

ATTACHMENT A – SAMPLE PRICE AGREEMENT

PRICE AGREEMENT resulting from RFP No. 7092

OREGON HOUSING AND COMMUNITY SERVICES PRICE AGREEMENT NO. [REDACTED] Professional Services and Related Services *A&E Price Agreements for Construction Observation and Analysis*

This “Price Agreement” or “PA” is between the State of Oregon, acting by and through its Oregon Housing and Community Services (“Agency” or “OHCS”) and [legal company name as provided to IRS (and DBA name if applicable)] a [REDACTED] corporation (“Contractor”). Agency and Contractor together are referred to as “Parties” and individually referred to as “Party.”

Agency’s designated Contract Administrator for this PA (“PA Administrator”) and Contractor’s contact for this PA are identified in Exhibit E, Contact Information and Key Persons. This PA sets forth the terms and conditions applicable to services that may be required under “Work Order Contracts” or “WOCs” entered into between the Parties under this PA. This PA does not guarantee that any WOCs will be entered between the Parties.

For purposes of this PA and any WOCs assigned under this PA:

- a) “business days” means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) “calendar days” means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) “days” means calendar days;
- d) “Professional Services” means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100, ORS 279C.110 and ORS 279C.120];
- e) “Related Services” has the meaning provided in ORS 279C.100; and
- f) “State” means State of Oregon.

PART I. GENERAL PRICE AGREEMENT PROVISIONS

The following provisions apply to this PA:

- 1. Effective Date; Expiration and WOC Assignment Period; Termination.**
 - a. Effective Date.** This PA shall become effective on the date this PA has been signed by the Parties and all required State of Oregon approvals have been obtained.
 - b. Expiration and WOC Assignment Period**
 - i. Expiration.** This PA shall have a limited WOC assignment period but this PA will not expire until the later of the following occurs: (1) the expiration of the WOC assignment period, or (2) the expiration or termination of all WOCs assigned under this PA.
 - ii. WOC Assignment Period.** Unless this PA is sooner terminated, the WOC assignment period ends 5 years from the effective date of this PA. All WOC assignments are tentative until

negotiations are successfully completed, all required signatures have been obtained on the WOC, and Agency has issued a notice to proceed (“NTP”) to Contractor.

c. Termination

- i. Termination by Mutual Consent.** This PA may be terminated at any time by mutual written consent of the Parties.
- ii. Agency's Right to Terminate for Convenience.** Agency may, at its sole discretion, terminate this PA, in whole or in part, upon 30 calendar days written notice to Contractor.
- d. Effect of Expiration or Termination.** Expiration or termination of the PA shall not result in expiration or termination of any WOC issued before PA expiration or termination. Such WOCs shall remain in effect, and may be amended, until the particular WOC expires or terminates in accordance with its terms.

2. Scope of Services. Contractor shall perform all services and deliver all deliverables as described in any WOCs executed under this PA (the “Services”). The Services included in a WOC must be within the Scope of Services set forth in Exhibit A, which is attached and incorporated into this PA by this reference, which, although not physically attached, is incorporated into this PA by this reference with the same force and effect as though fully set forth herein, as provided here and below. Contractor agrees to perform the Services and provide the deliverables required under each WOC in accordance with the terms and conditions for WOCs as set forth in this PA. Contractor agrees that Agency may amend the Scope/Menu of Services from time to time.

3. Compensation

- a. Maximum Not-to-Exceed (“NTE”) Amount.** There is no guarantee that any specific amount of work or overall dollar amounts will be assigned via WOCs under this PA. This PA does not have an individual NTE. Instead, the collective maximum NTE compensation for all the WOCs issued under all of the PAs awarded from RFP #7092, including any allowable expenses, is \$_____. Agency will use this shared maximum NTE amount for assignment of WOCs under all of the PAs.
- b. Method of Compensation.** The payment methodology and options available for each WOC are described in Exhibit A. Each WOC will identify and incorporate from Exhibit A the agreed-upon payment methodology and options applicable to the specific WOC.

4. Price Agreement Documents.

a. Exhibits Attached and Incorporated

This PA includes the following exhibits, each of which is attached and incorporated into this PA as though fully set forth herein:

- Exhibit A – Scope of Services
- Exhibit B – Payment Provisions
- Exhibit C – Work Order Contract
- Exhibit D - Insurance
- Exhibit E – Key persons and Contact Information
- Exhibit F - Invoice

b. Exhibits Incorporated by Reference from Website(s)

This PA includes the most current versions of the following exhibits (as may be revised from time to time by Agency), each of which, although not physically attached, is incorporated by this reference into this PA with the same force and effect as though fully set forth herein:

EACH WOC INCORPORATES APPLICABLE PROVISIONS FROM THE THEN MOST CURRENT VERSIONS OF THE FOREGOING EXHIBITS AT THE TIME THE WOC IS EXECUTED. WOCS MAY EXCLUDE SOME EXHIBITS IN THEIR ENTIRETY IF THEY ARE NOT APPLICABLE TO A PARTICULAR WOC.

5. Amendments to PA. Agency may amend this PA to the extent permitted by applicable statutes and administrative rules. Except as provided in Section 5.c below, any such amendments shall not be effective unless in writing, signed by the parties, and all approvals required by applicable law have been obtained.

a. Reserved.

b. Reserved.

c. Changes via Electronic Amendment. The following amendments to this PA, when such amendments do not include changes to scope of work, may be accomplished by electronic amendments (sent via e-mail) that documents agreement by Contractor and Agency:

- (i) The addition of or change in Contractor's subcontractors approved by Agency;
- (ii) The addition of or changes to Salary and Billing Rates
- (iii) Correction of errors, inaccuracies and omissions in the cost schedules.
- (iv) Revisions to the WOC assignment period (within the limitations set forth in the PA.)
- (v) Revisions to designated PA Administrator.

Agency reserves the right to issue requirements for the electronic amendments, including but not limited to specific language that must be included to document agreement by Contractor and Agency.

