of Substantial Completion to YANTH and Contractor.
 - xiv. Architect shall conduct a final inspection of the overall Project to determine whether the completed Work of Contractor is acceptable under the Contract Documents such that the Architect may recommend, in writing, final payment to Contractor.
 - xv. The Construction Phase, and Architect's responsibilities under that Phase of the Project, shall commence with execution of the first construction contract for the Project or any portion thereof and shall end upon the Architect's recommendation for YANTH's final payment to Contractor.

(f) Consultant Phase (CP) The purpose of the Consultant Phase is to describe the Structural, Mechanical, Plumbing, Electrical, Civil Engineering, Landscape Architecture Consultant services of the Project. This phase includes the following tasks:

- i. Structural Engineering Design, calculations, required corresponding details and Design Development Documents and Construction Documents for proposed project. Basic services include coordination with other disciplines, correspondence with the building department as necessary for permit, limited assistance during bidding process, limited construction administration services include: one (1) review of shop drawing and concrete mix design, RFI's/clarification, or interpretation of structural drawings with three (3) general structural site observations. Basic services does not include special structural inspections or retaining wall designs (Optional Service) as required or requested, additional site visits and As-Built Drawings and/or any other services not specifically defined in Basic Services.
- ii. Mechanical and Plumbing Engineering Design, calculations and Design Development Documents and layouts and calculations, required corresponding details, complete specifications in CSI format, limited assistance during bidding process, one (1) review of shop drawings, coordination with other disciplines, correspondence with the building department as necessary for permit limited clarification or interpretation of M&P drawings and construction administration with three (3) site observations. Basic services does not include domestic water treatment, verification of water quality, cost estimation, As-built drawings, special inspections, and additional site visits and/or any other services not specifically defined in Basic Services.
- iii. Electrical Engineering Design, calculations and Design Development Documents and Construction Documents for proposed project. Basic services includes electrical site design and site lighting circuiting, IECC calculations, electrical design for buildings electrical SES, common area power panel, unit panels, load and fault calculations, compliance with Model energy code, required corresponding details and coordination with other disciplines, correspondence with the building department as necessary for permit, limited assistance during

bidding process, two (2) site observations and findings reports, one (1) review of shop drawings and limited clarification or interpretation of Electrical drawings and (1) SeS Special Inspections. Basic services do not include cost estimating, As-built drawings, special inspections, additional site visits, and/or any other services not specifically defined in Basic Services.

- iv. Fire Protection Design shall be provided by Contractor's Fire Protection Sub-Contractor. Architect to coordinate Fire Protection Design with other Consultants.

(g) Additional Services. The Provision of Additional Services by Architect shall be governed by Article 3 "Additional Services," of Architect's Proposal, attached hereto as **Appendix B. Additional Services shall be provided by Architect only as provided in an amendment to this Agreement setting forth the terms and price of said Additional Services.**

3. Time for Completion. The time for completion of the Scope of Services established under **Appendices A and B** and in this Agreement (except for the Construction Bidding Phase and the Construction Phase as specified hereinabove) is hereby agreed to require completion of the work of this Agreement over the course of **Sixty (60) Calendar Days** from the Effective Date of this Agreement. YANTH acknowledges that construction of the housing units designed under this Agreement will not be completed before the 60-day allotment of time and that Architect's Work under the Construction Bidding and Construction Phases may therefore extend past the 60-day period. Architect will coordinate with IHS for this portion of the construction. Survey will not be completed until project is finished. YANTH may extend this 60-day period for good cause shown by Architect and agreed to by YANTH.

ARTICLE IV

A. COMPENSATION AND PAYMENTS TO THE ARCHITECT

1. The total Compensation to be paid by YANTH to Architect for Architect's satisfactory performance and completion of the Architect's services under this Agreement shall be as follows: **Two Hundred Four Thousand Five Hundred and 00/100 Dollars (\$204,500.00)** inclusive of all fees and reimbursable expenses ("Compensation"). See **Appendix B**, Architect's Proposal, Article 4, for a detailed breakdown of the components of Architect's Compensation.

2. The Compensation to be paid under this Agreement is a lump sum fixed fee for all services provided by Architect. Unless authorized in writing by YANTH the total compensation for Architectural and Engineering services paid by YANTH to Architect under this Agreement shall not exceed **Two Hundred Four Thousand Five Hundred and 00/100 Dollars (\$204,500.00)**. Any change in Architect's services and the compensation to be paid for said services, if any, shall be determined exclusively by negotiation between the YANTH and Architect and set out in a written amendment to this Agreement. No work constituting changed services shall commence until a letter of authorization is issued by the YANTH's Representative.

3. Payments. All payments of compensation made by YANTH to Architect on account of the Services rendered under this Agreement are inclusive of all Fees and Reimbursable Expenses incurred by Architect in the performance of the work under this Agreement. Payments to the Architect shall be made by YANTH as follows:

(a) YANTH will make progress payments to the Architect for work satisfactorily completed and based on the ratio of completed work to the overall work of the Project.

(b) Architect shall submit a monthly Request for Payment on such form as may be provided by YANTH and accompanied by Architect's Invoice. The Request for Payment shall specify: (i) the work completed during the 30-day period covered by the Request, (ii) the percentage of the overall work completed as specified in the Request, and (iii) the cumulative percentage of work completed as of the date of the Request.

(c) YANTH has thirty (30) days from receipt of the Request for Payment to process payment of all undisputed amounts. If YANTH determines that any representations on Architect's Request for Payment are in any respect inaccurate, YANTH may withhold that portion of the requested payment attributable to the inaccuracy until the inaccuracy and its cause have been corrected by Architect to the satisfaction of YANTH. YANTH may withhold such amounts from the requested payment as are determined by YANTH to be in dispute between the Architect and its consultants/sub-contractors.

(d) In addition to the monthly Request for Payment, Architect shall submit a brief progress report summarizing Project activities for the payment period.

(e) Records of Architect's costs relevant to Architect's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. As deemed appropriate by YANTH in order to verify Architect's charges to the Project, YANTH may request, and Architect shall provide (at reasonable copy cost) copies of Architect's time sheets.

(f) Architect shall indemnify and hold harmless YANTH and YANTH's agents from all claims arising out of the claims of Architect's consultants and sub-contractors for payment of amounts owing from Architect for work performed under this Agreement.

ARTICLE V

A. GENERAL TERMS AND CONDITIONS

1. Changes in Architect's Services. Changes in the Services of the Architect under this Agreement, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed to in writing between YANTH and Architect, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Article II C 7. In the absence of mutual agreement in writing, Architect shall notify YANTH of the need for a Change in Services and obtain YANTH's written consent to proceed with the change prior to providing such changed services. Architect shall have no obligation to provide Changed Services unless Architect and YANTH agree in writing to the Scope of said Changed Services and amend this Agreement accordingly.

2. Architect's Standards of Performance.

(a) The standard of care for all professional Architecting and related services provided by Architect under this Agreement shall be the level of skill and care ordinarily used by members of the Architecting profession practicing under similar circumstances at the same time and in the same locality.

(b) YANTH is not responsible for discovering deficiencies in the technical aspects of Architect's work under this Agreement. Architect shall correct any such deficiencies

without additional compensation from YANTH, except to the extent that such corrective action is directly attributable to deficiencies in information provided to Architect by YANTH.

(c) Architect may employ such consultants as Architect deems necessary to assist in accomplishing the work of this Agreement, subject to the reasonable, substantive, and timely objections of YANTH as to selection.

(d) Subject to the standard of care set out above under VA2(a), Architect and its consultants may use and rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

(e) Architect shall work with YANTH and YANTH's attorney in developing the Contract Documents required under this Agreement for construction of the Project.

(f) Architect shall not be responsible to supervise, direct, or have control over the construction contractor's work, nor shall Architect have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, for security or safety at the Project site, for safety precautions and programs incident to the work of contractor, nor for any failure of contractor to comply with the laws and regulations applicable to contractor's performance of its work.

3. Architect's Opinion of Probable Construction Cost. Architect shall provide YANTH with an opinion of probable construction cost for construction of the Project. Architect's opinion shall be based on the basis of Architect's experience and qualifications and represent Architect's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because of the variability of the cost of labor, materials, equipment, or services furnished by others, and in the methods employed by contractors in determining prices, and because of changing market conditions, Architect cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from Opinions of Probable construction Cost prepared by Architect. YANTH may elect to employ an independent cost estimator.

ARTICLE VI

MISCELLANEOUS PROVISIONS

A. DISPUTE RESOLUTION AND GOVERNING LAW

1. This agreement shall be construed in accordance with, and any dispute or controversy arising from any breach of this Agreement will be governed by the laws of the Yavapai-Apache Nation. The Architect hereby expressly agrees and consents to the jurisdiction and venue of the Tribal Court of the Yavapai-Apache Nation for the resolution of any disputes arising under this Agreement.

2. Except as expressly provided hereinafter, nothing in this Agreement shall be construed as a waiver of sovereign immunity of the Yavapai-Apache Nation or any entity, officer, or employee of the Yavapai-Apache Nation.

3. All disputes arising under this Agreement shall be subject to the following provisions:

(a) Discussions. In the event of disputes arising under this Agreement and prior to initiating arbitration, the party raising the dispute shall first advise the other

party of the details of the dispute, in writing, with sufficient detail and back-up information to permit the other party to evaluate the dispute. Within ten (10) days after written notification of a dispute, representatives of YANTH and Architect shall meet and endeavor in good faith to reach a resolution of the dispute. All disputes that are not so resolved within five (5) business days of the commencement of such good faith efforts may be submitted to arbitration as provided in this Article VI, A 3.

