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## **HOMES FOR GOOD ARCHITECT/ENGINEER PRICE AGREEMENT**

This Agreement is by and between Homes for Good ("Agency") and \_\_\_\_\_ ("A/E") for the performance of general design and engineering services for Agency, on an as needed basis.

### **A. RECITALS**

Agency has conducted a formal Qualifications-Based Selection process in accordance with ORS 279C110 and Agency Public Contracting, Rules Division 48 to establish a pool of qualified design and engineering professionals with whom to enter into price agreements.

A/E submitted its proposal, having examined the Request for Proposals (RFP), and was chosen as one of the most highly qualified A/E, best suited to meet Agency's needs pursuant to the RFP criteria.

Agency has awarded this Price Agreement to A/E.

### **B. AGREEMENT EXHIBITS**

The following exhibits are hereby incorporated by reference into this Agreement:

- Exhibit A – Scope of Work
- Exhibit B – Task Order Form
- Exhibit C – Oregon Personal Services Public Contracting Code Requirements
- Exhibit D – Request for Proposal
- Exhibit E – A/E's Proposal and Schedule of Rates and Charges

In the event of a conflict between this Agreement and its exhibits, the terms of this Agreement shall prevail, followed by Exhibits B, C, A, D, then Exhibit E, in that order.

### **C. AGREEMENT**

#### **1. Term and Authorization to Proceed**

- 1.1 The term of this Agreement shall be from its execution to March 11, 2029. The initial term of three (3) years may be extended for up to two (2) additional one-year terms by written consent of both parties. Such extension(s) will consider adjustment to A/E's schedule of charges attached within Exhibit E to this Agreement.
- 1.2 Execution of this Agreement by the parties and issuance of one or more written task work orders authorizes A/E to proceed with the work under the provisions of this Agreement.



## 2. Scope of Work

- 2.1 A/E shall provide all services and deliver all materials as specified in the attached Exhibits A through E, which are hereby incorporated into this Agreement by this reference, and as may be described by future addenda to this Agreement or task work orders issued hereunder.
- 2.2 A/E will, in the rendering of its services to Agency, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered.
- 2.3 **Task Orders.** Task Orders in the form attached as Exhibit B shall be used as the sole basis to authorize all Work related to this Agreement. Task Orders are subject to all terms of this Agreement and shall establish the assigned Scope of Work, delivery schedule, and total compensation that reflects an identified payment methodology, the rates set in Exhibit E, hours, and includes any reimbursables. Task orders that do not meet these requirements shall not bind Agency and no compensation will be paid for any Work performed thereunder.

Agency shall have the right to request Work outside the scope of any Task Order to this Agreement and to cancel a portion of the Work at any time. A Task Order amendment shall set compensation for all additional Work requested and a reduction thereto, in the event Agency cancels Work. Agency shall not be liable for profits lost due to cancelled Work. A/E shall perform no Work outside the scope of any Task Order to this Agreement until the parties have signed a modification to the Task Order that describes the Work and contains the terms of payment. A/E shall not be entitled to payment for Work outside the scope of a Task Order, unless the parties signed a modification to the Task Order before A/E performed that Work. A/E shall not make modifications to the Task Orders or standard terms and conditions of this Agreement except in writing, signed by both parties.

## 3. Compensation

- 3.1 Compensation. For the services described and performed by A/E, the Agency agrees to pay, and A/E agrees to accept compensation set in accordance with the Schedule of Rates and Charges, attached within Exhibit E.
- 3.2 Invoices.
  - a. Invoices for services of A/E shall be billed to Agency on a time and materials basis in summary form, itemized by projects and/or Task Orders, on or about the end of the first full business week of each month, for all services performed through the last day of the previous month.
  - b. A/E will provide in its invoices a detailed description of hours billed to assist Agency in correctly allocating costs to separate projects or may



modify the billing statement into a format that is agreeable to both parties. Reimbursable expenses shall be itemized and backup invoices provided, if required by Agency.

