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## REQUEST FOR PROPOSALS

Architect/Engineer Price Agreements

&

2020 Permanent Supportive Housing Development

Homes for Good Housing Agency

ISSUE DATE: December 18, 2019

DUE DATE: January 8, 2020 by 4:00 PM

RFP CONTACT: Steve Ochs  
Real Estate Development Director  
Homes for Good  
177 Day Island Road  
Eugene, OR 97401  
Phone: 541-682-2530  
Email: [sochs@homesforgood.org](mailto:sochs@homesforgood.org)

DOCUMENT AVAILABILITY: Electronic copy of the RFP and all associated documents will be available on the Homes for Good web site ([www.homesforgood.org](http://www.homesforgood.org)) beginning Wednesday December 18, 2019. If the RFP is downloaded from the website, Homes for Good requests that an email indicating interest in the solicitation be sent to the RFP Contact in order to be added to the Prospective Responders List and to receive addenda.

## **SECTION I: INTRODUCTION**

Homes for Good Housing Agency is the Housing Authority for Lane County and is the second largest housing agency in the State of Oregon. Homes for Good owns and manages over 1,600 units of affordable housing in Lane County and provides numerous other housing services to low-income individuals.

Homes for Good (Agency) is soliciting proposals from qualified firms and individual professionals to enter into architect/engineering (A/E) price agreements with Agency. Services typically conducted by an Agency A/E include, but are not necessarily limited to, the items listed in this RFP. Services may include supervising work produced by Agency, which is subject to ORS 671 and/or 672. Homes for Good will select up to 3 qualified firms and work shall be requested by Agency on an as-needed basis, and authorized by Agency task orders, which will be assigned based upon A/E availability, qualifications, specializations, and where appropriate, price.

Homes for Good will select one of the respondents to this RFP to immediately provide Architectural & Engineering Services on a Permanent Supportive Housing (PSH) Project. Homes for Good is working closely with Lane County and the City of Eugene to select a site for this development. The target population, unit number, and unit mix will be dependent on the site selected. It is likely that at least 25% of the units in the future development will be for chronically homeless individuals or families at risk of homelessness which are at or below 30% of area median income (AMI). The selected firm will need to show the capacity to provide the necessary services and deliverables for a submittal for funding in early spring 2020.

Agency currently has five (5) development projects either in construction or expected to start construction in the next six months. At least two (2) additional affordable housing projects are anticipated in the next year, with an unknown number of projects thereafter. Agency is actively looking at a variety of projects in both urban and rural Lane County, including but not limited to: Permanent Supportive Housing, Mixed-use developments, Family Housing, Senior and Disabled Housing, Multi-generational housing, tiny homes, and workforce housing. Agency is also working to preserve its existing public housing portfolio through the Rental Assistance Demonstration Program (RAD) and well as preservation of other affordable housing units and requires a pool of A/E professionals to draw upon at any given time to help with ongoing development and maintenance needs, and to oversee larger capital improvement or renovation projects from start to finish.

Agency intends to use Oregon Housing and Community Services (OHCS) low income housing tax credits and other financial subsidies necessary to develop its projects including a submittal in Spring 2020 for a Permanent Supportive Housing project. Assigned design tasks may need to meet OHCS and accessibility requirements. Awardees must be prepared to work with Agency Project teams consisting of the A/E, Owner representatives, and general contractors and/or construction manager/general contractors to perform the work. Generally, the A/E will lead the Project team. Teamwork will be of particular importance when estimating the overall budget that will be required for individual projects. Proposers should also be familiar with Oregon Prevailing Wage Rate laws and/or Davis-Bacon wage requirements and associated rules and regulations.

Proposers shall be licensed to provide architectural design services in the State of Oregon and be members in good standing with the Oregon State Board of Architect Examiners (OSBAE) and/or the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS).

Interested firms and individuals are invited to submit proposals in accordance with the requirements described below. Homes for Good is committed to following diversity, equity and inclusionary ideals and standards in all processes and selections. Minority, Women and/or Emerging Small Business Enterprises are encouraged to

respond. No Pre-Proposal Conference will be held for this proposal. Requests for additional information should be directed to Steve Ochs, Real Estate Development Director, at (541) 682-2530 or [sochs@homesforgood.org](mailto:sochs@homesforgood.org).

## **SECTION II: SCOPE OF SERVICES**

**Architect/Engineer Price Agreement** - The following statement of work describes the services Proposers may be asked to provide to Agency. These services will be contracted for on an as-needed basis, via individual task orders. Agency will compensate A/E for the following outlined services based on the awarded price agreement, which shall include hourly rates and a fee schedule. During the course of any task order, an A/E may be expected to be available on a daily basis for consultation.

Proposers need not be able to provide all listed services, but should identify particular areas of expertise in responsive proposals. The scope of services for the A/E price agreements may include, but is not limited, to:

- Civil and structural engineering and landscape architecture services.
- Site suitability and scope of work for project sites.
- Assist with budgeting, cost estimates, and long range planning.
- Suggest and comment on engineering related issues, ordinance modifications and public works design standards and construction specification modifications.
- Assist with GPS/GIS data gathering and information compilation relating to existing infrastructure.
- Work with Agency staff to review or complete federal, state or county permits, applications, or agency notification.
- Work with Agency staff, organizations and funding agencies to help develop competitive and complete grant applications or funding proposals.
- Act as the Agency's representative with other state, federal or local governmental agencies.
- Serve as the Agency's representative during the review, plan approval, construction management, and project closeout phases of any development or planning project. This includes land development projects such as subdivisions or site specific developments.
- Review preliminary architectural/engineering design drawings and design calculations for general conformance with state, county, and city requirements and sound architectural/engineering practices.
- Attend pre-application, construction, and other meetings as requested by the Agency.
- Provide detailed design and construction specifications for successful bidding and construction coordination of Agency maintenance projects.
- Provide project management, engineering, design (drawings and specifications), procurement, solicitation and contract preparation, and construction observation and inspection for Agency construction projects.