(b) Binding Arbitration. At any time, with or without exhausting all remedies available under the laws of the Yavapai-Apache Nation, either party may elect to submit any disputes or controversies arising under this Agreement to an arbitration proceeding under the Commercial Arbitration Rules of the American Arbitration Association (AAA), before a complex litigation panel, of neutral arbitrators chosen by mutual agreement of the parties or (failing that) by AAA in accordance with such rules. Both parties shall be obligated to proceed by said arbitration as the exclusive means of resolving disputes hereunder. Any such arbitration shall proceed in a mutually agreed location in Yavapai County, Arizona, and the parties agree to be bound by the award of the arbitrator, which may be filed in the Yavapai-Apache Tribal Court for confirmation and enforcement in accordance with the **Yavapai-Apache Nation Arbitration Code (Ordinance 19)** in the form attached hereto as **Appendix C – Yavapai-Apache Nation Arbitration Code**. Consistent with the limited waiver of sovereign immunity given by YANTH and set out expressly below, the parties agree to the exclusive jurisdiction of the Yavapai-Apache Tribal Court for confirmation and enforcement of any such award by arbitration. Notwithstanding anything in this Agreement to the contrary, the prevailing party shall be entitled to reimbursement for its attorney's fees and all costs associated with the arbitration and its enforcement. In any arbitration proceeding conducted under the provisions of this Section, both parties shall have the right to conduct discovery, to call witnesses and to cross-examine the opposing party's witnesses, either through legal counsel, expert witnesses or both.

(c) Limited Waiver of Sovereign Immunity. In order to provide for dispute resolution and the enforceability of this Agreement, YANTH agrees to a limited waiver of its sovereign immunity from un-consented lawsuits as follows: (1) YANTH agrees that all unresolved disputes arising under this agreement shall be submitted to arbitration as provided above under Article VI, A 3 (b) hereinabove and that such arbitration shall be the exclusive means of dispute resolution under this Agreement; (2) YANTH agrees that the Yavapai-Apache Nation Tribal Court shall have subject matter jurisdiction over the resolution of disputes arising under this Agreement for the limited purposes of confirming and enforcing any arbitration award arising under this Agreement, in accordance with the Yavapai-Apache Nation Arbitration Code (Ordinance 19); (3) The waiver of sovereign immunity provided by YANTH hereunder shall not be construed to empower the arbitrator(s) to enter an award, or the Yavapai-Apache Nation Tribal Court to enforce any award, that reaches or encumbers the assets or property of the Yavapai-Apache Nation other than those assets of YANTH specifically liable for the satisfaction of any such arbitration award - specifically the Nation's funds set aside for the funding of the work of this Agreement and further limited to the amount of this contract as specified under Article IV, A 2 hereinabove, or as said amount may be subsequently amended by further Agreement of the YANTH and Architect; (4) it is acknowledged and agreed between YANTH and Architect

that the limited waiver of sovereign immunity provided by Article VI, A 3 of this Agreement shall extend only to YANTH and Architect and shall apply only to an action by Architect to arbitrate and enforce an arbitration award in favor of Architect for any claim for breach of this Agreement, and that this limited waiver shall therefore not extend to or be effective as to any claim or action by any party other than Architect (including without limitation any purported third party beneficiary of this Agreement), and (5) YANTH's liability for any recovery by Architect against YANTH by arbitration and enforcement as provided for hereunder shall be limited to any actual earned and unpaid contractual obligations (compensatory damages) arising under this Agreement, but not to exceed the amount specified under Article IV, A 2 hereinabove, as said amount may be subsequently amended by further written Agreement between YANTH and Architect hereunder, and/or specific performance, and any such liability on the part of YANTH shall not in any case include general, consequential, incidental, special, punitive or any other damages, all of which are hereby expressly declared to be outside of the scope of the waiver of sovereign immunity provided for under this Agreement.

(d) Applicable Law. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision. If any provision of this Agreement is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, then the provision shall have the meaning that renders it valid. The laws of the Yavapai-Apache Nation and applicable United States federal law shall govern the validity and performance of this Agreement as to all matters, without regard to any conflict of laws principles.

B. TERMINATION OR SUSPENSION

1. If YANTH fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services; prior to suspension of services, the Architect shall give seven days (7) written notice of said suspension to YANTH. Before resuming services, the Architect shall be paid all sums due for services satisfactorily performed prior to suspension and any reasonable expenses incurred as a result of the interruption and resumption of the Architect's services. The Architect's schedule for the completion of the remaining services shall be adjusted to accommodate the period of suspension.

2. If the Project is suspended by YANTH for more than thirty (30) consecutive days, the Architect shall be compensated for services satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for reasonable expenses incurred as a result of the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

3. If the Project is suspended or the Architect's services are suspended for more than ninety (90) consecutive days, the Architect may terminate the Agreement by giving YANTH not less than seven days written notice.

4. This Agreement may be terminated by either party upon not less than Fourteen (14) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

5. This Agreement may be terminated by YANTH upon not less than Fourteen (14) days written notice to the Architect for the YANTH's convenience and without cause.

6. In the event of termination not the fault of Architect, Architect shall be compensated for services satisfactorily performed prior to termination.

C. INSURANCE.

1. Throughout the entire period of performance by Architect, Architect shall maintain the following minimum insurance:

(a) Commercial General Liability – Architect shall maintain a policy of commercial general liability insurance with Policy limits not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate for death, bodily injury, and damage to property. YANTH is to be included under such policy as an additional insured to the extent of liability assumed by Architect, with coverage to be primary and not contributory with any such coverage maintained by YANTH. The policy shall contain a severability of interests' provision in favor of the additional insureds.

(b) Automobile Liability – Architect shall maintain automobile liability insurance covering all owned, rented, and non-owned vehicles operated by Architect with policy limits of not less than \$1,000,000 combined single limit.

(c) Worker's Compensation – Architect shall provide statutorily required Worker's Compensation insurance. Architect shall maintain coverage for employers' liability with a policy limit of not less than \$1,000,000.

(d) Professional Liability – Architect shall maintain professional errors and omissions liability insurance covering liability of Architect arising out of negligent acts, errors, or omissions in the rendering of the professional services to be provided under the Agreement in the amount of \$1,000,000 per claim and in the aggregate. Coverage shall be maintained for a period of two years following completion of the Project.

(e) General Requirements – All deductibles and premiums associated with the above coverages of professional liability insurance shall be the responsibility of Architect. The use of umbrella or excess liability insurance to achieve the above required liability limits is permitted, provided that such umbrella or excess insurance results in the same type and amounts of coverage as required under the required individual policies identified above.

(f) Certificates of Insurance – Architect shall provide to YANTH, Architect's certificates of insurance evidencing compliance with the insurance requirements. All insurance as required by this Section shall be issued by insurance carriers licensed to do business in the State of Arizona and all such carriers shall be rated with an A.M. Best rating of no less than A-VII.

(g) Architect shall ensure that all Consultants and sub-contractors engaged by Architect carry and maintain sufficient insurance coverage herein that is appropriate to the project in the reasonable discretion of the Architect.

D. INDEMNIFICATION.

1. Indemnification by Architect. Architect, its Consultants, subcontractors and their respective officers, directors, shareholder partners, principals, employees, and successors shall indemnify and hold YANTH and its officers, employees and successors, harmless from and against all, claims, costs, damages, losses, and judgments, (collectively "claims") (including but not limited to all reasonable fees and expenses of Architects, attorneys and other professionals, and all court, arbitration or other dispute resolution costs) arising out of or relating to the Project, provided that any such claims are attributable to or arise from (i) Architect's negligent acts, errors or omissions in the performance of Architect's services under this Agreement, or (ii) for patent, copyright or trademark infringement attributable to Architect's services under this Agreement, or (iii) bodily injury, sickness, disease, or death to any person or to injury to or destruction of tangible property, including the loss of use thereof, but only to the extent caused by any negligent act or omission of Architect, or Architect's officers, directors, partners, employees, consultants or subcontractors. YANTH agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal, or employees of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with the professional services provided in connection with the Project.

2. Indemnification by YANTH. YANTH and its respective officers, principals, employees, and successors shall indemnify and hold Architect and its officers, employees and successors, harmless from and against all, claims, costs, damages, losses, and judgments, (collectively "claims") (including but not limited to all reasonable fees and expenses of Architects, attorneys and other professionals, and all court, arbitration or other dispute resolution costs) arising out of or relating to the Project, provided that any such claims are attributable to or arise out of bodily injury, sickness, disease, or death to any person or to injury to or destruction of tangible property, including the loss of use thereof, but only to the extent caused by any negligent act or omission of YANTH, or YANTH's officers, principals, employees, and successors. Architect agrees that, to the fullest extent permitted by law, no officer, principal, employee, or successor of YANTH shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with YANTH's responsibilities in connection with the Project.

YANTH shall provide written notice to Architect of any known inconsistencies in the Architect's services under the Agreement within a reasonable time after discovery. However, YANTH has no obligation to investigate Architect's services for inconsistencies. The provisions of this Indemnification provision shall survive expiration or termination of the Agreement for a period of two years, or such longer statutory period as may be allowed under the laws of the state of Arizona for tort and/or contract claims.