### 3.3 Payments.

- a. Agency will review A/E's invoice and within ten (10) days of receipt notify A/E in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, Agency shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If Agency fails to make any payment due A/E for services and expenses within thirty (30) days of the date on A/E's invoice therefore, late fees will be added to amounts due A/E at the rate of 1.0 percent (1%) per month from original invoice date. . Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, A/E may, after giving seven (7) days written notice to Agency, suspend services under this Agreement until A/E has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

## 4. A/E Is an Independent Contractor

- 4.1 A/E shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Agreement. While Agency reserves the right to set various schedules and evaluate the quality of A/E's completed Work, Agency cannot and will not control the means and manner of A/E's performance. A/E is responsible for determining the appropriate means and manner of performing Work.
- 4.2 A/E is responsible for all federal and state taxes applicable to compensation and payment paid to A/E under this Agreement and will not have any amounts withheld by Agency to cover A/E's tax obligations.
- 4.3 A/E is not eligible for any Agency fringe benefit plans.
- 4.4 No Authority to Bind Agency. A/E shall have no authority to enter into contracts on behalf of Agency, its officers, agents and employees. This Agreement shall not create a partnership or joint venture of any sort between the parties.

## 5. Notices

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of email is generated by the transmitting email if delivered by email, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by email shall be followed by a hard copy. All notices shall be addressed as follows:



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**Agency:** Audrey Banks, Real Estate Development Director  
Homes for Good  
100 West 13<sup>th</sup> Avenue  
Eugene, OR 97401  
Email: [abanks@homesforgood.org](mailto:abanks@homesforgood.org)  
Phone: (541)682-2609

**A/E:**

\_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

## **6. Indemnification**

A/E shall indemnify, hold harmless, and defend Agency and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from A/E's negligent performance and/or fault of A/E, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of Agency and A/E, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Notwithstanding the foregoing, the A/E has no duty to defend Agency against a claim for professional negligence relating to the professional services A/E provided under this Agreement, except to the extent that the A/E's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and subject to the proportionate fault limitation, above.

A/E's indemnification obligations under this Section 6 shall survive the expiration or earlier termination of this Agreement.

## **7. Insurance Requirements**

**7.1** During the term of this Agreement, A/E shall maintain, at its own expense, the following types of insurance in the following amounts:

- a.** Occurrence form commercial general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):



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\$2,000,000 – General Liability - each occurrence (bodily injury)  
\$4,000,000 – General Liability - general aggregate

Coverage shall also include contractual liability coverage for the indemnity provided under this Agreement. (Proof of coverage will be attached to this Agreement).

- b. Automobile Liability insurance limit shall not be less than \$500,000 combined single limit per accident. (Proof of coverage will be attached to this Agreement).
- c. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence. (Proof of coverage will be attached to this Agreement).
- d. Professional Errors and Omissions insurance covering A/E's liability arising out of negligent acts, errors or omissions in its performance of Work or services under this Agreement. Such policy will have a combined single limit of not less than \$1,000,000 per each claim, incident or occurrence. Such policy will be either on a claims made basis and will have an extended claims reporting period of five (5) years after final completion or on an occurrence basis. (Proof of coverage will be attached to this Agreement).
- e. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.

7.2 Except as required in 7.1(d) above, if any of the above required insurance is arranged on a "claims made" basis instead of an occurrence basis, "tail" coverage will be required at final completion or termination of this Agreement for a duration of five (5) years.

7.3 Policies shall provide that Agency, its Board, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and Section 7.1(b) and a waiver of subrogation against them shall be obtained for all coverages.

7.4 All coverages under Section 7.1 shall be primary over any insurance Agency may carry on its own. Agency shall procure and maintain general liability insurance during the full term of this Agreement which provides insurance coverage up to the limits of the Oregon Tort Claims Act, in connection with any actions suit, or claim from any third party caused by Agency's negligent acts, omissions, activities or services by Agency or its officers, employees or agents.

7.5 Agency shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the Work or



services under this Agreement if the loss, damage or destruction is due to the Agency's negligence or fault.