6. Performance Evaluation: Agency may conduct performance evaluations on each assigned project and may conduct evaluations on each phase of a project. Poor performance on assigned projects may result in withholding of retainage and negatively impact Contractor's eligibility for WOC assignments (under this or other PAs) or selection under other Agency solicitations. Agency may conduct a separate solicitation near the end of the initial 5 years or at any time thereafter to replace firms that do not receive an extension of the WOC assignment period.

PART II. TERMS & CONDITIONS APPLICABLE TO AND INCORPORATED INTO WORK ORDER CONTRACTS, AND APPLICABLE GENERALLY TO THIS PRICE AGREEMENT.

The following provisions apply to and are incorporated into Work Order Contracts under this PA. The following provisions are also generally applicable to this PA, and where the context so requires, the reference in a provision to "Work Order Contract" or "WOC" shall be read to mean this PA for purposes of applying the provision to this PA:

1. Independent Contractor; Conflict of Interest; Responsibility for Taxes and Withholding; Contractor Oversight.

- a.** Contractor, by its signature on the PA and WOC, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>. Contractor shall perform all required Services as an independent contractor. Although Agency reserves the right (i) to determine the delivery schedule (as mutually acceptable to OHCS and Contractor) for the Services to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the

appropriate means and manner of performing the Services. Contractor is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265.

- b. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under the WOC and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Throughout the duration of the PA and any WOCs, Contractor shall submit an updated W-9 form (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>) to Agency whenever Contractor's backup withholding status or any other information changes. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under the WOC, except as a self-employed individual.
- c. Contractor shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other Contractors or contractors under contract with Agency who are performing services or construction work on projects within the scope of the WOC, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 1.d. provisions do not in any way revise or adjust Contractor's professional responsibility to report to Agency any information pertaining to a project, or to performance by other Contractors or contractors on a project, that would adversely affect Agency or a particular project, to the extent any such information may come to the attention of Contractor during the performance of Services within the scope of the WOC.

2. Subcontracts and Assignment; Successors and Assigns

- a. Contractor shall obtain Agency's written consent prior to entering into any subcontracts for any of the Services required by the WOC, or in any manner assigning, selling or transferring any of its rights or interest under the WOC or delegate any of its duties or performance under the WOC. In addition to any other provisions Agency may require, Contractor shall include, in any permitted subcontract under the WOC, contractual provisions that shall require any subcontractor (which may also be referred to as "Sub-Contractor") to comply with Part II Sections 5, 6, 7, 8, 9, 12, 19, and 24 of these WOC provisions and the limitations provided in Exhibit B, in the performance of the subcontractor's Services that are the subject of the WOC, as if the subcontractor were Contractor. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under the WOC, including with respect to any Services, whether performed or to be performed by Contractor or a subcontractor.
- b. The provisions of the WOC shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection a. above is void.

3. No Third Party Beneficiaries. Agency and Contractor are the only Parties to the WOC and are the only Parties entitled to enforce its terms. Nothing in the WOC gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in the WOC and expressly described as intended beneficiaries of the terms of the WOC.

4. Funds Available and Authorized; Payments. Contractor shall not be compensated for Services performed under the WOC by any other agency or department of the State of Oregon. Agency reasonably believes that, as of the effective date of the WOC, it has sufficient funds available and authorized for expenditure to finance the costs of the WOC within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payment of amounts under the WOC is contingent on Agency receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under the WOC. In the event Agency staff responsible for oversight of the WOC become

aware that sufficient funds are not available and authorized for expenditure to finance the costs of the WOC within Agency's biennial appropriation or limitation, Agency shall give prompt written notice to Contractor.

5. Representations and Warranties.

a. Contractor's Representations and Warranties.

Contractor represents and warrants to Agency, for this PA and the WOCs, that (i) Contractor has the power and authority to enter into and perform the WOC, (ii) the WOC, when executed and delivered is a valid and binding obligation of Contractor, enforceable in accordance with its terms, (iii) the Services under the WOC will be performed in accordance with the professional standard of care set forth in Section 6 below; (iv) Contractor is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Contractor is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the WOC.

b. Warranties Cumulative. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

6. Professional Standard of Care; Responsibility of Contractor; Design Within Funding Limit.

a. Professional Standard of Care.

Contractor shall perform all Services under the WOC in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

b. Responsibility of Contractor.

(i) Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Contractor under the WOC, and all of the foregoing shall also be in accordance with Contractor's approved Quality Plan. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.

(ii) Agency's review, approval or acceptance of, or payment for, the Services required under the WOC shall not be construed to operate as a waiver of any rights under the WOC or of any cause of action arising out of the performance of the WOC, and Contractor shall be and remain liable to Agency in accordance with applicable law for all damages to Agency caused by Contractor's negligent performance of any of the Services furnished under the WOC or negligent failure to perform any of the Services under the WOC.

(iii) The rights and remedies of Agency provided for under the WOC are in addition to any other rights and remedies provided by law.

(iv) If Contractor is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the WOC.

7. Ownership of Work Product.

a. Definitions. The following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the WOC.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Contractor is required to deliver to Agency pursuant to the WOC.

b. Work Product. All Work Product created by Contractor pursuant to the WOC, including derivative

works and compilations, and whether or not such Work Product is considered a “work made for hire,” shall be the exclusive property of Agency. Agency and Contractor agree that Work Product that constitutes original works of authorship (the “Original Work Product”) is “work made for hire” of which Agency is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the WOC is not “work made for hire,” Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Original Work Product created pursuant to the WOC, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency’s reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in Agency. Contractor forever waives any and all rights relating to Original Work Product created pursuant to the WOC, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 7.c., 7.d., 7.e. and 7.f. immediately below, for provisions applicable to Contractor Intellectual Property, Third Party Intellectual Property, Contractor Intellectual Property derivative works and Third Party Intellectual Property derivative works.