E. NOTICE

1. All notices required of Architect hereunder shall be provided to YANTH in writing and either personally delivered to YANTH or deposited in the United States Mail postage

prepaid and addressed to YANTH's Representative at the address set forth herein. Failure to provide written notice shall relieve YANTH of any liability or obligation intended to be created by the notice.

F. OWNERSHIP AND DELIVERY OF DOCUMENTS

1. All newsletters, studies, reports, materials, designs, drawings, documents, and other materials and data devised, conceived, made, developed, obtained, or created whether in tangible or electronic format, in whole or in part, by the Architect, in the course of its work hereunder are works undertaken on behalf of YANTH and shall at all times be the property of YANTH; and Architect hereby assigns and transfers to the YANTH all of its rights, titles, and interests therein. Immediately upon the expiration or earlier termination of this Agreement, Architect shall deliver to YANTH all papers, documents, and any other tangible information regardless of form or medium, containing or constituting such work product or that relate to, or were made available in connection with Architect's work hereunder including, without limitation, all materials containing Trade Secrets (information in any format, verbal or written provided by the Yavapai-Apache Nation to the Architect).

G. CONFIDENTIALITY

1. Except as permitted or directed by YANTH, Architect, its associates, agents, consultants or employees shall not, either during the term of this Agreement or at any time thereafter, divulge, furnish or make accessible to anyone or use in any way (other than in the ordinary course of the performance of this Agreement) any Trade Secret which Architect has acquired or become acquainted with or will acquire or become acquainted with prior to the expiration and/or termination of Architect's rights and obligations hereunder. Without limiting the generality of the foregoing, Architect shall use its best efforts to prevent the unauthorized disclosure and/or use of such Trade Secrets. Architect acknowledges that the Trade Secrets constitute a unique and valuable asset acquired at great time and expense, and that any disclosure or use of any Trade Secret other than in furtherance of this Agreement will be wrongful and would cause irreparable harm to YANTH. The foregoing obligations of confidentiality, however, shall not apply to any knowledge or information which is now published, or which subsequently becomes generally publicly known, other than as a direct or indirect result of the breach of this covenant. In the event of a breach or actions that suggest an inadequate remedy at law, both preliminary and permanent equitable injunctive relief is hereby deemed necessary and shall be available to protect the rights of the Yavapai Apache Nation.

H. SUCCESSORS, ASSIGNS AND BENEFICIARIES

1. YANTH and Architect, respectively, hereby bind themselves, their partners, successors, executors, administrators assigns and legal representatives to the other party to this Agreement in respect to all covenants, agreements, and obligations of this Agreement.
2. Neither YANTH nor Architect may assign or transfer ("assignment") this Agreement (including but without limitation, moneys due or to become due under this Agreement) without the written consent of the other, unless otherwise mandated or restricted by law. Unless specifically agreed to in any such approved assignment or transfer, no such assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

3. Unless otherwise provided herein, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by YANTH to any consultant or subcontractor of Architect or to create, impose, or give rise to any duty owed by YANTH or Architect to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties, responsibilities and obligations undertaken under this Agreement are undertaken for the sole and exclusive benefit of YANTH and Architect and not for the benefit of any other party.

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

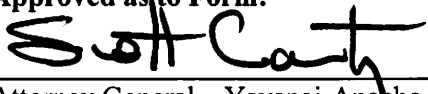
YANTH

ARCHITECT
Perlman Architects Consultants

(Signature)
Sharie Benson, Executive Director

(Signature)
Nathanael Maki, LEED AP

Approved as to Form:



Attorney General – Yavapai-Apache Nation

NOTICE TO PROCEED

TO:
Perlman Architects of Arizona
2929 N Central Ave, Ste. 1600
Phoenix, AZ 85012

Date: _____
Project: Yavapai-Apache Homes VIII LIHTC
Project, Camp Verde, AZ 86322

You are hereby notified to commence WORK for completion of the above reference Project in accordance with the Agreement date _____ and you are to complete the WORK within _____ calendar **days** thereafter. The date of completion of all WORK is therefore _____.

Yavapai-Apache Nation
Tribal Housing

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE to PROCEED
Is hereby acknowledged by:

(*Architect*)

this the _____ day,

of _____, 2023,

By: _____

Title: _____

Appendix A

To
Contract – Perlman Architects of Arizona

Yavapai-Apache Homes VIII LIHTC Project

**YANTH's Request for Proposals for Architectural Services (RFP) issued by
YANTH on December 12, 2022**



YAVAPAI-APACHE NATION TRIBAL HOUSING

P.O. Box 3310 - 1500 E. Cherry Creek Rd. - Camp Verde, Arizona 86322

Phone: (928) 567-4191 Fax: (928) 567-5310

Request for Proposals

12/16/22

Yavapai-Apache Nation Tribal Housing ("YANTH") is requesting proposals from qualified individuals and firms for professional services for an Architectural Design and Supervision services for housing located on the Yavapai-Apache Reservation. Services will occur in three phases as follows:

Phase 1. Preliminary floor plans (3 designs) and elevations (3 for each design) for review and discussion

Phase 2. Preliminary architectural designs, elevations and certifications required for the submission of a Low Income Housing Tax Credit ("LIHTC") application to the Arizona Department of Housing ("ADOH"); and

Phase 3. Architectural services for the vertical design (including preliminary designs, full plans & specifications, MEP and structural engineering, bidding & contract documents), and

Phase 4. Construction contract administration and construction monitoring services. Please present this as a separate line item cost.

Quotes to assist with these services must be submitted to YANTH electronically by 12/23/22, at 3:00 PM. Send to David Schreiner, dschreiner@yan-tribe.org

General Background

YANTH is planning a 30 - 40 unit residential development on the Yavapai-Apache Reservation on a site in the Tunlii area off Hwy 260 near the existing homes. The units are mix of single family and duplex units consisting of two, three and four bedroom models. The requirements of the LIHTC application (preliminary designs, analysis of design standards, and architectural certifications), must be met for satisfactory completion of Phase 1. If YANTH is awarded Tax Credits, then Phase 2 will be required. Phase 3 will be required once construction begins and continue through completion of the project.

YANTH will issue a notice to proceed to the next phase to the selected firm upon an award of credits.

Proposal Requirements

1. Cover letter
2. Names of the Owner, Partner, or Officer of the business or businesses.
3. Description of Experience related to Architectural design and supervision services:
 - a. Please describe the general experience of the firm including number of years the firm has been in operation. Please describe the specific experience of the firm in providing

services for single and multi-family residential projects.

- b. Please describe the specific experience of the firm in providing services for LIHTC developments in the State of Arizona.
 - c. Description of experience in Indian Country: Please describe any relevant experience of the firm, involved principals and any assigned staff in design and specification writing services for projects located on Tribal land.
4. **Associations:** Please provide a description of any associations with other firms or any form of subcontracting that is planned for the project.
 5. **Certifications and Licenses:** Please include a copy of any pertinent licenses or certifications.
 6. **References:** Please include a minimum of three references that can be contacted by the YANTH.
 7. **Disclosure of Claims:** Please disclose any claims, lawsuits, or formal disputes for work or services previously or currently being performed.
 8. **Methodology:** Please provide explanation of methodology for all services.
 9. **Cost proposal:** Please detail all costs required to assist with these services and required timelines for payments.

Please breakout Phase four costs separate from Phases 1 - 3

10. **Timetable for completion of the services:** Please outline the expected timeline to compete the full scope of services outlined below.

Project Award

The rating factors and values to be used in award of this contract are as follows and are based on a possible 100 points:

Criteria	Points
Relevant Experience:	
Number of LIHTC projects (0=0, 1-3=5, 4-6=8, 7+=10)	10
Number of LIHTC projects with tribes in Arizona (0=0, 1-2=3, 3+=5)	5
Qualifications	35
Cost	40
Proposed Schedule	10
Total Possible	100

Services to Be Provided

This request is being sent to a selected number of firms. The intent of the RFP is to have the firms under consideration specifically address the services required and provide a well-considered proposal for these services.

Proposals shall include all labor, materials, travel, and consultation necessary to produce a complete and thorough set for drawings, specifications, and all other necessary documents. The services shall be divided into three phases based on the project milestones.

The Phase One services shall be completed upon notice to proceed by Owner, target completion no later than January 18, 2023.

The Phase Two services shall not proceed until notice is given by Owner, target completion no later than March 21, 2023.

The Phase Three services shall not proceed until notice is given by Owner, targeted completion August 15, 2023.

Phase One:

- Owner will hire civil engineer under separate agreement. Architect responsible for helping lay units on sites for preliminary site plan. Owner will provide topography and/or aerial imagery for preliminary site plan underlayment.
- Preliminary floor plans and elevations for each proposed building type.

Phase Two:

- Form 12-1 – attached for LIHTC application and updated at major project milestones.
 - Residential Floor Area of each unit type
 - Total Residential Floor Area
 - Total Project Square Footage
- Realistic budget/schedule of values for LIHTC application and updated at major project milestones.
- Depending on LIHTC commitments, a RESNET Home Energy Rater may be added to the team (under separate agreement). Architect is responsible for working with Owner's Energy Rater to provide project information to generate preliminary energy report and HERs score meeting ADOH LIHTC requirements. Following LIHTC award, Architect must incorporate energy requirements in construction documents and work with Owner's Energy Rater to update energy reports and coordinate energy inspections and major project milestones.
- Architect is responsible for ensuring that all preliminary designs meet the 2022-2023 ADOH Qualified Allocation Plan including the Exhibit A Design Requirements. Requirements must be coordinate in preliminary designs through final construction documents with confirmation at project completion.