- 7.6 All policies of insurance shall be issued by good, responsible companies, that are qualified to do business in the State of Oregon and listed by A.M. Best as an A-VIII or above.
- 7.7 A/E shall furnish Agency with certificates of insurance evidencing all required coverages prior to commencing any Work or Services under this Agreement. If requested by Agency, A/E shall furnish Agency with executed copies of such policies of insurance. A/E shall furnish Agency with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.

## **8. Workers' Compensation**

- 8.1 A/E, its subconsultants, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.
- 8.2 A/E warrants that all persons engaged in Agreement Work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. A/E shall indemnify Agency for any liability incurred by Agency as a result of A/E's breach of the warranty under this Section.

## **9. Hours of Employment**

A/E shall comply with all applicable state and federal laws regarding employment.

## **10. Assignment**

A/E may not assign any of its responsibilities under this Agreement without prior written consent from Agency, which consent may not be withheld, in Agency's sole discretion. A/E may not subcontract for performance of any of its responsibilities under this Agreement without Agency's prior written consent, which consent shall not be unreasonably withheld, other than Work performed directly for A/E by the subconsultants specified in executed Task Orders.

A/E's assigning or subcontracting of any of its responsibilities under the Agreement without Agency's consent shall constitute a material breach of this Agreement. Regardless of any assignment or subcontract, A/E shall remain liable for all of its obligations under this Agreement.



## **11. Labor and Material**

A/E shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Agreement Work, all at no cost to Agency other than the compensation provided in this Agreement.

## **12. Ownership of Work and Documents**

- 12.1 Ownership of Work, Unauthorized Use of Work. All Work performed by A/E and compensated by Agency pursuant to this Agreement shall be the property of Agency upon full compensation for that Work performed or document produced to A/E, and it is agreed by the parties that such documents are Works made for hire. A/E hereby conveys, transfers and grants to Agency all rights of reproduction and the copyright to all such documents. However, in the event Agency reuses or modifies any engineering documents furnished to Agency by A/E, without A/E's involvement or consent, then A/E shall not be responsible for the materials.
- 12.2 Intellectual Property.
  - a. The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Agreement shall vest in Agency, except for Work exempted by Section 12.2(b), below. Upon request, A/E shall execute any assignment or other documents necessary to give effect to this Section. A/E will retain a nonexclusive right to use intellectual property vested in Agency as part of this Agreement.
  - b. A/E shall retain all intellectual property rights (including but not limited to copyrights and/or patents of any type) for Work completed by A/E prior to execution of this Agreement, or completed for other clients or outside of the scope of this Agreement. This includes, but is not limited to, design elements developed on previous projects, as well as standard Agreement documents, standard specifications, design standards manuals, standard details or other standard documents, details or drawings developed prior to execution of or outside the scope of this Agreement.
  - c. Agency will retain a nonexclusive right to utilize documents and materials provided to Agency by A/E which are excluded under Section 12.2(b), but shall not profit from such use, and shall not provide these documents or materials for use by other jurisdictions without authorization from A/E.

## **13. Termination or Suspension for Convenience**

- 13.1 This Agreement may be terminated or suspended by mutual consent of the parties upon written notice.



- 13.2 In addition, Agency may terminate or suspend all or part of this Agreement upon determining that such action is in the best interest of Agency by giving seven (7) days' prior written notice, without waiving any claims or remedies it may have against A/E.
- 13.3 Upon termination under this Section, A/E shall be entitled to payment in accordance with the terms of this Agreement for Agreement Work completed and accepted before termination less previous amounts paid and any claim(s) Agency has against A/E. Only if previously approved in writing by Agency will Agency pay A/E's reasonable costs actually incurred in the orderly closing out of specific Work tasks or projects underway under this Agreement. Pursuant to this Section, A/E shall submit an itemized invoice for all unreimbursed Agreement Work completed before termination and any previously approved Agreement closeout costs actually incurred by A/E. Agency shall not be liable for any costs invoiced later than thirty (30) days after termination unless A/E can show good cause beyond its control for the delay.