- Perform final construction observations and punch lists for completion of Agency developments and project sites, including review of as-built drawings, testing results, as-built certification, project closeout and initiation of the required construction warranty period.
- Perform work pertaining to public records, property acquisitions, condemnations, public improvements public rights of ways, easements, and matters relating to special assessments and public utilities.
- Perform additional basic architectural, engineering and special services which cannot be fully described at this time, as requested by Agency.
- Electrical, mechanical, and plumbing may be offered by Proposers as additional specialized areas of expertise.
- Advise and oversee use of standard general contractor and/or construction manager/general contractor (CM/GC) alternative contracting method.

Project work orders shall include a detailed scope of work, schedule and cost terms.

### **2020 Permanent Supportive Housing Project -**

The most qualified Architectural Firm will be selected to provide architectural, engineering, and other related services for the design, permitting, and construction administration of the 2020 Supportive Housing Project as outlined in this RFP. The Architectural Firm, either through in-house or sub-consultants, shall provide Homes for Good with professional services in the following areas:

- Architectural design
- Civil design and engineering
- Structural design and engineering
- Landscape design
- Mechanical, electrical, plumbing, and fire systems design and engineering
- Envelope and constructability review services

Design Services for this project will include, but are not limited to, the following:

A. Schematic Design Services (See AIA Document B101 – 2017 Section 3.2)

1. Manage architect services, consult with owner, attend project meetings, and report to owner.
2. Coordinate services provided by owner and owner's consultants.
3. Prepare schematic design, schedule, and cost of work for approval.

B. Design Development (See AIA Document B101 – 2017 Section 3.3)

1. Based on Owner approval, prepare design/development documents.

2. Coordinate design work with public and franchise utilities.
  3. Coordinate design work with geotechnical engineer, environmental engineer, land surveyor, and other consultants under contract with Homes for Good.
  4. Update Cost of Work estimate.
  5. Submit documents to Owner for approval.
- C. Contract and Construction Documents Services (See AIA Document B101 – 2017 Section 3.4)
1. Prepare construction documents including drawings and specifications.
  2. Incorporate design guidelines and requirements into documents.
  3. Acquire all necessary building permits and other jurisdictional approvals.
  4. Assist Owner in development of bidding and procurement information, form of agreement between Owner and Contractor and compile Conditions of the Contract for Construction and Specifications.
  5. Update Cost of Work as appropriate.
  6. Submit Construction documents to owner and request approval.
- D. Construction Phase Services (See AIA Document B101 – 2017 Section 3.6)
1. Conduct specified number of site visits to evaluate construction.
  2. Conduct inspection and testing as required.
  3. Respond to RFIs.
  4. Review and certify amounts due to Contractor and submittal schedule.
  5. Authorize minor changes in work.
  6. Prepare and distribute punch-lists.
  7. Determine dates of substantial completion.
- E. Post-Construction Services and Additional Services
1. Provide final images of the finished site plan and unit floor plans.
  2. Participate in one-year warranty inspection.
  3. Additional Services may be required and will be negotiated.

### **SECTION III: SELECTION PROCESS AND CONTACT REQUIREMENTS**

The intent of this Request for Proposals is to select 3 firms to enter into Contracts to provide design services as described in the above Scope of Work for Architect/Engineering Price Agreement. In addition, the Agency will

select one of these firms to provide architectural, engineering and other necessary services for the 2020 Permanent Supportive Housing Project. Please clearly describe if your firm has the capacity to provide immediate services for the 2020 PSH Project. Qualified and experienced professionals are invited to submit a proposal in accordance with requirements outlined below:

A. Three (3) copies of all materials and one USB flash drive containing a PDF file of the entire proposal must be received by Homes for Good no later than 4:00 p.m. January 8, 2020. Late proposals will not be accepted.

B. Mail or deliver proposals to:

Mr. Steve Ochs  
Homes for Good Housing Agency  
Real Estate Development Director  
177 Day Island Road  
Eugene, Oregon 97401

Faxed or emailed proposals will not be accepted.

C. Please limit submission to 20 double-sided pages (not including front and back cover pages and exhibits). Submittals shall be tabulated in separate sections and labeled to match the requirements of Section IV. All materials shall be in 8.5" x 11" format.

D. All preparation costs incurred by the Proposer in developing proposals, presentations, demonstrations or any other activity in responding to the RFP are the sole responsibility of the Proposer and will not be reimbursed by Homes for Good. "All proposals submitted are the property of Agency, thus subject to disclosure pursuant to the public records law, as qualified by ORS 279C.107. Accordingly, proposals received and opened shall not be available for public inspection until after Agency has awarded and executed Architect/Engineer Price Agreements. Thereafter, except for information marked "Proprietary," all documents received by Agency shall be available for public disclosure. Agency will attempt to maintain the confidentiality of materials marked "Proprietary" to the extent permitted under the Oregon Public Records law."

E. Additionally, Homes for Good may award a Price Agreement and thereafter issue task orders for all or a portion of planned developments, at the discretion of Homes for Good. For larger projects, the Agency will select a consultant for each individual work order or task order through a shortened Request for Proposals (RFP) for each project. Further information requested through the shortened RFP will include but not be limited to:

- Firm Experience specific to the proposed project
- Capacity and availability to execute the proposed project in required timeframe
- Past Performance on Homes for Good Projects
- Other factors or experience that make a firm the most advantageous one to work with on the specific project

The Agency intends to equitably distribute the work between the selected firms to a reasonable extent but will not make this the primary factor in selection of a firm on a specific project.

F. No Pre-Proposal Conference will be held for selection process. Requests for additional information or clarification should be directed towards Steve Ochs at (541) 682-2530 or [sochs@homesforgood.org](mailto:sochs@homesforgood.org). All questions must be submitted by 5:00 PM on December 27, 2019. Answers will be provided to all interested respondents via email in a timely manner. If any query results in an addendum to this RFP, the addendum will be issued to prospective respondents no later than January 2, 2020. Do not contact any other Homes for Good Board Member or staff member, or the property owner or current tenants, to discuss this project in any way during the RFP selection process.