Phase Three:

- Complete architectural designs inclusive of structural, mechanical, and electrical designs. Owner will procure civil engineering services under a separate agreement.
- Final refinement of the conceptual plans and design concepts provided in Phase One to produce schematic design documents.
- Specific document packages to be provided at schematic design, design development, 50%, 75%, 99% bid set, and 100% construction documents, permitting construction documents and for construction documents stages that will serve as the basis for budgeting, bidding, and construction.
 - Recommendations, research and documentation relative to value management options.

Phase Four:

- Construction administration services required for the above-mentioned scopes of work.
- Onsite Construction Project Inspection

Appendix B

Contract – Perlman Architects of Arizona

Yavapai-Apache Homes VIII LIHTC Project

Perlman's Response to YANTH's RFP dated January 4, 2023



OWNER AND ARCHITECT AGREEMENT

AGREEMENT made as of 4th day of January 2023.

Project No. 323001

BETWEEN the OWNER:

Yavapai-Apache Nation
1500 E Cherry Creek Rd
Camp Verde, AZ 86322
Attn: David Schreiner

and the ARCHITECT:

Perlman Architects of AZ, Inc.
2929 N. Central Ave, Ste 1600
Phoenix, Arizona 85012

PROJECT

For the following Project:

Name: **Yavapai-Apache Nation Housing**
Location: **T.B.D.**

Description:

Provide Architectural & Engineering services only for an LIHTC housing project For the Yavapai-Apache Nation. The Project scope is outlined below:

- **Phase 1.** Preliminary floor Plans (3 designs) and elevations (3 for each design) for review and discussion.
- **Phase2.** Preliminary architectural designs, elevations and certifications required for the submission of a Low Income Housing Tax Credit ("LIHTC") application to the Arizona Department of Housing ("ADOH").
- **Phase 3.** Architectural services for the vertical design (including preliminary designs, full plans, & specifications, MEP and Structural engineering, bidding & contract documents),.
- **Phase 4.** Construction contract administration and construction monitoring services.
- 30-40 unit residential development on the Yavapai-Apache Reservation on a site in the Tunlii area off Hwy 260000 near the existing homes.
- Mix of single family and duplex units consisting of 2, 3, and 4 bedroom units.

The following Agreement is for Professional Services to be provided to Owner for the proposed development to be located at the above referenced site ("Project") and as more fully described herein. Attached and incorporated herein by reference are Exhibit A. Perlman Architects of Arizona, Inc., Nevada corporation, identified herein as "Architect" agrees to provide the following described services to Yavapai-Apache nation. herein as "Owner," for the following described fees.

ARTICLE 1: ARCHITECT'S SERVICES AND GENERAL PROVISIONS

1.0 ARCHITECT'S SERVICES

- 1.0.1 The Basic Services consist of and are limited to those services described in this Agreement.
- 1.0.2 Estimated project schedule for the phases described in Article 2 upon Owner's approval to proceed:
To be mutually determined between Owner & Architect
- 1.0.3 The estimated schedule for the performance of the Architect's Services which may be adjusted as the Projects proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities known to have jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner. The schedule, therefore, shall be extended, except where the Architect is solely responsible for Project delays.

ARTICLE 2: SCOPE OF SERVICES

2.1 PHASE I & 2. Schematic Design (SD)

- 2.1.1 The purpose of the Schematic Design is to refine the approved Concept Design. This phase includes the following tasks:
- 2.1.2 The Architect shall attend a maximum of two (2) Schematic Design meetings with the Owner for the purposes of input and review. Additional meetings if requested by the Owner or municipality will be billed as an Additional Service.
- 2.1.3 Based on the Owner approved program/concept design, the Architect shall develop/refine the schematic design, in conjunction with YAN, and prepare one (1) set of schematic design site plan, unit plans, building floor plans, and exterior elevations. Basic services also includes: presentation site plan, floor plans, exterior elevations
- 2.1.4 The Architect shall ensure that all preliminary designs meet the 2022-2023 ADOH Qualified Allocation Plan including the Exhibit A Design Requirements. Requirements must be coordinated in preliminary design through final construction documents with confirmation at project completion.
- 2.1.5 The Architect shall obtain the Owner's approval to proceed with the Design Development phase. Phase II is subject to Owner's approval of tax credits from ADOH before proceeding onto work, unless otherwise authorized by Owner.

2.3 Phase 1 & 2. Design Development (DD)

- 2.3.1 The purpose of the Design Development Phase is to describe the various design components of the Project and establish a framework from which the final construction documents will be coordinated and developed. This phase includes the following tasks:
- 2.3.2 Based on the Owner approved Schematic Design drawings, the Architect shall complete the preparation of design development drawings consisting of scaled layout drawings (in AutoCAD format) for site plan, unit plans, building plans and community building plan, exterior elevations, roof plans, building sections, draft room finish schedules, draft window & door schedules, draft specifications.

- 2.3.3 The Architect shall assist Owner in the preparation of preliminary product criteria establishing material and construction standards.
- 2.3.4 The Architect shall provide design development drawings to Owner and consultants for their review, comments, and use.
- 2.3.5 Owner and Architect will rely on Contractor / Construction Manager to ensure Project's Feasibility from a construction risk standpoint (i.e. budget, schedule, warranty / maintenance, constructability, etc.).
- 2.3.6 The Architect shall attend a maximum of one (1) Design Development meetings with the Owner and/or City. Additional meetings if requested by the Owner or municipality will be billed as an Additional Service.
- 2.3.7 Upon completion of the Owner's review and approval of the Design Development Drawings, the Architect shall obtain the Owner's authorization to proceed with the Construction Document Phase.

2.4 PHASE 3, Construction Document Phase

- 2.4.1 Based upon the approved design development documents and upon authorization by the Owner, the Architect shall prepare a set of construction documents, as defined below. All construction documents shall be prepared to meet local building codes, Owner's financing requirements, Fair Housing Act requirements, Arizona Department of Housing (ADOH) year 2022-2023 Mandatory Design Guidelines for Multifamily Rental Housing, and requirements of the applicable local or state governing agencies having jurisdiction over the Project and shall be prepared in a manner consistent with the degree of care and skill ordinarily exercised by members of the profession practicing under similar circumstances.

The scope of services under this contract is limited to providing the standard of care required by members of the same profession, practicing under similar circumstances. The set of construction documents is sufficient to obtain a building permit; however, all materials and methods of construction necessary to complete the project are not necessarily described in the construction documents. The implementation of the plans requires an Owner/contractor thoroughly knowledgeable with the applicable building codes and methods of construction.

Upon substantial completion of the construction documents for submission to government (e.g. Building Department), the Architect shall review and check all drawings in an effort to minimize errors and ensure that the drawings are in general compliance with industry standards for completeness and accuracy.

- 2.4.2 Owner and Architect will rely on Contractor / Construction Manager to ensure Project's Feasibility from a construction risk standpoint (i.e. budget, schedule, warranty / maintenance, constructability, etc.).
- 2.4.3 It is the Owner's responsibility prior to or during construction to notify the Architect in writing of any perceived errors or omissions in the plans and specifications of which a contractor thoroughly knowledgeable with the building codes and methods of construction should reasonably be aware. Written instructions addressing such perceived errors or omissions should be received from the Architect prior to the Owner or Owner's subcontractors proceeding with the work. The Owner will be responsible for any defects in construction if these procedures are not followed.

- 2.4.4 The Architect shall review the work of the following consultants for conformance with the visual design concept of the project:
- a. Structural Engineer
 - b. Mechanical/Plumbing Engineer
 - c. Electrical Engineer
 - d. HERS Rater/Tester (under separate Contract directly with Owner)
 - e. Geotechnical Report (provided by Owner)
 - f. Fire Sprinkler Engineer (Provided by Owner or Contractor)
- 2.4.4 The Architect will assist the Owner in filing documents required for the approval of governmental and quasi-governmental authorities having jurisdiction over the Project. However, such assistance does not include submittal/permit fees, the preparation of special research studies, variances, special documentation of surveys, special tests or environmental studies and submissions, which services, if provided by the Architect, shall be compensated as Additional Services.
- 2.4.5 Plan check corrections, as may be required by the Building Department and/or local governing agency to obtain a building permit, and shall be made by the Architect without additional charge unless it is a result of Owner requested design changes.
- 2.4.6 The Architect shall attend a maximum of two (2) Construction Document meeting with the Owner and/or City. Additional meetings, if requested by the Owner or Municipality will be bill as an Additional Service.

2.5 PHASE V. Bidding and Negotiation

- 2.5.1 The Architect, following the Owner's approval of the Construction Documents (100% Set), shall assist the Owner with the Owner's Bidding & Negotiation Process tasks: 1) Invitation to Bid, 2) Bid Document Printing/Distribution Coordination, 3) Bid Clarification/Addenda, 4) Pre-Bid Meeting, 5) Bid Package Collection, 6) Bid Package Review & Contractor Selection.