#### **14. Termination or Suspension for Cause**

- 14.1 Agency may terminate or suspend this Agreement effective upon delivery of written notice to A/E, or at such later date as may be established by Agency, under any of the following conditions:
  - a. If Agency funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Agreement may be modified to accommodate a reduction in funds.
  - b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
  - c. If any license or certificate required by law or regulation to be held by A/E to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

#### **15. Termination for Default**

- 15.1 If the Agency fails to perform in the manner called for in this Agreement or if the Agency fails to comply with any other provisions of the Agreement, A/E may terminate this Agreement for default after giving the Agency the notice and opportunity to cure required by this Section. Prior to termination for default, A/E must give Agency written notice of the breach and of A/E's intent to terminate. If Agency has not entirely cured the breach within fifteen (15) days of the date of the notice, then A/E may terminate the Agreement at any time thereafter by giving a written notice of termination.



15.2 If A/E fails to perform in the manner called for in this Agreement or if A/E fails to comply with any other provisions of the Agreement, Agency may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on A/E setting forth the manner in which A/E is in default. A/E shall be paid the Agreement price only for services performed in accordance with the manner of performance as set forth in this Agreement. Upon termination under Section 15.1, A/E shall be entitled to payment in accordance with the terms under Section 13.3.

## 16. Remedies

In the event of termination for breach of this Agreement, the parties shall have the following remedies:

- 16.1 Any suspension of performance under Sections 13 or 14 of this Agreement constitutes a temporary stoppage of performance of the Agreement and does not constitute a termination of the Agreement under those Sections. In the event that the condition(s) causing the suspension are rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Agreement within seven (7) calendar days from written notice to resume. In the event that the Agency determines that the conditions causing suspension of the Agreement are not likely to be rectified in a reasonable amount of time, the Agency retains the right to terminate this Agreement, pursuant to Sections 13 or 14. In the event of a suspension of performance pursuant to Sections 13 or 14, A/E agrees to remain contractually obligated to perform the Services under this Agreement for the same compensation set forth in Section 3, "Compensation," of this Agreement and any applicable Task Order for six months. If the Agreement is reactivated and A/E is required to perform under this Agreement beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for A/E and any Consultants and amend this Agreement accordingly.
- 16.2 If terminated under Section 15 by Agency due to a breach by A/E, Agency may complete the Work either itself, by agreement with another party, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Agreement, then A/E shall pay to Agency the amount of the reasonable excess.
- 16.3 In addition to the above remedies for a breach by A/E, Agency also shall be entitled to any other equitable and legal remedies that are available.
- 16.4 If Agency breaches this Agreement, A/E's remedy shall be limited to termination of the Agreement and receipt of Agreement payments to which A/E is entitled.



- 16.5 Agency shall not be liable for any indirect, incidental, consequential, or special damages under this Agreement or any damages arising solely from terminating this Agreement in accordance with its terms.
- 16.6 Upon receiving a notice of termination, and except as otherwise directed in writing by Agency, A/E shall immediately cease all activities related to the services and Work under this Agreement. As directed by Agency, A/E shall, upon termination, deliver to Agency all then existing Work product that, if the Agreement had been completed, would be required to be delivered to Agency.

## **17. Nondiscrimination**

During the term of this Agreement A/E shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, disability, or veteran status.

## **18. Governing Law; Jurisdiction; Venue**

This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency and A/E that arises from or relates to this Agreement which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. A/E BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of Agency's protections under the Oregon Tort Claims Act.

## **19. Compliance with Laws and Regulations**

A/E shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Agreement. Without limiting the generality of the foregoing, A/E expressly agrees to comply with: (i) ORS 659A.142; and (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) Agency's performance under this Agreement is conditioned upon A/E's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit C and incorporated herein by this reference. A/E, its subconsultants and all employers providing work, labor or materials under this Agreement are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. A/E shall adhere to all safety standards and regulations established by Agency for Work performed on its premises or under its auspices.