Agency is using a qualifications based selection (QBS) process as mandated for contracts anticipated to exceed \$100,000 by ORS 279C.110. As a result, selection of the most qualified candidates will be made without regard to the price of the services. Only after selection of the most qualified candidates will Agency and selected candidates enter into contract negotiations for pricing proposals.

The Architect will be selected on the basis of several factors, including, but not limited to: experience, capacity to perform work, staff qualifications, professional record, familiarity with this type of work, and interview (if necessary). Homes for Good will carry out the following process to rate proposals and negotiate an agreement for professional services:

- Written proposals submitted in accordance with this RFP will be evaluated by a committee of Homes for Good staff and/or project consultants.
- The committee will rate the proposals according to the selection criteria outlined below and select top firms. The committee will rate the proposals separately for the Price Agreement Architect Pool and the 2020 Permanent Supportive Housing Project. It is likely but not assumed that the successful respondent for the Permanent Supportive Housing Project will also be a successful respondent to the Price Agreement RFP. Interviews may be held, if necessary, to make a final selections and recommendations. The selection process will prioritize the 2020 Permanent Supportive Housing Project followed by the Architect/Engineer Price Agreement Selection.
- Based on the ratings of the written proposals and interviews, the committee will recommend to the Homes for Good Executive Director a ranked list that meets the qualifications described in this RFP, for both the 2020 Permanent Supportive Housing Project and the Architect/Engineer Price Agreement
- Agency intends to first negotiate a contract with the highest-ranking firm for the 2020 Supportive Housing Project. Once this contract is successfully negotiated, the Agency will begin negotiating a contract with at least 3 of the highest-ranking candidates for the Architect/Engineer Price agreement. Agency shall direct negotiations toward obtaining written agreement on the A/E's performance obligations, a payment methodology that is fair and reasonable to Agency, and any other provisions Agency believes to be in Agency's best interest to negotiate.
- If Agency and one or more of the selected candidates are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to Agency, Agency shall, either orally or

in writing, formally terminate negotiations with one or more of the selected candidates. Agency may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or Agency terminates this RFP.

- It is the desire of Agency to have a contract in place no later than January 17<sup>th</sup> for the 2020 Permanents Supportive Housing Project and Architect/Engineer Price Agreements in place no later than January 31<sup>st</sup> 2020. Executive Director's final recommendations for the award of three or more price agreements in the form attached will be presented to the Board.

## **SECTION IV: SUBMITTAL REQUIREMENTS & EVALUATION CRITERIA**

Responses to the following items must be provided following the format described and should be prepared simply and economically. Homes for Good reserves the right to reject all proposals or to request clarification of proposals during analysis, selection, and award proceedings. In addition to the following, please include a cover letter that describes your Firm's design philosophy and interest in affordable housing, and is signed by an individual who is authorized to bind the Respondent contractually. The signature must indicate the title or position that the individual holds in the firm.

A. Architectural & Consultant Team. **(25 points)** Provide a brief description of your firm's history, size, and its capabilities related to its ability to succeed with provision of these services. Professional credentials should be related to the services described in this RFP. Please provide a minimum of three owner references regarding your experience. Describe the types of projects that you perform and the relative number (and dollar value) of each. Identify staff who would be working with Homes for Good and their relevant project experience. Provide name and experience of primary contact.

**If your firm would like to be selected for the 2020 Permanent Supportive Housing Project, please specifically address firm experience with PSH projects.**

*This section will be scored on the overall experience, expertise and qualifications of Architectural Firm as related to the services described in this RFP.*

B. Project Experience. **(30 points)** Describe experience with affordable housing projects including but not limited to Urban/Rural projects, Permanent Supportive Housing, Mixed-use developments, Family Housing, Senior and Disabled Housing, Multi-generational housing, tiny homes, and workforce housing. Provide a list and description of relevant projects and indicate all new affordable housing projects carried out in the last 5-10 years that may be relevant to this RFP.

**If your firm would like to be selected for the 2020 Permanent Supportive Housing Project, please specifically address experience with design and construction of units intended for chronically homeless individuals or families at risk of homelessness. Please also address experience in design of spaces for service provision to these target populations. List and describe any specific PSH projects carried out in the last 5-10 years.**



*This section will be evaluated on the related experience and record of performance with affordable housing projects.*

C. Predevelopment Design. **(15 points)** Describe your firm's approach to early design of projects. How does firm approach early research to ensure that issues which may impact the future development aren't missed?

**If your firm would like to be selected for the 2020 Permanent Supportive Housing Project, please also address experience with early research of design considerations for projects are intended to provide service delivery on-site.**

*This section will be evaluated on the firm's commitment to best practices and approach to early land use, zoning and infrastructure research. Maximum scoring can be achieved by providing specific examples and evidence of a proven track record of quality early design.*

D. Diversity, Equity and Inclusion Strategies **(10 points)**. Describe your firm's strategies to removing barriers and creating opportunities to participation of communities and populations facing disparities to include opportunities for Minority, Women and Emerging Small Businesses (MWESB).

*This section will be evaluated on firm's commitment to engaging diverse populations particularly those facing disparities. Maximum score will be given to firm's that have formally adopted Diversity, Equity and Inclusion strategies and MWESB strategies.*

E. Local Knowledge. **(10 points)** Describe your firm's knowledge and experience with the market and building conditions in Lane County as well as local rules and regulations. Describe experience working on projects that are subject to HUD Environmental Review.

*This section will be evaluated based on the architect's ability to show experience and knowledge about the conditions in Lane County, as well as local codes and regulations specific to the area and the specific project site.*

F. Staffing/Capacity. **(10 points)** Provide list of proposed staff for this job. Describe staff capacity and ability to provide pre-development assistance in an expedient manner. Resumes may be included in an Appendix and will not be counted within the page limit.