- c. Contractor Intellectual Property.** In the event that any Work Product is Contractor Intellectual Property (Contractor Intellectual Property that is applicable to the Services being performed by Contractor under the WOC or included in Work Product deliverable to Agency under the WOC), or in the event any Contractor Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Contractor hereby grants to Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Contractor Intellectual Property, including the right of Agency to authorize contractors, Contractors and others to do the same on Agency’s behalf. At the request of Contractor, Agency shall take reasonable steps to protect the confidentiality and proprietary interests of Contractor in any Contractor Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. Third Party Intellectual Property.** In the event that Work Product is Third Party Intellectual Property (Third Party Intellectual Property that is applicable to the Services being performed by Contractor under the WOC or included in Work Product deliverable to Agency under the WOC), or in the event any Third Party Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Contractor shall secure on Agency’s behalf and in the name of Agency, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of Agency to authorize contractors, Contractors and others to do the same on Agency’s behalf.
- e. Contractor Intellectual Property-Derivative Work.** In the event that Work Product created by Contractor under the WOC is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Contractor Intellectual Property employed in the Work Product, including the right of Agency to authorize others to do the same on Agency’s behalf.
- f. Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Contractor under the WOC is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on Agency’s behalf and in the name of Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of,

perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Agency's behalf.

- g. Limited Agency Indemnity.** To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.400, Agency shall indemnify and hold Contractor harmless from liability arising out of Agency's re-use or alteration of the Work Product.
- h. Contractor Use of Work Product.** Notwithstanding anything to the contrary in this Section 7, Contractor may refer to the Work Product in its brochures or other literature that Contractor utilizes for advertising purposes and, unless specified otherwise in the WOC, Agency hereby grants to Contractor a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Agency-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 8 below, pertaining to Confidentiality and Non-Disclosure.

8. Confidentiality and Non-Disclosure

- a. Confidential Information.** Contractor acknowledges that it and its employees and agents may, in the course of performing their responsibilities under the WOC, be exposed to or acquire information that is confidential to Agency. Any and all information that Agency provides to Contractor or its employees or agents in the performance of the WOC that Agency designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials (including software) that result from Contractor's use of such information and any other Work Product that Agency designates as confidential, is deemed to be confidential information of Agency ("Confidential Information"). Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by Agency to others without restrictions similar to those imposed by the WOC; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under the WOC; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure.** Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and shall not, without Agency's prior written consent, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever, other than the provision of Services to Agency hereunder. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use reasonable efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Contractor shall advise Agency immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms this Section 8(b), and Contractor shall, at its expense, cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency against any such person. Contractor agrees that, except as directed by Agency, Contractor will not at any time during or after the term of the WOC disclose, directly or indirectly, any Confidential Information to any person, except in accordance with the WOC, and that upon termination of the WOC or at Agency's request, Contractor shall turn over to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. In the event Contractor is required to disclose Confidential Information pursuant to a subpoena or other legal process, Contractor shall notify Agency of such subpoena or other legal

process, provide Agency with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with Agency in the event Agency decides to oppose the disclosure of the Confidential Information. In the event Agency decides not to oppose such subpoena or other legal process or Agency's decision to oppose the subpoena or legal process has not been successful, Contractor shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

9. INDEMNITY.

- a. CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY.** Contractor shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Contractor or its subcontractors, or their respective agents or employees, under or relating to the WOC.
- b. CLAIMS FOR PROFESSIONAL LIABILITY.** Contractor shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of the professionally negligent acts, errors or omissions of Contractor or its subcontractors, or their respective agents or employees, in the performance of Contractor's professional services under the WOC.
- c. INDEMNITY FOR INFRINGEMENT CLAIMS.** Without limiting the generality of section 9(a) or 9(b), Contractor expressly agrees to indemnify, defend, save and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation and their agencies, subdivisions, officers, directors, agents, and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of or relating to any claims that Contractor's services, the Work Product or any other tangible or intangible items delivered to agency by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or agency's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that state shall provide Contractor with prompt written notice of any infringement claim. Provided, however, Contractor shall not be obligated to indemnify, defend, save and hold harmless the state and agency under this section 9(c), based solely on the following: Contractor's compliance with agency specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by agency.
- d. DEFENSE QUALIFICATION.** Notwithstanding Contractor's foregoing defense obligations, neither Contractor nor any attorney engaged by Contractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the

event that it determines that Contractor is prohibited from defending the State of Oregon, or that Contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Contractor if the State of Oregon elects to assume its own defense.

- e. **AGENCY'S ACTS OR OMISSIONS.** This section 9 does not include indemnification by Contractor of the State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation and its officers agents and employees, for the acts or omissions of the State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation and its officers agents and employees, whether within the scope of the WOC or otherwise.

10. Insurance. Contractor shall carry insurance as indicated on Exhibit D throughout the term of the WOC.

11. Termination

- a. **Termination by Mutual Consent.** The WOC may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **Agency's Right to Terminate for Convenience.** Agency may, at its sole discretion, terminate the WOC, in whole or in part, upon 30 calendar days prior written notice to Contractor.
- c. **Agency's Right to Terminate for Cause.** Agency may terminate the WOC, in whole or in part, immediately upon written notice to Contractor or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
 - (i) Agency fails to receive appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for Contractor's Services;
 - (ii) Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the WOC are prohibited or Agency is prohibited from paying for such Services from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under the WOC, fails to perform the Services under the WOC within the time specified or any extension thereof, or so fails to perform the Services as to endanger Contractor's performance under the WOC in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice to Contractor, or such longer period as Agency may specify in such notice.
- d. **Contractor's Right to Terminate for Cause.**
 - (i) Contractor may terminate the WOC by giving written notice to Agency if Agency fails to pay Contractor pursuant to the terms of the WOC and if Agency fails to cure within 14 calendar days after receipt of Contractor's written notice, or such longer period of cure as Contractor may specify in such notice.
 - (ii) Contractor may terminate the WOC, for reasons other than nonpayment, if Agency commits any material breach or default of any covenant, warranty, obligation or agreement under the WOC, fails to perform under the WOC within the times specified, or so fails to perform as to endanger Contractor's performance under the WOC, and such breach, default or failure is not cured within 14 calendar days after Contractor's notice to Agency, or such longer period as Contractor may specify in such notice.
- e. **Remedies.**