## **20. Experience, Capabilities and Resources; Standard or Care**

By execution of this Agreement, the A/E agrees that:

- 20.1 A/E is an experienced engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Agreement to design or administer any Work within the scope and complexity contemplated by this Agreement.
- 20.2 A/E has the capabilities and resources necessary to perform the obligations of this Agreement.
- 20.3 A/E is familiar with all current laws, rules, and regulations which are applicable to the design and construction of Work which may fall within the scope of this Agreement, and that all drawings, specifications, and other documents prepared by A/E shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.
- 20.4 Agency selected A/E for award of this Agreement because of the special qualifications of A/E's key personnel identified in Exhibit D (Key Personnel). A/D must obtain Agency's consent prior to replacing any Key Personnel assigned to perform or support the work specified in this Agreement. In the event A/E requests that Agency approve a reassignment or transfer of the Key Personnel, Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s).

## **21. Drawings, Specifications and Other Documents**

- 21.1 A/E hereby agrees that it will, in a manner consistent with its standard of care defined above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Agreement so that they are complete and that any project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility. As used in this Section 21:
  - 1) "structurally sounds" means that the facility has been designed and engineered to meet all code standards required of this project by the authority having jurisdiction; and
  - 2) "complete and properly functioning facility" means that the facility has been designed, utilizing the Standard of Care, to meet industry standards for similar facilities within Oregon.

## **22. Errors and Omissions**



A/E shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 20. A/E shall correct at no additional cost to Agency any and all such errors and omissions in the drawings, specifications, and other documents prepared by A/E or its subconsultants. A/E further agrees to assist Agency in resolving problems relating to any project designs or specified materials. A/E's warranties and obligations under Sections 6, and 20-22 of this Agreement shall survive the expiration or earlier termination of this Agreement.

## **23. Agreement Performance**

A/E and Agency shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. A/E shall not be liable for delays that are beyond A/E's control. Agreement expiration shall not extinguish, prejudice, or limit either party's right to enforce this Agreement with respect to any breach of A/E's warranties or a default or defect in performance by A/E or Agency that has not been cured. A/E agrees that time is of the essence under this Agreement.

## **24. Access to Records**

- 24.1 For not less than five (5) years after the Agreement expiration and for the purpose of making audit, examination, excerpts, and transcripts, Agency, and its duly authorized representatives shall have access to A/E's books, documents, papers, and records that are pertinent to this Agreement.
- 24.2 If, for any reason, any part of this Agreement, or any resulting construction contract(s) is involved in litigation, A/E shall retain all pertinent records for not less than three (3) years or until all litigation is resolved, whichever is longer. A/E shall provide full access to these records to Agency and its duly authorized representatives in preparation for and during litigation.

## **25. Representations and Warranties**

- 25.1 A/E represents and warrants to Agency that:
  - 25.1.1 A/E has the power and authority to enter into and perform this Agreement;
  - 25.2 When executed and delivered, this Agreement shall be a valid and binding obligation of A/E enforceable in accordance with its terms;
  - 25.3 A/E shall, at all times during the term of this Agreement, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent; and



- 25.4 The services under this Agreement shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.
- 25.2 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## **26. Conflicts of Interest.**

A/E agrees not to accept or perform any work for clients other than Agency on projects awarded by Task Order without Agency's prior written approval, which may be granted or withheld in Agency's sole discretion.

## **27. Agency Obligations**

- 27.1 Agency shall provide full information in a timely manner regarding requirements for and limitations on projects and Task Orders. With regard to subcontractor liens, Agency shall furnish to A/E, within fifteen (15) days after receipt of a written request, information necessary and relevant for A/E to evaluate, give notice of, or enforce lien.
- 27.2 Agency shall establish and update, if necessary, overall project budgets, including engineering and construction costs.
- 27.3 Agency shall furnish the services of consultants, including geotechnical engineers, when such services are requested by A/E, reasonably required by the scope of a project, and agreed to by Agency.
- 27.4 Agency shall furnish all testing as required by law or the Agreement documents.
- 27.5 Agency shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the Agency's needs and interests, after A/E has performed requisite project management and oversight duties.
- 27.6 Agency shall provide prompt written notice to A/E if Agency becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in A/E's design or performance under the Agreement.
- 27.7 Agency shall pay A/E in accordance with Section 3 and Exhibit E of this Agreement, upon receipt of A/E's submission of monthly invoices, and satisfactory progress and performance made in accordance with the Scope of Work. Payments shall reflect Work completed, or progress made on a project to date, on a pro rata basis.
- 27.8 Agency shall report the total amount of all payments to A/E, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.