**If your firm would like to be selected for the 2020 Permanent Supportive Housing Project, please also address staff capacity to provide the necessary support and documents to allow the Agency to submit a funding application to Oregon Housing and Community Services in early to mid-Spring of 2020. At a minimum, this will require a schematic design with enough detail for project cost estimation in time for application submittal.**

G. Additional Data. **(No points)** Include any pertinent data not covered by the other sections. This section can be used to provide alternatives or additional information the firm feels would be useful during the review process.

H. Interview (if necessary). **(No points)** Homes for Good may conduct interviews with the top ranked Architectural Firms, if necessary. After completing one or more interviews, the evaluation committee may revise its scores based on the evaluation criteria in Section IV of this RFP. Interviews are not a separate evaluation criterion eligible for points, but the committee may consider the interview when revising its scores.

## SECTION V: SCHEDULE

The schedule for this RFP is as follows.

Task	Date
RFP Issue Date	12/18/2019
Deadline for Questions	12/27/2019, 5:00 PM
Issue Final Addendum (if necessary)	01/02/2020
<b>Proposals Due</b>	<b>01/08/20, 4:00 PM</b>
Committee Evaluation	01/09/2020-01/20/2020
Interview (if necessary)	01/20/2020-01/24/2020
Selection of Firm	01/24/2020
Contract Execution	01/31/2020

All above dates are subject to change, in Agency's discretion.

## SECTION VI: ADDITIONAL CONTRACT REQUIREMENTS AND PROVISIONS

Agency desires to enter into professional service price agreements with chosen awardees in the forms attached, which includes all services necessary for this position, whether or not the services are specifically outlined in this RFP.

- The selected proposers will be expected to sign the attached written agreements, which will incorporate this RFP and awardees' proposal. Attachment A is the contract applicable to the Price Agreement and Attachment B will be for pre-development services related to the Permanent Supportive Housing Project. Submittal of a proposal indicates a proposer's agreement with and intent to be bound by the terms of the attached contract. Any open terms in the attached contract will be completed, based upon awardee's proposal. Negotiations shall be limited to cost and any other terms Agency chooses to negotiate, in Agency's sole discretion.
- Agency anticipates payment for services on an hourly basis. However, Agency will also consider alternative proposals. Agency reserves the right to negotiate a compensation package that is fair and reasonable to Agency, as determined solely by Agency.
- It is anticipated that Homes for Good will enter into a three (3) year agreement, which thereafter may be extended upon written consent of both parties for up to two (2) additional one (1) year terms.

- The agreement requires that awardee will comply with all applicable federal and state laws, rules and regulations.
- The agreement requires that awardee will comply with all applicable federal and state laws, rules and regulations.

## **SECTION VII: HOMES FOR GOOD PROTEST CONTACT AND PROCESS**

A. RFP Protest or Request for Change. Proposers may comment on or protest any provisions of this Request for Proposals that they believe limit competition, and/or may protest any of its specifications or proposed contract terms. Comments should be sent to:

Kurt von der Ehe,  
Capital Projects Manager  
Homes for Good Housing Agency  
177 Day Island Road,  
Eugene, Oregon 97401

B. RFP Protest Procedures. Comments must be in writing and received at the Homes for Good office at least seven calendar days before the RFP submission deadline. Submittals must explain the reasons for the request/protest and proposed changes to the RFP or contract. Submittals will be reviewed by the Homes for Good Capital Projects Manager. If the comments are determined to be timely submitted and valid, an addendum to the RFP will be issued to all applicants. The appeal procedures and limits set forth herein are directory and not mandatory and Agency's failure to follow or complete the action in the manner provided shall not invalidate Agency's decision.

C. Award Protests. The selected firms will be announced by Homes for Good in an email sent to all Proposers. Proposers not recommended for award by the evaluation committee may protest the award to the Executive Director. Homes for Good's Procurement Policy describes the right of appeal as follows:

D. Any appeal must be made in writing, be received within seven (7) days after issuance of Agency's selection notice, clearly state the grounds for the appeal, and claim that the protesting Proposer is one of the highest ranked Proposers because the higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a protester must claim that all higher ranked Proposers, or a sufficient number of higher ranked Proposers are not qualified to perform the services requested under this RFP. Any appeal which does not comply with the applicable procedures shall be rejected.

E. The Executive Director shall evaluate any protest before rendering a decision and shall state the conclusions reached and reasons in writing. Any decision to overturn the award shall be based on a finding that protester is one of the highest ranked Proposers entitled to award.

## **SECTION VIII: ATTACHMENT**

Attachment A: A/E Price Agreement

Attachment B: Professional Services Agreement

## ATTACHMENT A

# 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 solicitation for proposals from A/E firms pursuant to Agency Public Contracting Rule 137-048-0270 to establish a pool of 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 – Oregon Personal Services Public Contracting Code Requirements
- Exhibit C – Request for Proposal
- Exhibit D – A/E's Proposal and Schedule of Rates and Charges

### C. AGREEMENT

#### 1. Term and Authorization to Proceed

- 1.1 The term of this Agreement shall be from its execution to \_\_\_\_\_, 20\_\_\_\_, for an initial three (3) year term. Thereafter, it may be extended for two (2) additional one (1) year terms upon written consent of both parties. Such extension(s) will consider adjustment to A/E's schedule of charges attached within Exhibit D to this Agreement.
- 1.2 Execution of this Agreement by Agency will be authorization for A/E to proceed with the work under the provisions of this Agreement, as directed by Agency.

#### 2. Scope of Work

- 2.1 A/E shall provide all services and deliver all materials as specified in the attached Exhibits A, C and D, which are hereby incorporated into this Agreement by this reference, and as may be described by future addenda to this Agreement.
- 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 shall be used as the sole basis to authorize all Work related to this Agreement. Task orders shall be issued by Agency and assigned to A/E based upon A/E's availability to complete the Work on Agency's timeline, A/E's specialized expertise, and, where Task Order compensation will not exceed \$100,000, on price. Task Orders are subject to all terms of this Price Agreement and shall establish the assigned Scope of Work, delivery schedule, and total compensation, including reimbursables. Task Orders that do not meet these requirements shall not bind the parties and no further compensation will be paid for any Work performed.