2.6 PHASE 4. Construction Administration Phase (CA)

- 2.6.1 Construction Administration Services shall consist of the following tasks: 1) RFI responses & Architectural ASI's to clarify or interpret the construction documents, 2) Provide sixteen (16) on-site visits with field report for field observation or Plan Grid punch list report to ascertain whether construction is proceeding in accordance with the architectural design concept, 3) Review contractor submittals/shop drawings (two reviews per submittal item is included- additional reviews will be billed as an additional service), 4) Assist Owner with review of Contractor Change Order Request/Change Orders, 5) Issue Certificates of Substantial Completion based on visual observation and utilization of Contractor supplied "Punch List" and Final Certificate of Completion (Certificates shall state that the work completed is in general conformance with construction documents, except such work as listed on Architect's punch list and/or latent defects. Re-reviews to verify punch list items are completed will be billed as an additional service). Additional site visits, As-built drawings, as requested and approved by the Owner, will be billed as Additional Service.
- 2.6.2 It is agreed that the professional services of the Architect do not extend to or include the review or site inspection of the contractor's work or performance, however, Architect shall provide written notification to Owner for any work perceived to not meet the intent of the Construction Documents, building codes or quality workmanship.
- 2.6.3 The Architect will be available by telephone to answer reasonable inquiries regarding clarification of the design construction documents.

- 2.6.4 The Architect will assist Owner with the review of the O & M Manuals and Construction Close-out forms.

2.7 Interiors

- 2.7.1 The Architect shall provide the Owner with Limited Interior design services for each unit type and the community areas. Basic services includes the assistance with the selection of electrical lighting fixtures, one scheme of interior color and finish selections and assistance with the coordination of Owner selected furniture & equipment.

2.8 Consultant Phase (CP)

- 2.8.1 The purpose of the Consultant Phase is to describe the Structural, Mechanical, Plumbing, Electrical, Civil Engineering, Landscape Architecture Consultant services of the Project. This phase includes the following tasks:
- 2.8.2 Structural Engineering Design, calculations, required corresponding details and Design Development Documents and Construction Documents for proposed project. Basic services includes coordination with other disciplines, correspondence with the building department as necessary for permit, limited assistance during bidding process, limited construction administration services includes: one (1) review of shop drawing and concrete mix design, RFI's/clarification or interpretation of structural drawings with three (3) general structural site observations. Basic services does not include special structural inspections or retaining wall designs (Optional Service) as required or requested, additional site visits and As-Built Drawings and/or any other services not specifically defined in Basic Services.
- 2.8.3 Mechanical and Plumbing Engineering Design, calculations and Design Development Documents and Construction Documents for proposed project. Basic services includes mechanical and plumbing layouts and calculations, required corresponding details, complete specifications in CSI format, limited assistance during bidding process, one (1) review of shop drawings, coordination with other disciplines, correspondence with the building department as necessary for permit limited clarification or interpretation of M&P drawings and construction administration with three (3) site observations. Basic services does not include domestic water treatment, verification of water quality, cost estimation, As-built drawings, special inspections and additional site visits and/or any other services not specifically defined in Basic Services.
- 2.8.4 Electrical Engineering Design, calculations and Design Development Documents and Construction Documents for proposed project. Basic services includes electrical site design and site lighting circuiting, IECC calculations, electrical design for buildings electrical SES, common area power panel, unit panels, load and fault calculations, compliance with Model energy code, required corresponding details and coordination with other disciplines, correspondence with the building department as necessary for permit, limited assistance during bidding process, two (2) site observations and findings reports, one (1) review of shop drawings and limited clarification or interpretation of Electrical drawings and (1) SeS Special Inspections. Basic services does -not include cost estimating, As-built drawings, special inspections, additional site visits, and/or any other services not specifically defined in Basic Services.
- 2.8.5 *Fire Protection Design shall be provided by Contractor's Fire Protection Sub-Contractor. Architect to coordinate Fire Protection Design with other Consultants.*

2.9 Meetings

- 2.9.1 The Architect shall provide for the quantity of meetings through the course of providing the Basic Services, as specifically described. These meetings include meeting time and follow up project management (these meetings do not include the cost of airfare or mileage). Any additional meetings, as may be requested by the Owner or Contractor, will be billed as Additional Services. The Architect will provide any additional meetings, if required due to the errors and/or omissions of the Architect, for no additional charge.

ARTICLE 3: ADDITIONAL SERVICES

3.0 General

The Additional Services described in this Article and elsewhere in this Agreement are not included in Basic Services, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. Additional Services may only be provided if authorized or confirmed in writing by the Owner and the Architect. If services are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner in writing as to the necessity of such services. If the Owner does not deem that those services are required or are within the scope of Basic Services, Owner shall give the Architect written notice within seven (7) calendar days of the Architect's notice, the failure of which shall be deemed acceptance of those services. If the Owner indicates in writing that all or part of such services are not required, the Architect shall have no obligation to provide those services and shall not be held liable for any losses or damages which may arise from not providing such services

3.1 ADDITIONAL SERVICES

3.1.1 Making revisions in plans or other documents when such revisions are:

- a. Inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or program budget, however, Architect is aware of Owner's budget and shall be cognizant during the design process;
- b. Required by the enactment, revision of codes, zoning or building ordinances, laws or regulations subsequent to the preparation of such documents, or additional costs caused by delays resulting from such;
- c. Due to changes required as a result of the Owner's failure to render decisions in a timely manner;
- d. If construction of this project occurs in more than one building phase, additional submittals, revisions and corrections required by the Owner or Building Department shall be considered Additional Services. If permits are required for additional units, repackaging, processing and signature of plans will be considered Additional Services.

3.1.2 Providing services required because of changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction.

3.1.3 Preparing drawings, details and other documentation, analysis and supporting data, evaluating Contractor's proposals other than RFI's or ASI's, and providing other services in connection with

- change orders, field orders, directives and addenda; other than what is specifically outlined under project description/basic services.
- 3.1.4 Providing services in connection with replacement of work damaged by fire, exposed to the elements or other causes and furnishing services required in connection with the replacement of such work.
 - 3.1.5 Providing services made necessary by the default or termination of the contractor, by defects or deficiencies in the work of the contractor, or by failure of performance of the Owner, contractor or others performing services or providing work on the Project.
 - 3.1.6 Providing services in connection with claims submitted by the contractor or others.
 - 3.1.7 Providing services in connection with the preparation for, or attendance at public hearings, or other meetings, or legal proceedings, except where the Architect is a party thereto.
 - 3.1.8 Preparation of designs and construction documents for buildings or features not specifically contained in the Scope of Work including, but not limited to, sales offices, cabanas, swimming pools & spas, or any other ancillary structure or feature not specifically outlined under project description/basic services.
 - 3.1.9 Providing or preparation of environmental impact reports, fuel abatement programs, surveys or any other similar submissions required for approvals of governmental or quasi-governmental authorities having jurisdiction over the Project.
 - 3.1.10 Providing financial feasibility, marketing, comparative studies or other such special studies or providing analysis of the Owner's project requirements in the preparation of a program for the Owner.
 - 3.1.11 Providing services in connection with design/build contractors
 - 3.1.12 Providing interior design and other services required for or in connection with the selection, procurement, purchasing, receipt, moving or installation of furniture, graphics, signage accessories, and the like, if not specifically provided for under Basic Services.
 - 3.1.13 Providing services of or in connection with consultants other than those specified under Scope of Services.
 - 3.1.14 Providing any additional presentation drawings, including colored street scene elevations, colored brochure artwork, perspective renderings, models, or similar presentation drawings if requested by Owner and not provided for under Basic Services.
 - 3.1.15 Providing services required due to the change of ownership of the Project to a distinct person or entity that involves change in project management.
 - 3.1.16 Costs of legal services required for the review of any documents, certifications or declarations required by any of the Owner's lending institutions or financing source.
 - 3.1.17 Providing services after issuance by the Owner of the certificate of substantial completion or filing of notice of completion.
 - 3.1.18 Preparation and processing of addendum drawings, bulletins, change orders and field changes that occur during the construction phase of the Project which are beyond the control of the Architect. Any drawings or bulletins issued by the Architect to clarify any error or omissions in the construction documents will be provided at no additional charge.

- 3.1.19 Preparation of 1/4" reverse floor plans and reverse roof plans as may be required and/or requested by the Owner or the Building Department if not stated within the Scope of Basic Services of this Agreement.
- 3.1.20 Any additional site visits as requested by the Owner for field observation of model or pilot building construction, other than those provided for under Basic Services, to ascertain if the construction is proceeding in accordance with the visual design concept of the Project.
- 3.1.21 Providing any other services not otherwise included in this Agreement.
- 3.1.22 Preparation of As-built drawings

ARTICLE 4: THE ARCHITECT'S COMPENSATION

The Owner shall compensate the Architect for the professional services provided in accordance with 4.6 Payment of Services, and the other terms and conditions of this Agreement, as follows:

4.1 Compensation for the Architect's Basic Services as described in Article 1 shall be as follows:

4.1.1

Architectural Fees:

Phase 1 & 2	(SD) & (I	\$17,500.00
Phase 3	(CD)	\$44,000.00
Phase 4	(CA)	\$45,000.00
Sub-Total Architectural		\$106,500.00

Consultant Fees:

Phase 3: Specification Writing	\$10,500.00
Phase 3: Structural Engineering	\$31,500.00
-Phase 4: CA Phase Services	\$6,500.00
Phase 3: MEP Engineering	\$43,000.00
-Phase 4: CA Phase Services	\$6,500.00
Sub-Total Consultants	\$98,000.00

