**STATE OF OREGON**

**OREGON HOUSING AND COMMUNITY SERVICES**

**Technical Assistance: Sheltering**

**Price Agreement #XXXX**

**Introduction**

This Price Agreement No. [\_\_\_\_] (“Agreement”) is entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department (“Agency”), and [insert Consultant’s name], a [insert entity type] ("Consultant").

For good and sufficient consideration, including the terms and conditions herein, the parties agree as follows:

1. **Agreement Period.** The initial term of this Agreement begins on the date this Agreement has been signed by Agency and Consultant and all required approvals have been obtained (the “Effective Date”) and ends on June 30, 2023 unless sooner terminated or extended as approved in this Agreement. The parties may extend the term of this Agreement provided that the total Agreement term does not exceed five years. Agreement termination shall not extinguish or prejudice Agency’s right to enforce this Agreement with respect to any default by Consultant that has not been cured.
2. **Scope of Work.** Consultant must perform the work (the “Work”) as set forth in the Scope of Work, that is attached as Exhibit A. Consultant must perform the Work in accordance with the terms and conditions of this Agreement.
3. **Consideration.**
   1. The maximum, not-to-exceed compensation payable to Consultant under this Agreement and its respective Work Order Contracts (each a “WOC”), which includes any allowable expenses, is $[\_\_\_\_]. Agency will not pay Consultant any amount in excess of the not-to-exceed compensation of this Agreement for completing the Work and will not pay for Work performed before the Effective Date or after the termination of this Agreement. If the maximum compensation is increased by amendment to this Agreement, the amendment must be fully effective before Consultant performs Work subject to the amendment.
   2. Interim payments to Consultant shall be subject to ORS 293.462, and will be made in accordance with the payment schedule and requirements in Exhibit A (Scope of Work).
   3. Agency will pay only for completed Work that is accepted by Agency.
   4. Contractor must submit invoices no more frequently than monthly to Agency’s Agreement Administrator for Work performed. The invoices must describe all Work performed with particularity including by whom it was performed and must itemize and explain all expenses that this Agreement requires Agency to pay and for which Consultant claims reimbursement. Each invoice must also include the total amount invoiced to date by Consultant prior to the current invoice.
4. **Agreement Documents.** This Agreement consists of the following documents, which are listed in descending order of precedence:

* This Agreement, less all exhibits
* Exhibit A (Scope of Work)
* Exhibit B (Required Insurance)
* Exhibit D (Sample Work Order Contract)
* Exhibit C (Standard Invoice)

Exhibits A-D are attached hereto and incorporated by this reference.

1. **Independent Contractor; Responsibility for Taxes and Withholding.**
   1. Consultant must perform all Work as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, Agency may not and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Work.
   2. If Consultant is currently performing work for the State of Oregon or the federal government, Consultant by signature to this Agreement, represents and warrants that: Consultant’s Work to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS 244, and no statutes, rules or regulations of the state or federal agency for which Consultant currently performs work would prohibit Consultant’s Work under this Agreement.
   3. Consultant understands and agrees that it is not an "officer", "employee", or "agent" of the State of Oregon, as those terms are used in ORS 30.265.
   4. Consultant shall be responsible for all federal or state taxes applicable to compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Consultant’s federal or state tax obligations. Consultant is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Consultant under this Agreement, except as a self‑employed individual.
2. **Subcontracts, Successors, and Assignments.**
   1. Consultant must not enter into any subcontracts for any of the Work required by this Agreement without Agency's prior written consent. In addition to any other provisions Agency may require, Consultant must include in any permitted subcontract under this Agreement provisions to ensure that Agency will receive the benefit of subcontractor performance as if the subcontractor were the Consultant with respect to Sections 5, 6, 7, 9, 10, 11, 14, 15, 16, 18, and 24. Agency’s consent to any subcontract shall not relieve Consultant of any of its duties or obligations under this Agreement.
   2. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.
   3. Consultant must not assign, delegate, or transfer any of its rights or obligations under this Agreement without Agency’s prior written consent.
3. **No Third Party Beneficiaries.** Agency and Consultant are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
4. **Funds Available and Authorized; Payments.** Consultant will not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within Agency's current biennial appropriation or limitation. Consultant understands and agrees that Agency's payment of amounts under this Agreement is contingent on Agency receiving appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
5. **Representations and Warranties.**
   1. **Consultant’s Representations and Warranties.** Consultant represents and warrants to Agency that (1) Consultant has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (3) Consultant has the skill and knowledge possessed by well-informed members of its industry, trade, or profession and Consultant will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Consultant’s industry, trade, or profession, (4) Consultant shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work, and (6) Consultant prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
   2. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Ownership of Work Product.**
   1. **Definitions.** As used in this Section 10, and elsewhere in this Agreement, the following terms have the meanings set forth below:
      1. **“Consultant Intellectual Property”** means any intellectual property owned by Consultant and developed independently from the Work.
      2. **“Third Party Intellectual Property”** means any intellectual property owned by parties other than Agency or Consultant.
      3. **“Work Product”** means every invention, discovery, work of authorship, trade secret, or other tangible or intangible item and all intellectual property rights therein that Consultant is required to deliver to Agency pursuant to the Work.
   2. **Original Works.** All Work Product created by Consultant pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Consultant agree that such original works of authorship are “work made for hire” of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not “work made for hire,” Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency’s reasonable request, Consultant must execute such further documents and instruments necessary to fully vest such rights in Agency. Consultant forever waives any and all rights relating to original Work Product created pursuant to the Work, 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.