## ATTACHMENT A

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.

### **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 D.
- 3.2 Invoices.
  - a. Invoices for services of A/E shall be billed to Agency 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.

## ATTACHMENT A

4.3 A/E is not eligible for any Agency fringe benefit plans.

### 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 transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, 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 facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

Agency: [CONTACT NAME], [TITLE]  
Homes for Good  
177 Day Island Road  
Eugene, OR 97401  
Email: \_\_\_\_\_  
Phone: (541) \_\_\_\_\_  
Fax: (541) \_\_\_\_\_

A/E: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

### 6. Indemnification

6.1 Liability of A/E for Claims Other Than Professional Liability:

For claims other than professional liability, A/E shall indemnify, hold harmless, and defend Agency and its officers, agents, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits, to the extent resulting from or arising out of A/E's negligent activities, performance and/or fault of A/E, its employees, representatives, or subconsultants in connection with this Agreement or the Work to be performed hereunder. Nothing herewith shall be construed to require indemnification of Agency attributable to its own negligence, or for acts outside the control of A/E or the control of anyone acting on A/E's behalf in connection with, or incidental to, this Agency.

6.2 Liability of A/E for Claims for Professional Liability:

For claims for professional liability, A/E shall defend, save, and hold harmless Agency, its officers, agents and employees, from all claims, suits, or actions to the extent arising out of the professional negligent acts, errors or omissions of A/E, its subconsultants, agents or employees in the performance of professional services in connection with this Agreement or the Work to be performed hereunder.

6.3 Liability of Agency:

Agency shall hold A/E, its officers, agents and employees harmless from and indemnify them for any and all liability, settlements, loss, costs and expenses in connection with any actions suit, or claim caused by Agency's negligent acts, omissions, activities or services by Agency, its agents or employees.

6.4 Liability Shared by A/E and Agency:

If negligence, errors or omissions of both A/E and Agency (or person identified above for whom each is liable) is a cause of such claims, suits, or actions, the loss, cost, or expense shall be shared between A/E and Agency in proportion to their relative degrees of negligence, errors, or omissions and the right of indemnity shall apply for such proportion.

## ATTACHMENT A

### 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):
    - \$2,000,000 – each occurrence (bodily injury)
    - \$2,000,000 – general aggregate
    - \$1,000,000 – property damage, contractual, etc.
    - \$1,000,000 – umbrella liability coverage

Coverage shall also include contractual liability coverage for the indemnity provided under this Agreement.
  - b. Automobile Liability insurance limit shall not be less than \$1,000,000 combined single limit per accident.
  - 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.
  - 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 \$2,000,000 per each claim, incident or occurrence. Such policy will be on a claims made basis and will have an extended claims reporting period of five (5) years after final completion.
  - 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(e) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Agreement for a duration of two (2) 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.
- 7.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to Agency and that are qualified to do business in the State of Oregon.



## ATTACHMENT A

- 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**

Neither Agency nor A/E may assign any of its responsibilities under this Agreement without prior written consent from the other party, which consent shall not be unreasonably withheld. 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 Exhibit D.

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

## ATTACHMENT A

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 for Convenience

- 13.1 This Agreement may be terminated by mutual consent of the parties upon written notice.
- 13.2 Agency may terminate all or part of this Agreement upon determining that termination is in the best interest of Agency by giving seven (7) days' prior written notice of intent to terminate, 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. Upon prior written notice to Agency, Agency may agree to 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 all 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.
- 13.4 Agency may unilaterally order A/E to suspend all or part of the services under this Agreement. If Agency suspends certain services under this Agreement and later orders A/E to resume those services, A/E will be entitled to reimbursements for the costs actually and reasonably incurred, if any, in re-starting the suspended services.
- 13.5 A/E may terminate this Agreement for its own convenience upon 120 days prior written notice to Agency.

### 14. Termination for Cause

- 14.1 Agency may terminate this Agreement, or specific Work items authorized under 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

## ATTACHMENT A

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.

14.2 A/E may terminate all or part of this Agreement for cause if Agency breaches the provisions of this Agreement or requests A/E to perform Work in violation of applicable laws, ordinances, or generally accepted engineering practices and standards in effect when the services are rendered, upon 14 days written notice to Agency.

14.3 Upon termination under Section 14.1, A/E shall be entitled to payment in accordance with the terms under Section 13.3.

### 15. Termination for Default

15.1 Either Agency or A/E may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice 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.

### 16. Remedies

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

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 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.

## ATTACHMENT A

### 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, or national origin.

### 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 B 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 of Care**

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

- a. 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.
- b. A/E has the capabilities and resources necessary to perform the obligations of this Agreement.
- c. 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.

20.2. The standard of care applicable to A/E's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed.

20.3. While exercising the standard of care applicable to A/E's services, if A/E's performance of services hereunder reasonably requires A/E to rely on information provided by other parties (excepting A/E's subconsultants), A/E shall not be required to independently verify

## ATTACHMENT A

the validity, completeness or accuracy of such information unless otherwise expressly engaged to do so in writing by Agency.

### **21. Drawings, Specifications and Other Documents; Opinions of Cost**

- 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.
- 21.2 In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for Work under this Agreement, A/E has no control over unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; quality of performance by operating personnel or third parties; and other operational factors that may materially affect the ultimate project cost or schedule.

### **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.

### **23. Agreement Performance**

A/E and Agency shall at all times carry on the services and obligations 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. The parties agree that time is of the essence under this Agreement.

### **24. Access to Records**

- 24.1 For not less than three (3) 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, at Agency's cost for retrieval and reproduction.
- 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, at Agency's cost for retrieval and reproduction.