- (i) In the event of termination pursuant to Sections 11(a), 11(b), 11(c)(i), 11(c)(ii) or 11(d), Contractor's sole remedy (except as otherwise required by applicable state or federal law) shall be a claim for the sum designated for performing the Services multiplied by the percentage of Services completed and accepted by Agency (with acceptance by Agency not to be unreasonably withheld), less previous amounts paid and any claim(s) which state has against Contractor, except in the event of a termination under Section 11(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium, consistent with Section 4, Funds Available and Authorized; Payments. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay all excess to Agency upon demand.
 - (ii) In the event of termination pursuant to Section 11(c)(iii) or 11(c)(iv), Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 11(c)(iii) or 11(c)(iv), the rights and obligations of the Parties shall be the same as if the WOC was terminated pursuant to Section 11(b).
- f. Contractor's Tender Upon Termination/Retained Remedies of Agency.** Upon receiving a notice of termination of the WOC, Contractor shall immediately cease all activities under the WOC, unless Agency expressly directs otherwise in such notice of termination. Upon termination of the WOC, Contractor shall deliver to Agency all documents, information, works-in-progress and other property that are or would be deliverables had the WOC been completed. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the WOC been completed, that are in Contractor's possession or control and may be needed by Agency to complete the Services.

12. Records Maintenance; Access. Contractor, and its subcontractors, shall maintain all fiscal records relating to the WOC in accordance with generally accepted accounting principles. In addition, Contractor shall maintain all other records pertinent to the WOC and the project in such a manner as to clearly document Contractor's performance. Agency, the Oregon Secretary of State's Office, the federal grantor agency, the Comptroller General of the United States, and their duly authorized representatives shall have access, and Contractor shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to the WOC to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the WOC, or until the conclusion of any audit, controversy or litigation arising out of or related to the WOC, whichever date is later.

13. Performance Evaluations. Agency may conduct performance evaluation(s) on the selected Contractor(s) during the PA term and the term of the WOC, which will be compiled and maintained by Agency, and become a written record of Contractor's performance, including information gained during an exit interview. Agency will provide copies of any performance evaluation documentation to the affected Contractor and upon request, to third parties, unless lawfully exempt from disclosure.

14. Compliance with Applicable Law. Contractor shall comply with all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the WOC, in effect at the time the WOC is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the WOC may or may not be the basis for modifications to Contractor's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Contractor or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Contractor expressly

agrees to comply with the following laws, regulations and executive orders to the extent they are applicable: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (v) the Clean Air Act (42 U.S.C. 7401-7671q); (vi) the Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vii) Executive Order 11738; (viii) Environmental Protection Agency regulations (40 CFR part 15); and (ix) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. Agency's performance under the WOC is conditioned upon Contractor's compliance with, and Contractor shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to Agency under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the PA and WOC. If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the WOC, Contractor shall in writing request Agency to resolve the conflict. Contractor shall specify if the conflict(s) create a problem for the design or other Services required under the WOC.

15. Permits and Licenses:

- a. Permits and licenses to conduct business.** Unless otherwise specified in any WOC, Contractor shall obtain, hold, maintain and fully pay for during the term of the WOC all permits and licenses required by law for Contractor to conduct its business and perform the Services under the WOC.
- b. Permits and licenses required for the project.** Unless otherwise specified in the WOC, Contractor shall obtain, hold and maintain during the term of the WOC all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but Agency shall pay for such permits and licenses. Contractor shall review the project site and the nature of the Services that Contractor shall perform under the WOC. Contractor shall advise Agency throughout the course of the WOC as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

16. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the WOC.

17. Force Majeure. Neither Agency nor Contractor shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the WOC.

18. Survival. All rights and obligations shall cease upon termination or expiration of the WOC, except for the rights and obligations set forth in Part I Section 4 and in Part II Sections 5, 6, 7, 8, 9, 11(e), 11(f), 12, 18, 19, 23, 24 and 27, and all other rights and obligations which by their context are intended to survive.

19. Time is of the Essence. Contractor agrees that time is of the essence in Contractor's performance of its obligations under the WOC.

20. Notice. Except as otherwise expressly provided in the WOC, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the e-mail address, the delivery address or facsimile number set forth in the WOC, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice. Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to Agency's PA Administrator or Contractor's representative, as applicable.

21. Severability. The Parties agree that if any term or provision of the WOC is declared by a court of competent jurisdiction 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 WOC did not contain the particular term or provision held to be invalid.

22. Counterparts. The WOC may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the WOC so executed shall constitute an original.

23. Dispute Resolution and Errors & Omissions Claims Process. In the event of a dispute between the Parties regarding any aspect of the PA, the WOC or performance under the WOC, the Parties agree to attempt in good faith to resolve any such dispute through direct communications and negotiations.

- a. Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter.
- b. Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to determine if mediation might be productive in resolving any such dispute. If the Parties determine that mediating the dispute would be productive, the Parties agree to use reasonable efforts to establish an agreement through which such mediation proceeding could take place. In the event such a mediation proceeding takes place, the Parties acknowledge and agree that any mediator or mediators retained to assist the Parties in resolving any dispute will not have the power to issue a decision that will bind the Parties, but will merely act as a facilitator in the process of the Parties' attempting to resolve the dispute through mutual agreement. In the event that through good faith efforts or mediation proceedings (if entered into) it is determined that the dispute includes issues related to Errors and Omissions, the Errors & Omissions Claims Process shall be followed.

24. Governing Law; Venue; Consent to Jurisdiction. The WOC shall be governed by, construed and enforced 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 (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to the WOC shall be brought and conducted solely and exclusively within the Circuit Court of Marion 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. **CONTRACTOR, BY EXECUTION OF THE WOC, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise.