Total Architectural and Consultants **\$204,500.00 plus reimbursable expenses**

P1+P2 17,500
P3 129,000
P4 58,000
204,500

- 4.2 Services that are to be compensated on an hourly basis including Additional Services shall be based on the flat hourly rates set forth in the Architect's standard rate schedules in accordance with Schedule A attached hereto. Such rates may be adjusted in accordance with the Architect's and the Architect's consultants' normal salary and expense review, practices and times. All adjusted rates shall be provided to Owner.
- 4.3 For Additional Services of Consultants, compensation shall be a multiple of one and one-fifth (1.15) times the amount billed to the Architect for such services.
- 4.4 For Reimbursable Expenses, compensation shall be a multiple of one and one-fifth (1.15) times the amounts billed to the Architect for such services, except for specific Reimbursable Expense rates stated on Schedule A.
- 4.5 Compensation for Reimbursable Expenses include expenses incurred by the Architect and the Architect's employees and consultants, if any, in the interest of the Project, as identified in the following clauses:
1. Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel, including air fare, lodging, meals, mileage at \$0.55 per mile; long distance communications; sales tax; fees paid for securing approval of authorities having jurisdiction over the Project; and other additional expenses attributed to the Project.
 2. Expense of CAD plots, reproductions, postage, messengers, delivery, telecopying, facsimile, and handling of drawings, other documents, and other data communications and telecommunications.
 3. If authorized in advance by the Owner, expense of overtime work at 1.5 times the employee's billable rate, which is in addition to that required under Basic Services. This "not to exceed" budget will be determined by the Architect to complete the task requested.
 4. Expense of outside renderings, models, mock-ups, photography, and reprographics not included under Basic Services.
 5. Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants, if any.
- 4.6 **Payment of Services**
- 4.6.1 Architect will bill at month's end for Owner approved Services completed to date and all approved invoices are due and payable within thirty (30) days from the date of Architect's invoice, unless otherwise agreed to by Architect. Architect will stop work when unpaid invoices reach the 60-day period from date of first invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half percent (1-1/2%) per month. The Fee for Services is due and payable when the drawings are complete, regardless of whether the Owner applies for a building permit, obtains financing or completes the project.
- 4.6.2 Delinquent Payments: Disputes or questions regarding an invoice or a portion of an invoice shall not be cause for withholding payment of remaining portions due.
- 4.6.3 Time Extensions: This Agreement anticipates that the Architect's services will proceed continuously and will be complete within a specified duration mutually agreeable to Owner and Architect. If and to the extent that the time initially established in the schedule is extended, or if the Architect's services are delayed or interrupted by the Owner or Owner's consultants and have not been completed within the

stated time limitations because of the Owner's schedule, compensation for any services rendered during the additional period of time shall be computed as an Additional Services based upon the hourly rates then in effect. Costs associated with start-up after a suspension in the work of 75 days or more shall be Additional Services.

- 4.6.4 No deductions, offsets or withholdings shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable or negligent for such amounts. Payments to the Architect for compensation and Reimbursable Expenses due shall not be contingent on the construction, completion, or ultimate success of the Project, however, limited to work actually completed. Payment to the Architect shall not be withheld, postponed, or be contingent upon receipt by the Owner of offsetting reimbursement or credit from the Contractor or other parties causing Additional Services or expenses.
- 4.6.5 Records of Reimbursable expenses and expenses pertaining to Additional Service and services performed on an hourly basis shall be available to the Owner or the Owner's authorized representative at mutually convenient times. If the Owner requests that the Architect provide copies of invoices, vouchers or any other backup documentation, the Architect shall provide such documentation.

ARTICLE 5: OTHER PROVISIONS

5.0 REPRODUCIBLE DOCUMENTS

- 5.0.1 The Owner shall have the right to obtain reproducible drawings for his use on this Project only in accordance with the following provisions:
- 5.0.2 It is agreed that these plans are not to be used for any other project except by written permission from the Architect. If the Owner makes or causes to be made any alteration, change, amendment or addition of any kind to the construction documents, the Owner will be solely responsible for any and all damage, liability and consequence resulting there from. To the fullest extent permitted by the law, the Owner agrees to defend, indemnify and hold harmless the Architect and its agents, losses, and expenses including, but not limited to, reasonable attorney's fees and costs arising out of or related directly to any alteration, change, amendment or addition to these construction documents.

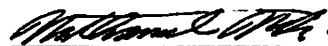
OWNER:

ARCHITECT:

By:

Its:

By: _____



(Signature)

01/04/23

(Date)

Nathanael Maki - Director

(Printed name and title)

EXHIBIT A

Yavapai-Apache Nation Housing

GENERAL CONDITIONS AND ADDITIONAL PROVISIONS

- A. INFORMATION:** The Owner shall be responsible for procuring and providing at its sole cost and expense the following information, data and documentation unless specifically identified under Basic Services of this Contract.
1. **Subdivision Maps:** Tentative and final subdivision maps, boundary survey(s), topographical survey(s), engineering plot plans, grading plans, soils reports, and any other related or similar documents necessary for the Architect to fulfill its services as more fully described in this agreement.
 2. **Surveys:** A certified survey of the site prepared by a licensed land surveyor or a licensed civil engineer, including, but not limited to, legal description, grades and lines of streets, pavements, and adjoining properties, rights of way, easements, encroachments, zoning and other restrictions, boundaries and contours of the building site, locations, dimensions, floor elevations, other pertinent data of existing buildings, other improvements and trees, and full information as to available service and utility lines, both public and private. All information on the survey shall be referenced to a project benchmark.
 3. **Testing:** Structural engineering drawings, calculations and specifications; structural, civil, electrical and mechanical services; chemical and other laboratory tests, inspections and reports; and the services of other consultants not specifically provided for under the agreement required by law, the authorities having jurisdiction over the project, by the scope of the project, or by the Architect.
 4. **Soils Reports:** Soils reports prepared by a licensed soil or geotechnical engineer for the use by all consultants on the project. Such reports shall not be unreasonably limited in scope by Owner and shall include necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations the completeness, accuracy, and sufficiency upon which the Architect and its consultants shall be entirely to rely. It is specifically understood that the Architect has no responsibility for the recommendations, accuracy or completeness of such soil reports. The Owner agrees to indemnify, defend and hold harmless the Architect, its agents, designers, employees and consultants from and against all claims, damages, losses and expenses including, but not limited to, attorney's fees arising out of or relating directly or indirectly to the adequacy or completeness of such soils reports or any errors, omissions, or inadequacies contained therein.
 5. **Renderings:** Perspective color renderings, photo and/or other reproduction work for presentation or promotional purposes; however, with the Owner's approval, the same may be secured by the Architect with billing therefore to the Owner.

6. *Applications:* Preparation and submission of applications to any building department, agency or governing body having jurisdiction over the project.
7. *Legal Description:* The Owner shall promptly furnish the Architect a legal description of the property, the name and address of the property Owner, and the name and address of the project's construction lender.
8. *Project Representative:* Owner shall designate a project representative authorized to act on the Owner's behalf. Said representative shall provide decisions coordinate between the Architect, Owner and Owner's consultants, and examine, review and approve documents submitted by the Architect. The project representative shall render decisions in a timely manner so as to avoid unreasonable delay in the progress of the services to be provided under this agreement.
9. *Legal, Accounting, Insurance Services:* The Owner shall furnish all legal, accounting or insurance services as may be necessary for the project, as the Architect does not have the expertise or training to provide these services.

B. THE ARCHITECT AND THE OWNER FURTHER AGREE THAT:

1. *Use of Documents:* All design documents prepared by the Architect pursuant to this contract are instrumentalities of the Architects services and are the Architect's property solely for use by the Owner on this project and no other. Any other use of such design documents is prohibited unless the Owner first obtains express written authorization from the Architect. Such authorization may be subject to an appropriate reuse fee as determined by the Architect. The Architect shall be compensated for any computer disks or tapes for which agreement in writing has been secured from the Architect, all of which shall contain a written disclaimer releasing the Architect from any liability for its use or translation.
2. *Project Suspension:* Should the Services in this Agreement be suspended or abandoned at any point, the Architect shall be paid to date of suspension of Services at its standard billing rates in effect or upon the stated fee basis to that point in time, whichever is greater, plus any reimbursable expenses. In the event the Services for this project are suspended or abandoned for ninety (90) days, this agreement may be reinstated if agreeable to the Architect by written amendment executed by the Architect and the Owner.
3. *Project changes:* Any (1) changes, modifications or amendments requested by the Owner, public agencies (changes other than those required for building permit or necessary utility approvals), the general contractor or other third parties acting on the Owner's behalf after incremental approval of the plans and specifications, or (2) any special foundation design required by information not previously made available, or (3) any other services requested of the Architect by the Owner or his agent which are not covered under this agreement, shall be paid in accordance to Section 4.6.2. Any new services due to project changes must be pre-authorize by the Owner.