### **25. Representations and Warranties**

A/E represents and warrants to Agency that (1) A/E has the power and authority to enter into and perform this Agreement, (2) when executed and delivered, this Agreement shall be a valid and binding obligation of A/E enforceable in accordance with its terms, (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, (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. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

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### **26. Agency Obligations**

- 26.1 Agency shall provide full information in a timely manner regarding requirements for and limitations on projects and Task Orders.
- 26.2 Agency shall establish and update, if necessary, overall project budgets, including engineering and construction costs.
- 26.3 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.
- 26.4 Agency shall furnish all testing as required by law or the Agreement documents.
- 26.5 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.
- 26.6 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, or if Agency becomes aware of any development that affected the scope or timing of A/E's services.
- 26.7 Agency shall pay A/E in accordance with Section 3 and Exhibit D 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.
- 26.8 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.
- 26.9 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.
- 26.10 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.
- 26.11 Timely review: Agency will examine A/E's studies, reports, sketches, drawings, specifications, proposals, and other documents (and obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, or other consultants to the extent that the Agency deems appropriate), and render in writing decisions required by Agency in a timely manner.

### **27. Arbitration**

- 27.1 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

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the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.

27.2 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.

27.3 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, reject arbitration and require the other party to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

### **28. 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.

### **29. Attorney Fees**

If 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 costs and disbursements. Further, if it becomes necessary for Agency to incur 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 losing party.

### **30. 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.

### **31. 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

## ATTACHMENT A

Agreement in accordance with its terms. A/E shall not be liable for any consequential damages under this Agreement.

### **32. 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 Secretary of State Corporation Division 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.

### **33. 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.

### **34. 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. In any such event, A/E's schedule, and compensation for fixed-fee or for hourly-not-to-exceed projects, shall be equitably adjusted.

### **35. 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.

### **36. 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.

### **37. 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.

### **38. 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.



## ATTACHMENT A

### 39. Authority

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

### 40. Certificate of Compliance with Oregon Tax Laws

By executing this Agreement, A/E certifies under penalty of perjury that A/E is, to the best of A/E's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

HOMES FOR GOOD

A/E

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

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

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

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

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

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

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

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

## ATTACHMENT A

### 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.
- 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

## ATTACHMENT A

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.

## ATTACHMENT A

### Exhibit B

#### Oregon Public Contracting Requirements

##### ORS CHAPTERS 279B AND 279C REQUIREMENTS

- (1) Consultant shall pay promptly, as due, all persons supplying labor or materials for the prosecution 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.
- (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 316.617.
- (5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Consultant or a Subcontractor by any person in connection with the contract as such claim becomes due, the Agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Consultant by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Consultant or his surety from his or its obligation with respect to any unpaid claim. If the Agency is unable to determine the validity of any claim for labor or material furnished, the Agency may withhold from any current payment due Consultant an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Consultant, of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- (7) Consultant shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, *et seq.*).
- (8) 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.
- (9) All subject employers working under the Consultant are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.
- (10) 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.
- (11) 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.

## ATTACHMENT A

- (12) Consultant certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Consultant certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.

ATTACHMENT A

**Exhibit C**

**Request for Proposal**

ATTACHMENT A

**Exhibit D**

**A/E's Proposal**

## ATTACHMENT B



177 Day Island Rd., Eugene, OR 97401 • PH 541-682-3755 • FAX 541-682-3411  
300 West Fairview Dr., Springfield, OR 97477 • PH 541-682-4090 • FAX 541-682-3875

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### PROFESSIONAL SERVICES AGREEMENT

FOR [INSERT PROJECT NAME]

This Agreement is entered into this [ ] day of [ ], 2019 (Effective Date), by and between Homes for Good Housing Agency ("Agency") and [ ] ("Contractor"), to provide [ ] services for [ ] ("Project") located at [ ]. All terms of the following exhibits are hereby incorporated by reference into this Agreement, and Contractor agrees to comply with each:

- Exhibit A – Scope of Work
- Exhibit B – Professional Fees
- Exhibit C – Insurance Coverage Required
- Exhibit D – Public Contracting Requirements

WHEREAS, Agency has a need for the type of professional services provided by Contractor;

WHEREAS, Contractor agrees that it is qualified to perform the services and desires to provide those services to Agency;

NOW, THEREFORE, THE PARTIES AGREE:

1. Term. The Term of this Agreement shall extend from the Effective Date, above, to [ ], 2019 or as stated in the Scope of Work, or earlier terminated pursuant to provisions of this Agreement.
2. Scope of Work.
  - 2.1 Generally, Contractor shall provide Agency all materials and services associated with providing [ ] services for the Project.
  - 2.2 Specifically, Contractor shall provide the [ ] services for the Project, as specified in the attached **Exhibit A**, "Scope of Work."
  - 2.3 If Agency requests Contractor to expand the Scope of Work, Contractor will submit a requested change in work and price, if any, in writing to Agency with associated explanations for the changes. All modifications to the Scope of Work shall be in writing and signed by an authorized representative of each party before Contractor undertakes any such work or incurs associated costs. Any additional work will be provided on a time and expense basis up to an agreed upon not-to-exceed price, which will be added to the compensation set in Section 3 of this Agreement.
3. Compensation.