25. Amendments to WOCs.

- a. Changes via WOC Amendment.** Agency may amend the WOC to the extent permitted by applicable statutes and administrative rules and as mutually agreed upon by Agency and Contractor. Agency may agree to appropriate increases in the maximum compensation payable under the WOC, should any Agency-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the statement of work (“SOW”). Contractor shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing signed by the Parties and all approvals required by applicable law have been obtained.
- b. Changes via Electronic Amendment.** The following amendments to WOCs, when such amendments do not include changes to scope of work or not-to-exceed amount of the WOC, issued under this PA may be accomplished by electronic amendment (sent via e-mail) that documents agreement by Contractor and Agency:
- (i) The addition of or change in Contractor’s subcontractors approved by Agency under the WOC;
 - (ii) The addition of or changes for Contractor and its subcontractors
 - (iii) Correction of errors, inaccuracies and omissions in the Breakdown of Costs for Services, or other cost schedules;
 - (iv) Revisions to delivery schedule and WOC expiration date;
 - (v) Revisions to designated WOC Administrator.

Agency reserves the right to issue requirements for the electronic amendments, including but not limited to specific language that must be included to document the agreement by Contractor and Agency.

26. False Claims

- a.** Contractor understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the PA and any WOC, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the PA and any WOC or the project for which the Services are being performed, including but not limited to Contractor’s statement of proposal and any invoices, reports, or other deliverables.
- b.** Contractor shall immediately disclose (in writing) to Agency whenever, in connection with the award, performance or closeout of the PA or any WOC, or any subcontract thereunder, Contractor has credible evidence that a principal, employee, agent, or subcontractor of Contractor has committed—
- (i) A violation of the Oregon False Claims Act; or
 - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c.** Contractor must include subsections (a) and (b) of this section in each subcontract Contractor may award in connection with the performance of the PA or any WOC. In doing so, Contractor may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

27. Merger Clause; Waiver; Interpretation. The WOC, including everything incorporated by reference into the WOC, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the WOC. No waiver, consent, modification or change of terms of the WOC shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties, and all necessary State of Oregon governmental approvals have been obtained. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party’s failure to enforce any provision of the WOC shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the PA or the WOC as material provisions or the

failure to comply with certain provisions as a material breach of the PA or the WOC shall in no way be construed to mean that any other provisions of the PA or the WOC are not material or that failure to comply with any other provisions is not a material breach of the PA or the WOC.

28. Certified Small Businesses. Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Contractor shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by ORS 279A.107 as a material condition of the PA. If the Contractor or subcontractor was awarded the PA, WOC or subcontract, as applicable, in the course of Agency carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, Agency may terminate the WOC or PA, require the Contractor to terminate the subcontractor, or exercise any of the remedies reserved for a breach of the PA or WOC.

29. Order of Precedence. All WOCs, (including all amendments, if any) shall be interpreted in the following order of precedence:

- a. The WOC less all attachments, Exhibits and other documents/information incorporated into the WOC by reference;
- b. The Statement of Work attached to the WOC;
- c. All Terms and Conditions contained in the PA;
- d. All attachments, Exhibits, and other documents/information incorporated into the WOC by reference.

30. Certified Small Business Outreach Plan. If Contractor submitted a Certified Small Business Outreach Plan as part of the procurement process for this PA, that plan is incorporated by reference into this PA as though fully set forth herein for WOCs issued under this PA that do not include any federal funding. Contractor, as performance obligations of WOCs that do not include any federal funding, shall conduct the outreach, subcontracting and assistance efforts included in Contractor's Certified Small Business Outreach Plan.

STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES
Architectural & Engineering and Related Services

Contractor Tax Identification Information. Upon request, or when there are any changes to backup withholding status or other information, Contractor shall provide to Agency a current [W-9 Form](#) with Contractor's taxpayer identification number ("TIN") and the additional information required in the form. Information provided pursuant to this requirement will be used for the administration of state, federal and local tax laws. Agency may report the information to the Oregon Department of Revenue and Internal Revenue Service ("IRS") under the name and TIN provided.

PA #: _____; Legal, tax filing Company Name: _____
Address: _____

CERTIFICATION:

A. Any individual signing on behalf of Contractor hereby certifies under penalty of perjury:

- (1) Contractor has provided its correct TIN to Agency.
- (2) Contractor is not subject to backup withholding because (a) Contractor is exempt from backup withholding, (b) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Contractor that Contractor is no longer subject to backup withholding.
- (3) S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.657; and local taxes administered by the Department of Revenue under ORS 305.620.

B. Any individual signing on behalf of Contractor hereby certifies they are authorized to sign this PA and that:

- (1) Contractor has read this PA, understands it, and agrees to be bound by its terms and conditions.
- (2) Contractor understands and agrees that various Exhibits to the PA are not physically attached, but are incorporated by reference in Part I, Section 4 of the PA and have the same force and effect as if fully set forth herein.
- (3) (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this PA, the undersigned shall complete and submit [Standard Form-LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
(c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
(d) Contractor shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.
- (4) Contractor is an independent contractor as defined in ORS 670.600 and as described in [IRS Publication 1779.](#)
- (5) In the event that Contractor is a general partnership or joint venture, that Contractor signature(s) on this PA constitute certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this PA.

CONTRACTOR

By: _____ Title: _____ Date: _____

By: _____ Title: _____ Date: _____
(2nd signature if necessary for Contractor)

DOJ REVIEW: (Reviewed by _____ via e-mail dated _____)
Reviewed by Assistant Attorney General _____ Date _____

EXHIBIT A – SCOPE of SERVICES

A. GENERAL INFORMATION

The Agency is the State of Oregon's Housing Finance Agency. The Agency provides stable and affordable housing and engages leaders to develop integrated statewide policy that addresses poverty and provides opportunity for Oregonians.

As a key component of this mission, the Agency provides financial and program support focused on the development and preservation of quality, affordable housing for Oregonians of lower and moderate incomes. The Agency administers its programs in partnership with housing developers and community-based providers. The Agency, itself, does not own or develop housing. Funds used to carry out this work are varied and include federal and state resources that have complex regulatory compliance requirements making stewardship, compliance monitoring, and asset management core functions of the Agency.

B. PROJECT DESCRIPTION and OVERVIEW of WOC SERVICES

Contractor shall provide construction observation and analysis services (“Services”), as assigned in a Work Order Contract (“WOC”), within the scope of work identified in this Price Agreement (“PA”) or the associated solicitation.