- 27.9 Agency shall guarantee access to, and make all provisions for A/E to enter upon public and private property necessary for performance of the Scope of Work over which Agency exercises control.
- 27.10 Extra Work or Work on contingency tasks is not permitted unless authorized by the Agency in writing. Failure of A/E to secure written authorization for extra Work shall constitute a waiver of all rights to an adjustment in the Agreement price or Agreement time.

## 28. Arbitration

- 28.1 All claims, disputes, and other matters in question between the Agency and A/E arising out of, or relating to this Agreement, including rescission, reformation, enforcement, or the breach thereof, except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in Agency's sole discretion, in accordance with Oregon's Uniform Arbitration Act ORS 36.600 et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lane County Circuit Court will establish rules to govern the arbitration. The Agency shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.
- 28.2 A claim by A/E arising out of, or relating to this Agreement must be made in writing and delivered to the Agency not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the Agency within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the Agency will be considered by the Agency Board at the Board's next regularly scheduled meeting. At that meeting the Board will render a written decision approving or denying the claim. If the claim is denied by the Board, the A/E may file a written request for arbitration with the Agency. No demand for arbitration shall be effective until the Agency Board has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the Agency Board has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the Board's decision being binding upon the Agency and A/E.
- 28.3 Notice of demand for arbitration shall be filed in writing with the other party to the Agreement. The demand for arbitration shall be made within the 30-day period specified above. Agency, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or, by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the other party to proceed through the courts for relief. If arbitration is allowed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having



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jurisdiction thereof, and the award will not be subject to modifications or appeal except to the extent permitted by Oregon law.

## **29. Joinder**

Notwithstanding any contrary language in other documents or agreements related to services provided by A/E pursuant to this Agreement, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Agreement and whose presence is required if complete relief is to be accorded. This Section applies to any and all claims, disputes, and other matters arising out of, or relating to this Agreement, including but not limited to those claims, disputes, and other matters subject to litigation or arbitration.

## **30. Attorney Fees**

If any suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the applicable costs and disbursements. Further, if it becomes necessary for Agency to retain the services of an attorney to enforce any provision of this Agreement without initiating litigation, A/E agrees to pay Agency's attorney fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by the losing party.

## **31. Successors and Assigns; Subcontractors and Assignments**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

## **32. Limitation of Liabilities**

Agency shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Agreement or (ii) any damages of any sort arising solely from the termination of this Agreement in accordance with its terms. A/E shall not be liable for any consequential damages under this Agreement. This limitation shall not be construed to reduce or limit A/E's professional liability insurance obligations under Section 7.

## **33. Foreign Contractor**

If A/E is not domiciled in or registered to do business in the State of Oregon, A/E shall promptly provide to the Oregon Department of Revenue and the Corporations Division of the Oregon Secretary of State all information required by those agencies relative to this Agreement. A/E shall demonstrate its legal capacity to perform the Work under this Agreement in the state of Oregon prior to entering into this Agreement.



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### **34. Confidentiality**

A/E shall maintain the confidentiality of any of Agency's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent A/E from establishing a claim or defense in an adjudicatory proceeding. A/E shall require similar agreements from Agency's and/or A/E's subconsultants to maintain the confidentiality of information of Agency.

### **35. Force Majeure**

A/E shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

### **36. Waivers**

No waiver by Agency of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by A/E of the same or any other provision. Agency's consent to or approval of any act by A/E requiring Agency's consent or approval shall not be deemed to render unnecessary the obtaining of Agency's consent to or approval of any subsequent act by A/E, whether or not similar to the act so consented to or approved.