- 3.1 In consideration for Contractor's performance of the Scope of Work, Agency agrees to pay, and Contractor agrees to accept, Compensation in the maximum not to exceed amount of [REDACTED], based upon the fees set forth in the attached **Exhibit B**, "Professional Fees." Contractor shall not perform and Agency shall not pay for Contractor's services which are outside the Scope of Work, unless this Agreement is amended per Sections 2.3 and 16.
- 3.2 Agency shall not be obligated to pay any amount greater than that stated in Section 3.1. Contractor shall perform such additional work as may be necessary to correct errors in the services required under this Agreement without undue delays and without additional cost.
- 3.3 Invoices for Contractor's services shall be based upon Contractor's fees and hourly rates as set forth in **Exhibit B**. These amounts shall be billed to the Agency in summary form, detailing the previous month's fees and costs and the percentage of the Project completed to date, on or about the 15th day of each month for all services performed through the last day of the prior month. Backup invoices, supporting documentation, and records evidencing the progress made on the Project to date shall be provided by Contractor at Agency's request.
- 3.4 Payments.
- 3.4.1 Agency will review Contractor's invoice and within ten (10) days of receipt notify Contractor in writing if there is a disagreement or dispute with the invoice. If there are no such disputes, Agency shall pay the invoice amount in full within thirty (30) days of invoice send date.
- 3.4.2 If Agency fails to make any payment due Contractor for services and expenses within thirty (30) days of the send date on Contractor's invoice therefore, late fees will be added to amounts due Contractor at the rate of 1.0 percent (1%) per month from original invoice date. In addition, Contractor may, after giving seven (7) days' written notice to Agency, suspend services under this Agreement until Contractor has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.
- 3.4.3 Agency shall reimburse Contractor for pre-approved expenses reasonably incurred by Contractor in furtherance of its duties under this Agreement. Such expenses may include mileage, meals, or hotel accommodations. Agency shall not reimburse for any expense, unless Contractor first obtains Agency's prior written authorization before incurring such expense. Contractor will provide appropriate documentation and receipts of such expenditures when submitting them for reimbursement.
4. Covenants. Contractor agrees to faithfully and diligently perform the duties required by the Agreement and will not engage in any activity that is or may be contrary to the welfare, interest, or benefit of the Agency. At all times during the term of this

Agreement, Contractor shall have all licenses and permits necessary to perform the Scope of Work.

5. Agency Responsibilities.

- 5.1 In addition to Agency's payment obligations, as set forth in Section 3.4 above, Agency shall report the total amount of all payments to Contractor, including any expenses, in accordance with federal Internal Revenue Services and State of Oregon Department of Revenue Regulations.
- 5.2 Agency shall make all provisions for Contractor to enter upon public and private property as necessary to perform Contractor's duties under this Agreement. Agency shall also provide all licenses and permits necessary to perform this Agreement.

6. Independent Contractor.

- 6.1 Contractor is an independent contractor for all purposes and is not entitled to any compensation other than the compensation provided for under this Agreement. The performance of this Agreement is at Contractor's sole risk. Contractor is not an officer, employee or agent as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to any claims between Agency and Contractor.
- 6.2 While Agency reserves the right to set various schedules and evaluate the quality of Contractor's completed work, Agency cannot and will not control the means and manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work provided for under this Agreement.
- 6.3 Contractor is responsible for all federal and state taxes applicable to compensation and payment paid to Contractor under this Agreement and will not have any amounts withheld by Agency to cover Contractor's tax obligations. Any subcontractor hired by Contractor is similarly responsible.
- 6.4 Contractor is not eligible for any Agency fringe benefit plans.
- 6.5 It is recognized that Contractor may or will be performing work during the term for other parties and that Agency is not the exclusive user of the services that Contractor provides.
- 6.6 Contractor, its subcontractors, if any, and all employees working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires them to provide Worker's Compensation coverage for all their subject workers or be exempt under ORS 656.126.

7. Federal Funds. If payment under this Agreement is to be charged against federal funds, Contractor is not currently employed by the federal government and the amount charged does not exceed Contractor's normal charge for the type of service provided.

8. No Benefits. Contractor will not be eligible for any federal Social Security, state Worker's Compensation, unemployment insurance or Public Employees Retirement System benefits from payments made pursuant to this Agreement, except as a self-employed individual.
9. PERS. Contractor is not a member of the Oregon Public Employees Retirement System and is not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
10. Indemnity. To the extent permitted by law, Contractor shall protect, defend, indemnify and hold the Agency harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of Agency.
11. Insurance. Contractor shall provide all insurance called for on **Exhibit C**, "Insurance Coverage Required". Carrier shall be rated A- or better by A.M. Best, and authorized to do business in the State of Oregon.
  - 11.1 Contractor shall: (a) provide the Agency with a copy of a current Certificate of Insurance with the coverages listed on **Exhibit C** to: Homes for Good Housing Agency, [REDACTED], 177 Day Island Road, Eugene, OR 97401; (b) include Agency as an additional insured for insurance required in **Exhibit C**; and (c) provide Agency with 30-day notice prior to cancellation.
  - 11.2 Should any policy be canceled before final payment by Agency to Contractor and should Contractor fail to immediately procure other insurance as specified, Agency reserves the right to procure such insurance and to deduct the cost thereof from any sum due Contractor under this Agreement. Any insurance bearing any adequacy of performance shall be maintained after completion of the Agreement for the full guaranteed period.
  - 11.3 Responsibility for payment of damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from Contractor's operation under this Agreement.
12. Public Contracting Requirements. Contractor shall comply with all federal, state and local laws and ordinances applicable to the work done under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contract Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth on **Exhibit D**, "Public Contracting Requirements."
13. Non-Collusion. By execution of this Agreement, Contractor certifies under penalty of perjury that Contractor and all of its employees are independent of Agency and

Contractor has not employed any person to solicit or secure this Agreement for a commission, percentage, brokerage or contingent fee.