Tasks and deliverables that may be assigned via WOCs under this PA may include but are not limited to those listed in the sections below. The tasks and deliverables identified in this exhibit are examples and are not exhaustive. Individual WOC assignments may include any task, reasonably within the scope of work included in this PA or the associated solicitation, as determined necessary to complete an assigned project.

Agency shall assign work according to the process described below. There is no guarantee of work or of compensation under this PA.

WOCs will be assigned for each construction observation and analysis projects. The Services will be assigned as needed for each project based on the project construction schedule and as the specific circumstances associated with each project may require. Other WOC assignment considerations include: the Contractor’s physical location relative to the work site, the Contractor’s specific expertise relative to the project type and complexity, and equitable distribution of the needed work among the contractor pool.

The Contractor shall perform all Services pursuant only to the applicable WOCs. Upon receiving written or verbal notification by the Agency that a WOC needs to be issued, the Contractor shall conclude any negotiations within 5 days, unless otherwise allowed by the Agency. Agency and Contractor may negotiate the number and type of hours necessary to perform the Services to establish a not-to-exceed amount that will be applied when a Work Order is issued. No Services under a WOC or WOC amendment shall begin before Agency and Contractor have signed the WOC or WOC amendment and other required signatures are obtained on the WOC or WOC amendment. Unless extended or terminated earlier in accordance with its terms, this WOC shall terminate when Agency accepts Contractor's completed performance or on _____, _____, *or* the date Contractor has

completed all Services in accordance with the requirements of this WOC, as determined by Agency. The parties may extend the term of this WOC provided that the total WOC term does not extend beyond _____.

C. STANDARDS and GENERAL REQUIRMENTS

The standards and general requirements applicable to WOCs are stated below. In addition to those stated in the PA, standards and general requirements specific to an assigned project may be included in the WOC.

1. Standards

Contractor shall perform all Services in accordance with the professional standard of care set forth in the PA. Contractor shall be responsible for determining all applicable practices and standards to be used in performing Services. Contractor shall inform and demonstrate to Agency if standards, directives or practices required by Agency in performance of the Services are insufficient, in conflict with applicable standards, or otherwise create a problem for the design or construction of the project.

2. Professional Licenses, Registrations and Qualifications

Contractor and its Sub-Contractors must be duly licensed in Oregon to perform the Services, as required by the applicable Oregon Revised Statutes ("ORS") and Oregon Administrative Rules, and other applicable laws. Contractor's personnel and Sub-Contractor personnel must be duly licensed to perform all Services which they will be performing under a resulting WOC, must be performing such Services under the "responsible charge" of a person so licensed (as that term is defined under ORS Chapter 672), or must be otherwise exempt from any licensing requirements applicable to the Services being performed.

3. Minimum Contractor Requirements

Contractor must meet and maintain all requirements as given in the Request for Proposal that are associated with this Price Agreement.

4. General Requirements

- **Endorsement of Data.** Contractor shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to Agency, as well as any other materials where professional standards require such seal and signature.
- **Safety Equipment.** Contractor shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by state and federal regulations and policies and procedures for the Services under the WOC.
- **Personnel, Materials, and Equipment.** Contractor shall provide competent personnel and shall furnish all supplies, equipment, tools, and incidentals required to accomplish the work. All equipment and tools shall be in good operating condition and shall be kept in proper adjustment throughout the duration of any assigned WOCs. All materials and supplies shall be of good quality and suitable for the assigned work.

5. Compliance with Applicable Law (in addition to those identified elsewhere in the PA)

In addition to the broad requirements set forth in the PA, state and federal laws specific to an assigned project may be included in the WOC.

D. FORMAT REQUIREMENTS

- Contractor shall submit draft and final deliverables in electronic format via email (and hard copy if requested).
- Contractor shall also submit all graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by Agency.
- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by Agency.
- Additional format requirements may be listed with specific tasks/deliverables throughout the SOW or in the PA/Contract.

E. TASKS (or MENU of SERVICES)

Assigned WOCs will include a detailed statement of work (“SOW”) and delivery schedule that may include, but is not limited to, any or all of the following types of tasks and deliverables that may be required for a given project assignment:

The following services may be requested pursuant to WOCs issued by the Agency under this Price Agreement. A specific scope of services and associated contract fee amount will be established by Agency prior to issuance of a WOC to the Contractor. Not all services listed below may be requested and the Agency may request construction administration related tasks that are not listed below.

Actual project work tasks may include but are not limited to some or all of the following areas:

1. Pre-Construction review of project related documents as applicable to the project, including the following:
 - a. Drawings and Specifications
 - b. Surveys
 - c. Geotechnical Report
 - d. Hazardous Materials Report
 - e. Utility Agreements
 - f. Agency’s Current Design Standards Manuals

The purpose of this review is to accomplish the following:

- a. Achieve a comprehensive understanding of the project requirements.
 - b. Review documents for compliance with industry best practices related to: accuracy, readability, and completeness.
 - c. Review documents for conformance with Affordable Housing Program Requirements.
2. Periodic construction site visits to observe construction progress, quality of workmanship, and construction contractor performance
 3. Attend construction progress meetings
 4. Production of site visit and construction observation/progress reports

5. Review of change orders, RFIs, submittals and other construction contractor issued documents
6. Construction issue identification and issue resolution consulting
7. Review construction for general conformance with the contract documents
8. Review construction for conformance with federal accessibility requirements (Section 504 of the Rehabilitation Act of 1973)
9. Building envelope technical guidance
10. Other construction administration related technical support services

G. DELIVERABLES

The following deliverables may be requested pursuant to WOCs issued by the Agency under this Price Agreement. Not all of the deliverables listed below may be requested and the Agency may request construction administration related deliverables that are not listed below:

1. Change Order Analysis

Change Orders shall be reviewed and comments provided to the Agency (when requested) on the appropriateness of the Change Order and its ability to maintain the integrity and intent of the original plans and specifications. Comments should include, as applicable, any impacts anticipated on the quality of the project, the construction schedule or the contract amount.