### **37. Severability**

Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

### **38. Headings**

The captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

### **39. Integration and Modification**

This Agreement, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Agreement. Any modifications or amendments to this Agreement will only be effective when made in writing and signed by authorized parties for each party to this Agreement.



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## 40. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to enter into this Agreement.

**HOMES FOR GOOD**

By: \_\_\_\_\_

Name: Jacob Fox

Title: Executive Director

Date: \_\_\_\_\_

**[A/E]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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## Exhibit A

### Scope of Work

#### SERVICES AND RESPONSIBILITY OF A/E

- A. Services shall be provided pursuant to Agency Task Orders requests or as otherwise requested by Agency in writing. When authorized by Agency, the specific services which the A/E shall furnish will generally consist of, but not be limited to, the following itemized services:
  1. Engineering services for Agency systems including studies, designs and construction administration.
  2. Consultation with the Agency and staff members on specific problems related to the Agency's facilities.
  3. Attend meetings, when requested by the Agency, or when necessitated by project Work underway.
  4. Project reviews, construction observation, and field surveying services.
  5. Miscellaneous technical services requested by the Agency.
  6. Preparation of Federal and State Funding applications, as authorized by the Agency Manager.
  7. Plan review.
  8. Feasibility studies and facilities plans.
  9. Apprise Agency of applicable changes in state or federal law regarding engineering or design services where such changes in state and federal law directly affect the A/E's Work or the Agency's projects, and public works.
- B. Basic A/E services. When authorized by the Agency, A/E will provide services for Agency development projects. These will generally consist of, but not be limited to, the following itemized services:
  1. Preparation of designs, plans and specifications, including solicitation packets and construction contracts.
  2. Tabulation of bids at bid opening, report same to the Agency, and assist in awarding Contracts for Construction.
  3. General observation of the Work by observation trips to the job site on a periodic basis, as agreed with the Agency.
  4. Preparation and submittal of proposed Agreement change orders.
  5. Preparation of monthly progress payments to the Contractor.
  6. Final review of the project by the A/E.
  7. Final acceptance of the project by the A/E and recommendations accordingly to the Agency.
  8. Submission to the Agency of final quantities and costs.
  9. As appropriate, furnish a set of "record" reproducible mylars, or other mutually agreeable format suitable for long term preservation and storage.



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C. Special Services. Special services of varying types may be requested, including, but not limited to:

1. Resident observation – Provide the services of an observer, acceptable to the Agency, as requested when contracts have been let by the Agency for construction. The Observer shall keep a daily diary of Work progress. The Observer shall check and approve all construction Work, prepare record drawings of the construction Work, and prepare the monthly progress payments to the Contractor. As used in this document, the term "record drawings" means a set of documents consisting of record specifications and record drawings showing the reported location of the Work. Record drawings are based on information provided by persons other than the A/E, and the A/E does not warrant their accuracy.
2. Redesigns – As ordered by the Agency after final plans have been completed.
3. Appearances before courts or boards on matters of litigation related to a project.
4. Preparation of operation and maintenance manuals and cost of duplication.
5. Printing of plans and specifications.
6. Preparation of planning studies or reports, including costs of duplication.
7. Coordinating and obtaining permits and arranging agency reviews. Fees for permits or agency review are excluded from A/E's services, and will be paid by others.
8. Miscellaneous other technical services as may be assigned and for which A/E has qualifications and/or expertise.
9. Consultant Services – (Various technical services for which Agency requires A/E to manage, monitor or direct):
  - a. Field engineering – Survey crew to stakeout construction Work, provide preliminary design surveys and design land surveys. Survey crew shall furnish all necessary equipment, instruments, transportation, stakes and subsistence required for field engineering.
  - b. Soils investigations – including test borings, related analysis and recommendations by the A/E.
  - c. Laboratory tests, well tests, borings, specialized geological, or other studies recommended by the A/E.
  - d. Other consultant services requested by Agency, such as mechanical, electrical, architectural, wetland, permitting and cost estimation services.