14. Standard of Care. The standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professionals performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation, and shall perform such additional work as may be necessary to correct errors required under this Agreement without undue delay and without additional costs.
15. Work Product. All work performed by Contractor and compensated by Agency pursuant to this Agreement shall be the property of Agency upon full compensation for that work performed or document produced by Contractor, and it is agreed by the parties that such documents are works made for hire. Contractor 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 materials furnished to Agency by Contractor, without Contractor's involvement or consent, then Contractor shall not be responsible for the materials.
16. Amendment. Modifications or amendments to this Agreement shall be effective only if in writing and signed by an authorized representative of each party.
17. Dispute Resolution. The parties shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, the parties shall submit all disputes, including interpretation, rescission, validity or enforcement, except for claims which may have been waived by the making or acceptance of final payment, to arbitration in accordance with the Oregon Uniform Arbitration Act, ORS 36.600, et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lane County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties. Arbitrator shall establish rules for the arbitration which include the following conditions:
  - 17.1 The location of the arbitration shall be in Eugene, Oregon;
  - 17.2 The Agreement is to be governed by and under the laws of the State of Oregon;
  - 17.3 Each party shall bear its own costs (except arbitration filing costs), witness fees, and attorney fees. 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 costs and disbursements; and
  - 17.4 Judgment upon award rendered by the Arbitrator may be entered in a court in Lane County, Oregon.

18. Continuation During Disputes. Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute and Agency shall make payments as required by the Agreement for undisputed portions of work.
19. Consent to Jurisdiction. The parties hereby consent to jurisdiction of the Lane County Circuit Court, Lane County, Oregon, over all legal matters pertaining to this Agreement, including, but not limited to, its enforcement, interpretation or rescission.
20. Termination.
- 20.1 Termination for Convenience. This Agreement may be terminated by mutual consent of the parties upon written notice at any time. In addition, Agency may terminate all or part of this Agreement for any or no reason by giving seven (7) days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Upon termination under this section, Contractor shall be entitled to payment in accordance of the terms of this Agreement for work completed and accepted before termination, less previous amounts paid in any claims Agency has against Contractor. Contractor shall submit an itemize invoice for all uncompensated work completed before termination and all Agreement close-out costs actually incurred by Contractor. Agency shall not be liable for any costs invoiced later than thirty (30) days after termination, unless Contractor can show good cause beyond its control for the delay.
- 20.2 Termination for Default.
- 20.2.1 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, the Contractor 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, the Contractor must give the Agency written notice of the breach and of the Contractor's intent to terminate. If the Agency has not entirely cured the breach within fifteen (15) days of the date of the notice, then the Contractor may terminate the Agreement at any time thereafter by giving the Agency a written notice of termination.
- 20.2.2 If the Contractor fails to perform in the manner called for in this Agreement or if the Contractor fails to comply with any other provisions of the Agreement, the Agency may terminate this Agreement for default. Termination shall be affected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor shall be paid the Agreement price only for services performed in accordance with the manner of performance as set forth in this Agreement.
21. Remedies. In the event of breach of this Agreement, the parties shall have the following remedies:

- 21.1. If terminated under Section 20.2 by Agency due to a breach by Contractor, Agency may complete the work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the compensation to Contractor as provided under this Agreement, then Contractor shall pay to Agency the amount of the reasonable excess.
- 21.2. In addition to the above remedies for a breach by Contractor, Agency also shall be entitled to any other equitable and legal remedies that are available.
- 21.3. If Agency breaches this Agreement, Contractor's remedy shall be limited to termination of the Agreement and receipt of Agreement payments to which Contractor is entitled.
- 21.4. Agency shall not be liable for any indirect, incidental, consequential, or special damages under the Agreement or any damages arising solely from termination the Agreement in accordance with its terms.
22. Disengagement Agreement. Upon receiving a notice of termination, and except as otherwise directed in writing by Agency, Contractor will continue to perform services to the date agreed upon as the termination date.
23. Force Majeure. Contractor shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such failure 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.
24. Waiver. Failure of the Agency to enforce any provision of the Agreement shall not constitute a waiver or relinquishment by the Agency of the right to such performance in the future nor of the right to enforce that or any other provision of this Agreement.
25. Confidentiality. Contractor shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Agreement. Contractor warrants that its employees assigned to this Agreement shall maintain necessary confidentiality. Contractor shall require similar agreements from any Contractor subcontractors to maintain the confidentiality of Agency information.
26. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

AGENCY:

Homes for Good Housing Agency  
177 Day Island Road  
Eugene, OR 97401

CONTRACTOR:


27. Assignment. Contractor shall not assign or subcontract any of its obligations under this Agreement without Agency's prior written consent, which may be granted or withheld

in Agency’s sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. Agency’s consent to any assignment or subcontract shall not release Contractor from liability under this Agreement or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract, and Agency shall incur no obligation other than its obligations under this Agreement.

- 28. Severability. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 29. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.
- 30. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Project.
- 31. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.

AGENCY

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

Jacob Fox, Executive Director  
Homes for Good Housing Agency

CONTRACTOR

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

## EXHIBIT A

### Scope of Work



EXHIBIT B

PROFESSIONAL FEES

## EXHIBIT C

### INSURANCE COVERAGE REQUIRED

General Liability Insurance with a limit of no less than \$2,000,000 per occurrence and an aggregate limit of no less than \$4,000,000.

Homes for Good Housing Agency listed as additional insured.

Professional Indemnity Insurance (Errors & Omissions) \$1,000,000 minimum.

Workers' Compensation Insurance for Contractor's employees at no less than statutory limits.

Automobile Insurance with liability coverage at no less than statutory limits.

## EXHIBIT D

### PUBLIC CONTRACTING REQUIREMENTS

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution 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. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the Agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or their surety from their or its obligation with respect to any unpaid claim. If the Agency is unable to determine the validity of any claim for labor or material furnished, the Agency may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3).
- (9) The Contractor 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. ORS 279B.235(2).

(10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.

(11) The contract may be canceled at the election of Agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.

(12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385. Contractor represents and warrants that the contractor has complied with the tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants to continue to comply with the tax laws of this state during the term of the public contract. Contractor's failure to comply with the tax laws of this state before the contractor executed the public contract or during the term of the public contract is a default for which a contracting agency may terminate the public contract and seek damages and other relief available under the terms of the public contract or under applicable law. ORS 279B.045 and 305.385.

(13) Contractor certifies that it has not discriminated and will not discriminate against minorities, women, emerging small business enterprises or a business enterprise that is controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontractors. ORS 279A.110.

(14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.