4. **Site Visits:** The Architect will make on-site observations to check the contractor's compliance with the plans or specifications only for overall general design intent and will notify owner of any concerns. The Architect has no responsibility for or control over construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the work. The Architect has no responsibility for any failure by the contractor to carry out the work in accordance with the contract documents and is not responsible to insure compliance with the contract documents. The Architect has no responsibility for, or control or charge over, any acts or omissions of the contractor, subcontractors or any of their agents or employees, other design professionals, or any other persons performing any work on the site.
5. **Failure to Make Payment:** Failure of Owner to make payments in accordance with section 4.6.2 of this agreement shall be considered substantial non-performance and cause for suspension and/or termination upon seven (7) days written notice at the sole discretion of the Architect until payments are current on all agreements between the Owner and the Architect. If a performance time schedule is involved in relating to the Service under this Agreement, any time lost while Services are suspended will be added by the Architect to the end of such schedule. This provision in no way limits or precludes the Architect from utilizing all legal remedies it may have in connection with overdue invoices.
6. **Suspension or Termination:** In the event of suspension and/or termination under this agreement the Architect shall have no liability to Owner for delay or damage caused the Owner as a result of the suspension and/or termination. The Architect shall also have the right to retain possession of all drawings or other documents prepared for this project until full payment for services has been received. The Architect shall not be held liable for any damages resulting from the withholding of drawings or other documents.
7. **Lien Rights:** This Agreement in no way limits or precludes the Architect from enforcing any available lien, whether statutory or common law.
8. **Professional Credits:** The Architect shall be credited in the project brochure, advertising and other promotional material, where appropriate, and shall be entitled to receive appropriate awards for said project. The Architect shall have the right to include representations of the design, including photographs among the Architect's professional materials. The Architect shall be permitted, if allowed by jurisdiction, to display a site sign.
9. **Architect's Liability:** The Architect will coordinate the professional engineering consultants called for by this Agreement, but Owner acknowledges that the Architect lacks the training and experience necessary to perform or critique said services, and that these Services will necessarily be provided by licensed, independent contractor engineering professionals. The Architect has no responsibility of any construction documents, calculations, or specifications prepared by any consultant employed by Owner or the Architect for the Owner's project.

10. *Evidence of Insurance:*

- (a) The Architect agrees to furnish the Owner written evidence of professional liability or errors and omissions insurance and general liability insurance. In addition, with respects to the work performed by the Architect, the Owner shall be named as an additional insured for General Liability insurance only. Limits shall be set per Owner's financing requirements.
 - (b) The Owner agrees that in the event he employs, hires or contracts with any other designer, The Architect, planner, engineer or service provider to assist the Owner in this project, then the Owner will in all such cases require such other party to furnish the Owner written evidence of professional liability for errors and omission insurance in an amount suitable to the scope of the project. The failure to provide such evidence can at the Architect's discretion is considered substantial non-performance under this agreement.
11. *Owner Alteration:* The Architect shall work with the Owner and Contractor to address alterations or changes required for value engineering and inspection purposes. If the Owner makes or causes to be made any alteration or change of any kind in the drawings or other documents provided under this agreement, or shall deviate in any way from the drawings or other documents in the construction of the project without the written approval of the Architect, the Owner will be solely responsible for any and all damage, liability and consequence resulting there from. The Owner agrees to defend, indemnify and hold harmless the Architect and its agents, employees, and the Architect's consultants from and against all claims, damages, losses and expenses including, but not limited to reasonable attorney's fees arising out of or related directly or indirectly to any alteration, change, amendment, or addition to such documents or deviation from such documents during construction.
12. *Limitation of Liability:* In light of the limited ability of the Architect to affect the risks inherent in the Project, and of the disparity between the Architect's fee and the potential liability exposure for problems or alleged problems with the project, Owner agrees that if the Architect should be found liable for loss or damage due to a failure on the part of the Architect, its liability shall be limited to an amount equal to the refund of the Architect's fee, as liquidated damages and not as a penalty, and this liability is exclusive. This paragraph shall apply in the event of loss or damage, directly or indirectly to person or property from the performance or non-performance of the obligations set forth by the terms of this Agreement, or from the negligence, active or passive, of the Architect, the Architect's agents, employees, or independent contractors.
13. *Entire Agreement:* This agreement shall be binding upon the Owner and the Architect and their partners, personal representatives and those who succeed to their interest. The Owner shall not assign, or transfer his interest in this agreement, without the written consent of the Architect. Any such assignment without the Architect's consent shall be considered void and unenforceable.
14. *Certificates:* The proposed language of certificates or certifications requested of the Architect or the Architect's consultants for this project shall be submitted to the Architect for review and approval at least 14 days prior to execution. In no event shall the Architect's execution of said certificates or certifications be considered a guarantee or warranty. The Architect shall not be required to execute any certificate or certification that is beyond the knowledge or expertise of the Architect.

15. **Attorney's Fees:** In the event it is necessary for either party to employ an attorney to interpret, enforce or otherwise give effect to this agreement, then the prevailing party shall be entitled to recover reasonable attorney's fees and costs whether or not the matter proceeds to trial.
16. **Indemnification:** The Owner shall indemnify and save harmless the Architect, its employees, agents, officers, the Architect's consultants and employees, and each of them, of and from:
- (a) Any and All claims, demands, causes of action, damages, costs, expenses, property damage, contract disputes, penalties, losses or liability, in law or in equity of every kind and nature whatsoever, including but not limited to, damage to streets, goods, property, or effects of any person or entity whatsoever, or for injuries to or death of any person, including the Owner's employees, arising out of or in any manner directly or indirectly connected with the obligations or work to be performed under this Agreement or any change thereto, regardless of any negligence of the Architect, its agents, officers, consultants or employees, except where the Architect's negligence is found to be the sole cause of the claim, demand, cause of action, damage, costs, expense, property damage, contract dispute, penalty, loss or liability by a court of competent jurisdiction.
 - (b) Any and all penalties imposed on account of the violation of any law or regulation, compliance with which is required by this contract by the Owner and;
 - (c) The Owner shall defend, indemnify and hold harmless the Architect and its agents, assigns, employees, subcontractors and consultants from and against all claims, damages, losses, attorney's fees, costs and expenses alleged or incurred by any homeowner or homeowner's association, arising out of any claim, action, lawsuit, arbitration or administrative hearing related to the structure built with the construction documents provided by the Architect. Owner expressly agrees to pay defense costs and attorney's fees as they accrue on a current basis from the first date that Owner receives written notice from the Architect that a claim or other loss, as designated above, has occurred. The Architect shall reimburse the Owner the percentage of costs equating to the percentage of comparative fault of the Architect as determined by a forum of competent jurisdiction.
 - (d) Notwithstanding anything to the contrary contained herein, it is agreed, acknowledged and understood that the Owner's sole and exclusive claim, demand, suit, judgment or remedy shall be directed and/or asserted only against the Architect, a Nevada Corporation, and not against any of the Architect's shareholders, the Architect, directors, officers or employees.
 - (e) In the event that the Owner terminates this Agreement prior to completion of construction, or the Owner chooses to engage the Architect for partial or less than full services throughout any phase of the Project, the Owner agrees to indemnify, defend and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorney's fees, accruing to or resulting from any and all persons, firms, or any other legal entity, on account of any damage or loss to property or persons, firms, or any other legal entity, on account of any damage or loss to property or persons, including, but not limited to, death, arising out of the Work, except for that portion of the total of such loss or liability as is equal to the portion of total loss or liability for the losses or damages found by a court or forum of competent jurisdiction to be attributable to the negligent errors or omissions of the Architect.

17. **Hazardous Materials:** In the event the Owner or the Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or water pollutants at the site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty to immediately notify the other in writing. Upon such knowledge or notice, the Owner shall promptly retain a qualified consultant to investigate, test and determine the presence of such Hazardous Substances and, if such Hazardous Substances are found at the site to an unacceptable degree, to provide services that may include, among other things, recommendations as to the removal, encapsulations, or other appropriate handling of such Hazardous Substances. The Owner shall promptly retain qualified experts in handling of such Hazardous Substances to undertake the consultant's recommendations.

The Owner acknowledges that the Architect is unable to reasonably obtain professional liability (errors and omissions) or other insurance for claims arising out of the performance of failure to perform professional services, including but not limited to, the preparation of reports, design, drawings and specifications or testing related to the investigation, detection, abatement, replacement, discharge or removal of products, materials or processes containing Hazardous Substances ("Hazardous Substances Services"). Accordingly, the Architect shall not provide such services. The Owner hereby agrees to bring no claim for negligence, breach of contract, indemnity or other cause of action against the Architect, if such a claim in any way arises out of Hazardous Substances or Hazardous Substances Services.

The Owner hereby acknowledges that standards for maximum acceptable levels of indoor or outdoor pollutant or contaminants may not yet have been established and/or recognized, and that sufficient ongoing ventilation and maintenance by the Owner must be provided to reduce the risk of injury to persons or property from such.

The Owner agrees to indemnify, defend and hold the Architect harmless from and against any and all claims, suits, demands, losses and expenses, including reasonable attorney's fees, accruing to or resulting from any and all persons, firms or any other legal entity, on account of any damage or loss to property or persons, including death, arising out of Hazardous Substances or Hazardous Substances Services, except where the Architect is found solely liable for such damages or losses by a court or forum of competent jurisdiction.

18. **Design/Build:** If Design/Build Contractor or subcontractors are to be retained directly by the Owner or contractor for specified portions of the design and construction of the Project, each Design/Build contractor or subcontractor shall be responsible for (1) preparing engineering and other drawings and specifications for all components of its Design/Build contract, (2) complying with the Project requirements and space limitations, (3) coordinating and interfacing with other trades and consultants, and (4) obtaining approvals from authorities having jurisdiction over the Project. The Design/Build contractor or subcontractor shall be the Professional of Record for his/her portion of the work, responsible directly to the Owner. Design/Build system designs shall be reviewed by the Architect only for conformance to the aesthetic aspects of the design and major space limitations. The Architect does not assume responsibility for the designing, installation or performance of these systems. Review by the Architect of Design/Build proposals shall be compensated as Additional Services.