2. Site Visit / Construction Observation Reports

Contractor shall be aware that his/her presence on site may represent the Agency's only construction site presence over the period of project execution. Contractor's activities and services are therefore critical to the Agency's overall effectiveness in the administration of the project. Contractor's construction observation tasks, including the generation of reports, shall be done in a thorough, methodical, and comprehensive manner. The following elements must, at a minimum, be included in the Contractor's Construction Observation Reports:

- a) Date, arrival/departure time, site and weather conditions.
- b) Primary construction contractor individuals present and sub-contractors that are on site.
- c) Primary construction tasks being performed.
- d) Any significant interactions between Agency's construction observation Contractor and project related personnel at the construction site including the general character of these interactions.
- e) Assessment of general contractor progress in relation to project schedule; provide overall percent completed.
- f) Assessment of the construction's conformance with the contract documents.
- g) Assessment of the quality of the work being performed and appropriateness of work sequencing.
- h) Brief summary of major items discussed in any site meetings attended.
- i) Documentation of any items observed that are not within expected parameters, e.g. non-conforming to code or the project documents or outside standard practices for construction, substandard quality. Such items shall be tracked in a numbered running list format so that all unresolved issues automatically migrate to the next report.
- j) Documentation of site safety issues observed related to the public or the construction crew.

- k) Documentation of any negative site issues being encountered by the Contractor or the project team.
- l) Any other items observed and deemed to be important to the project and project stakeholders.
- m) Digital photo record of the site visit showing most important observations made. All photos must have a written description of what the photo is illustrating.

Construction Observation Reports must be issued to the Agency and any other party the Agency specifies within five (5) business days of the associated construction site visit.

The Contractor shall notify the Agency with the appropriate level of promptness and urgency if a serious issue is observed or becomes known during a site visit. Issues or observations deemed serious by the Contractor shall be reported to the Agency no later than 24 hours from the time observed or otherwise discovered by the Contractor.

H. EMPHASIS OF CONTRACTOR'S WORK RELATED TO CONSTRUCTION OBSERVATION AND/OR DESIGN DOCUMENT REVIEW

The Contractor shall use diligence in accordance with prevailing industry standards in the level of scrutiny employed while on site observing the construction process and the constructed work and/or reviewing the construction documents. However, the Contractor shall use a heightened level of scrutiny in performing the following:

1. Review and comment on safety as it applies to all aspects of the project's design and its construction.
2. Review and comment on the proposed design of, the integration of, and the construction of the building envelope systems and the building envelope components. The Contractor shall identify conditions that are substandard in material quality or execution, are inappropriate or functionally awkward as proposed, pose a risk of not remaining in serviceable condition for the industry standard life expectancy of the component(s), or are anticipated to require an unusually high level of maintenance.
3. Review of critical accessibility-related elements of the project.
4. The Contractor shall not be expected to identify all the conditions or issues that may exist related to the foregoing. However the importance of the Contractor's contribution to the project in the form of observations and comments to the Agency in these key areas is critical.

EXHIBIT B
PAYMENT PROVISIONS AND TRAVEL EXPENSES

PAYMENT PROVISIONS

- A. The compensation for Services and deliverables provided under this Agreement and its respective WOCs shall not exceed a maximum of \$_____. Contractor agrees to perform all Services on the basis of Contractor's hourly s as follows:

Principal	\$____/hour
Senior Project Manager	\$____/hour
Construction Project Manager	\$____/hour
Administrative Support Services	\$____/hour

- B. Progress payments may be made to Contractor over the period of the applicable WOC upon receipt of the Contractor's billing statement. Invoices for Services shall be submitted using the Standard Invoice form (see Exhibit F). Agency reserves the right to request, in writing, full itemization and receipts for, but not limited to, any or all labor and/or direct costs billed by the Contractor. Contractor shall provide receipts within five (5) business days of request. Payment shall not be released until all requested receipts have been received from the Contractor. All invoices and other forms of claims for payment must be submitted no more frequently than once per month to Agency, ATTN: Accounts Payables, 725 Summer Street NE, Suite B, Salem, OR 97301-1266, for approval. Failure to present claims in proper form within 60 days after the end of the month in which the Services are performed shall constitute a waiver on the part of Contractor to present such claim thereafter or to receive payment therefore. Any overdue payments by Agency for an approved billing statement shall be paid in accordance with ORS 293.462.
- C. Payment for work accomplished shall include those costs allowable under the provisions of 48 CFR Part 31 (Federal Acquisition Regulations).
- D. Contractor shall complete all Services to the satisfaction of the Agency. If Contractor expends all time allowed under the applicable WOC and fees incurred have reached the maximum compensation allowed under Section 3(a) of the Agreement or under the applicable WOC, but the work and Work Products are not complete or are not satisfactory, Contractor shall complete the work to Agency's satisfaction without further compensation. Agency may, by written amendment to the Agreement, increase the maximum compensation payable under this Agreement for any substantial, approved increase in the scope, character, schedule or complexity of services as outlined in this Exhibit A. Contractor may petition the Agency for such an amendment, or the Agency may initiate the action on its own. Any amendment must receive all necessary State approvals prior to commencement of any such work by the Contractor
- E. Agency reserves the right to withhold final payment equal to ten percent (10%) of the total Price Agreement amount until all required work is completed and accepted by the Agency.
- F. Agency shall make final payment of any balance due Contractor promptly upon verification of completion and acceptance of the work by Agency. Agency, or its duly authorized agents, may audit Contractor records prior to payment of the final billing.

TRAVEL AND OTHER EXPENSES

Agency will reimburse Contractor, within the not to exceed amount identified in the applicable WOC for travel only when the travel is essential to the normal discharge of Agency's responsibilities. Contractor shall conduct all travel in the most efficient and cost-effective manner resulting in the best value to the Agency. The travel must comply with all the requirements set forth in this section and must be for official Agency business only. Contractor shall provide Agency with receipts for all travel expenses except meals. All Contractor representatives will be limited to economy or compact sized rental vehicles, unless Contractor personally pays the difference.