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## **Exhibit B**

### **Task Order Form**

**Task Order No. \_\_**

**Homes for Good**

**Architect/Engineering Work**

**Dated:** \_\_\_\_\_

In accordance with the Architect/Engineer Price Agreement entered into between Homes for Good (Agency) and \_\_\_\_\_ (A/E), dated \_\_\_\_\_, A/E is authorized to complete the scope of work defined in this Task Order according to the schedule and authorized compensation defined herein.

This Task Order is issued pursuant to Agency's Public Contracting Rule 137-048-0270 and the Architect/Engineer Price Agreement established through a Qualifications-Based Selection (QBS) process.

#### **SCOPE of WORK**

The scope of work includes the following services, as set forth in the attached Exhibit A:

- Project description and objectives:
- Deliverables and milestones:
- Applicable standards and codes:
- Key personnel and subconsultants, if any:

#### **BUDGET**

The costs for A/E's services as defined herein, including reimbursables, shall not exceed \$\_\_\_\_\_.

#### **AUTHORIZED COMPENSATION**

Compensation shall be paid up to the total maximum compensation set above and in accordance with Section 3 of the Agreement and the A/E's Schedule of Rate and Charges attached to the Contract as Exhibit E.

In accordance with Section 2.3 of the Agreement, if additional funds are required to complete the services defined herein beyond the limit set above, A/E shall notify Agency in writing prior to reaching the authorized limit, and will not proceed with work in excess of the limit without the prior written approval of Agency.



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## SCHEDULE

Work shall commence upon issuance of this Task Order. A/E shall complete the deliverables according to the milestones and completion dates defined in the Scope of Work section of this Task Order. Any schedule change must be approved in writing by the Agency Project Manager:

Project Manager: \_\_\_\_\_

Project Manager email: \_\_\_\_\_

Project Manager phone: \_\_\_\_\_

## TERMS and CONDITIONS

All work under this Task Order is governed by the terms and conditions of the Agreement, unless otherwise specifically set forth herein.

[INCLUDE WHEN APPROPRIATE] This Task Order is funded in whole or in part with federal or state funds. A/E shall comply with all applicable funding requirements, including 2 CFR Part 200 and Section 3 obligations as incorporated by reference in the Price Agreement.

Attachments:

Exhibit A, Scope of Work

**HOMES FOR GOOD**

**[A/E]**

By: \_\_\_\_\_

Name: Jacob Fox

Title: Executive Director

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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## Exhibit C

### Oregon Public Contracting Requirements

#### FOR ORS 279C PERSONAL SERVICE CONTRACT

- (1) Consultant shall pay promptly, as due, all persons supplying labor or materials for the performance of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
- (2) Consultant shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Consultant or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Consultant or any Subcontractor in connection with the performance of the contract shall promptly be paid.
- (3) Consultant shall not permit any lien or claim to be filed or prosecuted against the Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
- (4) Consultant and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- (5) Consultant shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, Consultant shall pay the employee at least time and one-half pay for: 1) all overtime in 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, except for individuals under personal service contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime; or 2) work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(B) to (G).
- (6) Pursuant to ORS 279C.520(2), the Consultant must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
- (7) Pursuant to ORS 279C.530(2), all employers, including Consultant, that employ subject workers who work under this contract shall comply with ORS 656.017, and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Consultant shall ensure that each of its subcontractors complies with these requirements.



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- (8) All sums due the State Unemployment Compensation Fund from the Consultant or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
- (9) The contract may be canceled at the election of Agency for any willful failure on the part of Consultant to faithfully perform the contract according to its terms.
- (10) Consultant certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is controlled by or that employs a veteran as defined in ORS 408.225 in obtaining any required subcontractors.
- (11) Consultant certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
- (12) In the performance of this contract, the Consultant shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
- (13) Pursuant to Agency's Public Contracting Rule 137-049-0880, the Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
- (14) Consultant shall ensure Agency's compliance with all applicable provisions of ORS 279C.527 and OAR Chapter 330 Division 135 regarding green energy technology requirements for new or major renovations of public buildings costing over \$5,000,000.
- (15) The following notice is applicable to Work involving excavation. "ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987."