19. **Consultants:** The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost, including reasonable attorneys' fees and defense costs, arising in any way from the services performed by all consultants. It is further agreed that the Architect shall coordinate the construction documents of the professional consultants listed above but only for conformance with the aesthetic aspects, space constraints and design concepts as expressed in the construction documents prepared by the Architect.
20. **Defects in Service:** The Owner shall promptly report to the Architect any defects or suspected defects in the Architect's work or services of which the Owner becomes aware, so that the Architect may take measures to minimize the consequences of such a defect. The Owner warrants that he or she will impose a similar notification requirement on all contractors in his or her Owner/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Owner, and the Owner's contractors or subcontractors, to notify the Architect shall relieve the Architect of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
21. **For Rent Apartments only:** The Owner warrants that the project is contemplated as "For Rent Apartments" and does not foresee that the project will be converted to condominiums. In the event the Owner converts the project to condominiums, the Owner will hold the Architect and it's Consultants harmless from any and all costs, expenses, claim, damage or liability of any nature arising from such event or the Owner agrees to compensate the Architect and it's Consultants for any additional costs, expenses and liability that may occur from such event.

C. CLAIMS AND DISPUTE RESOLUTION:

1. **Mediation:** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, whether in tort or contract, may be subject to mediation under the auspices of a recognized, neutral third-party professional mediation service, or other mediation method acceptable to both parties, prior to undertaking any legal action. The cost of the mediation service shall be borne equally by the parties.
2. **Demand:** A written demand for mediation shall be made within a reasonable time after the claim; dispute or other matter in question has arisen.
3. **Attorney's fees:** Prevailing Party: Should any proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorney's fees which shall be determined by the court or forum in such proceeding or in a separate action brought for that purpose. For the purpose of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action proceeding.

4. **Corporate Protection:** It is intended by the parties to this Agreement that the Architect's services in connection with the project shall not subject the Architect's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Architect, a state corporation, and not against any of the Architect's employees, officers or directors.
5. **ADA Compliance:** The Owner acknowledges that the requirements of the Americans with Disabilities Act (ADA) will be subject to various and possibly contradictory interpretations. The Architect, therefore, will use his or her reasonable professional efforts to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The Architect, however, cannot and does not warrant or guarantee that the Client's project will comply with interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.
6. **Betterment:** If, due to the Architect's error, any required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.
7. **Consequential Damages:** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Owner or the Architect, their employees, agents, sub consultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
8. **Construction Costs:** The Architect shall not be required to submit Statements of Probable Construction Costs.
9. **Contingency Fund:** The Owner and the Architect acknowledge that changes may be required because of possible omissions, ambiguities or inconsistencies in the plans and specifications and, therefore, that the costs of the project may exceed the construction contract sum. The Owner agrees to set aside a reserve in the amount of five percent of the actual project construction costs as a contingency reserve to be used, as required, to pay for any such increased project costs. The Owner further agrees to make no claim by way of direct or third-party action against the Architect or his or her sub consultants with respect to any payments within the limit of the contingency reserve made to the construction contractors because of such changes or because of any claims made by the construction contractors relating to such changes.
10. **Billing and Payment Provisions, Back charges:** Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of offsetting reimbursement or credit from other parties causing Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable or negligent for such amounts.
11. **Collection Costs:** In the event legal action is necessary to enforce the payment provisions of this Agreement, the Architect shall be entitled to collect from the Owner any judgment or settlement sums due, reasonable attorney's fees, court costs and expenses incurred by the Architect in connection therewith and, in addition, the reasonable value of the Architect's time and expenses spent in

connection with such collection action, computed at the Architect's prevailing fee schedule and expense policies.

12. **Discounts:** Payment of invoices for work completed is in no case subject to unilateral discounting or set-offs by the Owner, and payment is due regardless of suspension or termination of this Agreement by either party. Payment of any invoice by the Owner to the Architect shall be taken to mean that the Owner is satisfied with the Architect's services and is not aware of any deficiencies in those services. If the Owner objects to any portion of an invoice the Owner shall notify the Architect in writing within thirty (30) calendar days of receipt of the invoice. The Owner shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated above shall be paid by the Owner on all disputed invoiced amounts resolved in the Architect's favor and unpaid for more than thirty (30) calendar days after date of submission.

D. MISCELLANEOUS PROVISIONS

1. **Law Governing:** This Agreement shall be governed by Arizona State Law. Venue shall be in the county in which the design services were rendered.
2. **Exercise of Rights:** No failure on the part of either party of this Agreement to exercise its right hereunder shall be or operate a waiver, release or relinquishment of any right or power conferred under this Agreement.
3. **Time Bar to Legal Action:** All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after one (1) year has passed from the date of issuance of the Certificate of Completion, unless the Architect's services shall be terminated earlier, in which case the date of termination of this Agreement shall be used.
4. **Property Insurance Waivers:** The Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction except such rights as they may have to the proceeds of such insurance. The Owner and the Architect each shall require similar waivers from their contractors, consultants and agents.
5. **Entire Agreement:** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, and either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a court or forum of competent jurisdiction, then the remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Owner and the Architect shall survive the completion of the services hereunder and the termination of this Agreement.

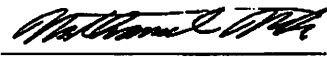
6. **Third Parties:** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Architect.
7. **Limitations of Assurance:** Notwithstanding any other provision in this Agreement to the contrary, nothing herein contained shall be construed as:
 - a) To constitute a guarantee, warranty or assurance, either express, or implied; or
 - b) Obligating the Architect to exercise professional skill or judgment greater than that which can reasonably be expected from other Architects under like circumstances for the Project locale; or
 - c) Nothing in this Agreement shall imply any understanding by the Architect for the benefit of, or which may be enforced by any third party.
8. **Interpretation:** Limitations on liability and indemnities in this Agreement are business understandings between the parties and shall apply to all the different theories of recovery, including breach of contract or warranty, tort (including negligence), strict or statutory liability, or any other cause of action. These limitations on liability and indemnities will not apply to any losses or damages that have been found by a trier of fact to have been caused by the Architect's sole or gross negligence or the Architect's willful misconduct. "Parties" means the Client will not seek damages in excess of the contractually agreed limitations indirectly through suits with other parties who may join the Architect as a third-party defendant.
9. **Subject to Financing:** Owner and Architect further agree that any sums due to the Architect in accordance to this Agreement & specifically Article 4, is subject to owner's receipt of approval of the Project's long-term financing sources. Any work completed by Architect prior to such receipt of approval shall be done so at the risk of the Architect.

OWNER:

ARCHITECT:

By:
Its:

By: _____


(Signature)

01/04/23
(Date)

Nathanael Maki - Director
(Printed name and title)

Appendix C

To
Contract – Perlman Architects of Arizona

Yavapai-Apache Homes VIII LIHTC Project

Yavapai-Apache Nation Arbitration Code (Ordinance 19)

ORDINANCE NO. 19
YAVAPAI-APACHE NATION
ARBITRATION CODE

Section 1. Scope of Code.

This Code applies to any written contract, agreement or other instrument entered into by the Yavapai-Apache Nation (the "Tribe"), or any other person in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument. Any prior legislation or other Tribal laws which are inconsistent with the purpose and procedures established by this Code are hereby repealed to the extent of any such inconsistency.

Section 2. Agreements to Arbitrate are Enforceable.

An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

Section 3. Law to be Applied.

a. In any contract, agreement or instrument described in Section 1 of this Code, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

b. In any proceeding under this Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Yavapai-Apache Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy

would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

c. In any proceeding under this Code, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall first apply the substantive law of the Tribe, including any applicable choice of law principles, and then the substantive law of the State of Arizona, including any applicable choice of law principles, provided that such law does not conflict with this Code or other applicable tribal law.

Section 4. Stay of Proceedings and Order to Proceed with Arbitration.

a. If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 1 of this Code, the Tribal Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

b. A party to any contract, agreement or instrument described in Section 1 of this Code claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

Section 5. Advice of the Court.

At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of tribal or state law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

Section 6. Time Within Which Award Shall be Rendered.

a. If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

b. An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

Section 7. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.

a. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an order confirming the award.

b. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk: (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 5; (4) each written extension of the time, if any, within which to make the award; (5) the award; (6) each notice and other paper used upon an application to confirm; and (7) a copy of each order of the Tribal Court upon such an application.

c. An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s); provided, however, that the Tribal Court shall decline to enforce any arbitration award if it finds (i) the award was procured by corruption, fraud or other undue means, (ii) there was evident partiality of an arbitrator appointed as a neutral, (iii) the arbitrator(s) exceeded their powers, or (iv) the arbitrators refused to hear evidence material to the controversy or otherwise conducted the hearing so as to substantially prejudice the rights of one party. The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

Section 8. Arbitration Award Not Appealable.

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Code enforcing an agreement to arbitrate or an award issued by an arbitrator.

Section 9. Jurisdiction of the Tribal Court in Actions to which the Tribe is a Party.

a. The Tribal Court shall have jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 1 of this Code to which the Tribe is a party; provided that in any such actions brought against the Tribe, the Tribal Council (the "Council") shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

b. To the extent allowed by federal law, the jurisdiction of the Tribal Court under this Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council shall have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 1 of this Code to which the Tribe is a party shall be valid and enforceable in accordance with its terms.

Section 10. Severability.

If any section or part thereof of this Code or the application thereof to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Code shall not be affected thereby and shall remain in full force and effect.

Section 11. No Waiver of Sovereign Immunity.

Nothing in this Code shall be interpreted to provide a waiver of the sovereign immunity of the Tribe or any of its officers, employees or agents acting within the scope of their authority.