Agency will reimburse reasonable travel and other expenses of the Contractor at the rates set forth in the Oregon Accounting Manual as of the date Contractor incurred the travel or other expenses. The Oregon Accounting Manual is available at <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>. Per diem rates may be subject to change without notice in accordance with government standards.

No out-of-state travel or any airfare is authorized nor shall be reimbursed under this Agreement.

Agency may, in its sole discretion, reimburse Contractor for other reasonable expenses incurred in the normal discharge of responsibilities.

EXHIBIT C – WORK ORDER CONTRACT

WORK ORDER CONTRACT

Construction Observation and Analysis

This Work Order Contract No. _____ to Agreement to Agree No. **xxxx** (the "Agreement") is entered into by and between the State of Oregon ("State") acting by and through its Housing and Community Services Department together with its successors and assigns hereinafter referred to collectively as "Agency", and Scott Edward Architecture, L.L.P., a domestic registered limited liability partnership, together with its successors and assigns hereinafter referred to collectively as "Contractor".

This Work Order Contract ("WOC") shall become effective on the date this WOC has been fully executed by every party. Unless extended or terminated earlier in accordance with its terms, this WOC shall terminate when Agency accepts Contractor's completed performance or on _____, _____, *or* the date Contractor has completed all Services in accordance with the requirements of this WOC, as determined by Agency. The parties may extend the term of this WOC provided that the total WOC term does not extend beyond _____. WOC termination shall not extinguish or prejudice Agency's right to enforce this WOC with respect to any default by Contractor that has not been cured.

A. WORK ORDER CONTRACT AMOUNT

1. Services. The maximum amount Agency may pay Contractor for all completed Services that Agency has accepted is \$_____.
2. Reimbursable Travel Expenses. The maximum not-to-exceed amount Agency may reimburse to Contractor for approved costs and expenses is \$_____.
3. Total Amount Payable (Services + Reimbursable Travel Expenses). The total amount of compensation Contractor may pay to Consultant under this WOC is \$_____.

B. STATEMENT OF WORK

C. AUTHORIZED SUBCONTRACTORS

NONE

D. CONTRACT AMENDMENTS

1. Circumstances Requiring Amendments. Contractor may request Contractor to provide additional quantities of Services if additional Services are necessary to meet Contractor needs. Contractor may also request Contractor to provide additional Services that may be required after the expiration date of the WOC to meet Contractor needs or may determine a need for Contractor to perform new Services within the Statement of Work associated with the WOC. In addition, Contractor may decrease the quantity of Services or delete Services, and correspondingly decrease the amount payable to Contractor if Contractor needs are less than originally anticipated. To address the circumstances described in this section, the parties may amend the Contract in accordance with Section D (2).

2. Scope of Amendments. During the term of the WOC, one or more of the following amendments may be made to the WOC:
 1. Amendments to extend the term of the WOC for additional periods;
 2. Amendment to increase the quantity of Services;
 3. Amendments to add new Services within the Statement of Work associated with the WOC;
 4. Amendments to increase the fixed price payable to Contractor to cover new Services or additional quantity of Services added to the WOC;
 5. Amendments to delete Services;
 6. Amendments to decrease the amount payable to Contractor.

3. Amendment Process. Upon identification of any of the circumstances set forth in Section D (1), the parties may enter into negotiations regarding the proposed amendment to the WOC.

E. REPRESENTATIONS

Except as expressly described above, all other terms and conditions of original Agreement #xxxx are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Work Order Contract and with the same effect as though made at the time of this Work Order Contract.

CONTRACTOR, BY EXECUTION OF THIS WORK ORDER CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS WORK ORDER CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

AS AGREED:

CONTRACTOR

Authorized by: _____ Title: _____ Date: _____

OREGON HOUSING AND COMMUNITY SERVICES

Authorized by: _____ Date _____
 Andrea Bell, Director or designee

EXHIBIT D - INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS:

Contractor shall obtain at Contractor's expense the insurance performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

AUTOMOBILE LIABILITY INSURANCE:

Required Not required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000.00 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY:

Required Not required

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

The Commercial General Liability insurance and Automobile liability insurance required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit D.

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EXHIBIT E

Contact Information and Key Persons

Key Persons. Include all Key Persons that will be assigned to the project. Contractor shall list Key People in descending order, starting with the key person with the highest qualifications, number one (1) Key Person, and so on. Submit additional pages as needed.

Contact Information -

#1

Contact Name: _____

Title: _____

Role in Project: _____

Contact Telephone Number: _____

Contact Email Address: _____

#2

Contact Name: _____

Title: _____

Role in Project: _____

Contact Telephone Number: _____

Contact Email Address: _____

#3

Contact Name: _____

Title: _____

Role in Project: _____

Contact Telephone Number: _____

Contact Email Address: _____

#4

Contact Name: _____

Title: _____

Role in Project: _____

Contact Telephone Number: _____

Contact Email Address: _____

#5

Contact Name: _____

Title: _____

Role in Project: _____

Contact Telephone Number: _____

Contact Email Address: _____

Agency's designated Contract Administrator for this PA ("PA Administrator") is:

Kevin Burgee

State Architect
Affordable Rental Housing
Oregon Housing & Community Services
725 Summer St NE, Suite B | Salem, OR 97301
T: 503-986-6773

Contractor's Contact for this PA is:

EXHIBIT F

OHCS STANDARD INVOICE

Page 1	OHCS STANDARD INVOICE
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Contractor Name: Federal Tax ID#:	Date of Invoice: Invoice No.: Contract No.: Billing Period: From _____ To _____
Contractor Contact Name and Phone Number for billing questions:	
Project Name:	

A. Total Funds Awarded	\$
B. Total Amount previously requested and received	\$
C. Total Amount Available ($A - B = C$)	\$
D. Total Amount of this request:	\$
E. Balance remaining on Contract ($C - D = E$)	\$

<i>FOR AGENCY USE ONLY</i>	
APPROVED FOR PAYMENT OHCS	INDEX _____ PCA _____ CONTRACT _____ AOBJ _____ <hr/> Reviewed & Approved for Payment by Program Coordinator Date <hr/> Approved for funds by Manager Date