In the event that Work Product created by Consultant under this Agreement is a derivative work based on Consultant Intellectual Property, or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Consultant Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency’s behalf.

In the event that Work Product created by Consultant under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Consultant shall secure on the Agency’s behalf and in the name of the Agency an irrevocable, non-exclusive, 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, and to authorize others to do the same on Agency’s behalf.

* 1. **Consultant Intellectual Property.** In the event that Work Product is Consultant Intellectual Property, Consultant hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the Consultant Intellectual Property, and to authorize others to do the same on Agency’s behalf.
  2. **Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Consultant shall secure on the Agency’s behalf and in the name of the Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency’s behalf.

1. **Indemnity.**
   1. **GENERAL INDEMNITY.** CONSULTANT SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND AGENCY AND THEIR OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONSULTANT OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.
   2. **INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONSULTANT EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD AGENCY, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO AGENCY BY CONSULTANT THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE 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 CONSULTANT WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.
   3. **CONTROL OF DEFENSE AND SETTLEMENT.** CONSULTANT SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; HOWEVER, NEITHER CONSULTANT NOR ANY ATTORNEY ENGAGED BY CONSULTANT SHALL DEFEND THE 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 FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONSULTANT SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONSULTANT IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON’S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.
2. **Insurance.** Consultant must maintain insurance as set forth in Exhibit B (Required Insurance), which is attached hereto.
3. **Default; Remedies; Termination.**
   1. **Default by Consultant.** Consultant shall be in default under this Agreement if:
      1. Consultant institutes or has instituted against it insolvency, receivership, or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
      2. Consultant no longer holds a license or certificate that is required for Consultant to perform its obligations under the Agreement and Consultant has not obtained such license or certificate within fourteen (14) calendar days after Agency’s notice or such longer period as Agency may specify in such notice; or
      3. Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Agency's notice, or such longer period as Agency may specify in such notice.
   2. **Agency’s Remedies for Consultant’s Default.** In the event Consultant is in default under Section 13.a, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:
      1. Termination of this Agreement under Section 13.e.ii;
      2. Withholding all monies due for Work and Work Products that Consultant has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
      3. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
      4. Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Consultant was not in default under Sections 13.a, then Consultant shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 13.e.i.

* 1. **Default by Agency.** Agency will be in default under this Agreement if:
     1. Agency fails to pay Consultant any amount pursuant to the terms of this Agreement, and Agency fails to cure such failure within thirty (30) calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice; or
     2. Agency commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice.
  2. **Consultant’s Remedies for Agency’s Default.** In the event Agency terminates the Agreement under Section 13.e.i, or in the event Agency is in default under Section 13.c, and whether or not Consultant elects to exercise its right to terminate the Agreement under Section 13.e.iii, Consultant’s sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Consultant. In no event shall Agency be liable to Consultant for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Consultant exceed the amount due to Consultant under this Section 13.d, Consultant must immediately pay any excess to Agency upon written demand provided in accordance with Section 20.
  3. **Termination.**
     1. **Agency’s Right to Terminate at its Discretion.** At its sole discretion, Agency may terminate this Agreement:

1. For its convenience upon thirty (30) days’ prior written notice by Agency to Consultant;
2. Immediately upon written notice if Agency fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
3. Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency’s purchase of the Work or Work Products under this Agreement is prohibited, or Agency is prohibited from paying for such Work or Work Products from the planned funding source.
   * 1. **Agency’s Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Agreement, Agency may terminate this Agreement immediately upon written notice by Agency to Consultant, or at such later date as Agency may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 13.e.ii.(B) and 13.e.ii.(C) below, upon the occurrence of any of the following events:
4. Consultant is in default under Section 13.a.i because Consultant institutes or has instituted against it insolvency, receivership, or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
5. Consultant is in default under Section 13.a.ii because Consultant no longer holds a license or certificate that is required for it to perform services under the Agreement and Consultant has not obtained such license or certificate within fourteen (14) calendar days after Agency’s notice or such longer period as Agency may specify in such notice; or
6. Consultant is in default under Section 13.a.iii because Consultant commits any material breach or default of any covenant, warranty, obligation, or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Agency's notice, or such longer period as Agency may specify in such notice.
   * 1. **Consultant’s Right to Terminate for Cause.** Consultant may terminate this Agreement with such written notice to Agency as provided in Sections 13.e.iii.(A) and 13.e.iii.(B) below, or at such later date as Consultant may establish in such notice, upon the occurrence of the following events:
7. Agency is in default under Section 13.c.i because Agency fails to pay Consultant any amount pursuant to the terms of this Agreement, and Agency fails to cure such failure within thirty (30) calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice; or
8. Agency is in default under Section 13.c.ii because Agency commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and Agency fails to cure such failure within thirty (30) calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice.
   * 1. **Return of Property.** Upon termination of this Agreement for any reason whatsoever, Consultant must immediately deliver to Agency all of Agency’s property (including without limitation any Work or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Consultant in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Consultant must immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Consultant must surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.
9. **Records Maintenance; Access.** Consultant must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Consultant must maintain any other records pertinent to this Agreement in such a manner as to clearly document Consultant's performance. Consultant acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments, and writings of Consultant that are pertinent to this Agreement, whether in paper, electronic, or other form, to perform examinations and audits and make excerpts and transcripts. Consultant must retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
10. **Compliance with Applicable Law.** Consultant must comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Agreement as they may be adopted or amended from time to time.
11. **Foreign Contractor.** If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant must 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. Consultant must demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement.
12. **Force Majeure.** Neither Agency nor Consultant shall be held responsible for delay or default caused by 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 Consultant, respectively. Consultant must, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and must, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
13. **Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 12, 13, 14, 18, 24, and 25.
14. **Time is of the Essence.** Consultant agrees that time is of the essence under this Agreement.
15. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, or mailing the same, postage prepaid, to Consultant or Agency at the address or email address set forth in this Agreement, or to such other addresses or email addresses as either party may indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender’s receipt of confirmation generated by the recipient’s email system that the notice has been received by the recipient’s email system.
16. **Severability.** The parties agree that if any term or provision of this Agreement 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 Agreement did not contain the particular term or provision held to be invalid.
17. **Counterparts.** This Agreement 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 Agreement so executed shall constitute an original.
18. **Oregon False Claims Act.**
    1. Consultant acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by Consultant pertaining to this Agreement that constitutes a “claim” (as defined by ORS 180.750(1)). By its execution of this Agreement, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other liabilities that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Consultant.
    2. Without limiting the generality of the foregoing, Consultant represents and warrants that:
       1. Consultant’s representations, certifications, and other undertakings in this Agreement are not False Claims Act Violations; and
       2. None of Consultant’s performance under this Agreement, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Agreement, will constitute False Claims Act Violations.
    3. For purposes of this Section 23, a “False Claims Act Violation” means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.
    4. Consultant must immediately report in writing, to Agency, any credible evidence that a principal, employee, agent, subcontractor, subgrantee, or other person has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or any moneys paid under this Agreement.
    5. Consultant understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or Agency under any other provision of law, or this Agreement.
19. **Governing Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by 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 Consultant related to this Agreement shall be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event shall this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONSULTANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
20. **Merger Clause; Waiver.** This Agreement and attached exhibits constitute 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 this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Agreement shall not constitute a waiver by Agency of that or any other provision.
21. **Amendments.** No amendment to this Agreement is valid unless it is in writing and signed by the parties.
22. **Certifications and Signature of Consultant’s Authorized Representative.**

The undersigned certifies under penalty of perjury both individually and on behalf of Consultant that:

* 1. The undersigned is a duly authorized representative of Consultant, and has been authorized by Consultant to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Consultant.
  2. By signature on this Agreement for Consultant, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is, to the best of the undersigned’s knowledge, 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; ORS 403.200 to 403.250; ORS chapters 118, 314, 316, 317, 318, 321 and 323; and local taxes administered by the Department of Revenue under ORS 305.620.
  3. To the best of the undersigned’s knowledge, Consultant has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
  4. Consultant and Consultant’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>.
  5. Consultant is bound by and will comply with all requirements, terms and conditions contained in this Agreement.
  6. Consultant \_\_\_ is / \_\_\_ is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one).

[insert Consultant name]

By:

Authorized Signature Date

Printed Name Title

Consultant’s Agreement Administrator

Name:

Address:

Phone:

Email:

1. **Signature of Agency’s Authorized Representative.**

State of Oregon acting by and through its Housing and Community Services Department

By:

Designated Procurement Officer or delegate Date

Agency’s Agreement Administrator

Name:

Address:

Phone:

Email:

**EXHIBIT A**

**SCOPE OF WORK**

**Part I. Definitions.**

**“Grantee”** means an organization that receives State funding from Agency to provide houseless services to the people of Oregon.

**“Subgrantee”** means an organization that receives federal funding from Agency to provide houseless services to the people of Oregon, or an organization that is engaged by a Grantee of Agency to provide houseless services to the people of Oregon.

**“Technical Assistance” or “TA”** commonly referred to as consulting, is an effective process of capacity building when a subject matter specialist provides targeted support to an organization with a development need or problem that is informed by communication between the agency and the specialist so that the specialist is aware of the organizational culture and any specific circumstances related to the development need. Targeted support takes on varied forms to best fit the needs of the organization ranging from but not limited to in person 1:1 or group training, virtual webinars, email, or phone correspondence surrounding the development need. TA is also typically delivered over an extended period of time. In contrast to hiring a contractor to provide a needed service that is beyond the capacity of the organization, the primary goal of TA is to increase the capacity of an organization to eventually not need the expertise of the specialist to execute the needed services.

**Part II. General Information.**

Agency has a network of Grantees and Subgrantees who focus on the roots of homelessness and bring together service providers, local governments, communities, faith leaders, and businesses to provide flexible wraparound services to work toward ending the reality of houselessness for the individual as well as the people of Oregon as a whole. Agency provides funding to Grantees and Subgrantees to create and facilitate emergency shelter communities across the entire State that function to provide for the basic needs of Oregonians experiencing houselessness and as a first stop in the network of services intended to help people avoid unsheltered houselessness and transition back into permanent housing.

The purpose of this Agreement is to include Consultant in a pool of consultants who can provide Technical Assistance (“TA”) to Agency’s Homeless Services Section as well as its Grantees and Subgrantees, in a variety of subject areas.

Any purchases under this Agreement must be authorized by a Work Order Contract issued by Agency in accordance with the ordering procedures described in Part IV of this Exhibit A. There is no guarantee of any specific volume of purchases under this Agreement.

**Part III. Technical Assistance.**

[Will be adjusted based on Proposal]

As requested by Agency in a properly authorized Work Order Contract, Consultant must provide Agency and its Grantees and Subgrantees, TA regarding the following subjects:

* **Funding**(applying for funding, strategies for braiding funding, State and federal funding requirements, budgeting, invoicing, fiscal compliance, reporting, audits, etc.)
* **Change management**(needs assessment; culture change related to diversity, equity, and inclusion; company organization or reorganization; growth management; etc.)
* **Program evaluation and design**(establishing performance metrics, using evidence-based practices, data collection and analysis, developing and implementing racial equity plans, community engagement, etc.)
* **Business operations**(onboarding new staff, resource mapping, technical writing, communication strategies and materials, project management, implementing new funding or programs, desk guide and template development, public image management, employee/ volunteer recruitment, etc.)
* **Facility rehabilitation and safety**(homeless shelter development, converting warehouse to shelter, emergency services, Narcan administration, housing quality standards, lead-based paint assessments, etc.)
* **Data management**(data literacy, data collection, data entry, data completeness/ quality, new user trainings, data ethics, exit/ entry, project type, etc.)

Individual engagement details will be set forth in the Work Order Contracts.

**Part IV. Ordering Procedures.**

When a Grantee or Subgrantee requests TA, Agency will match them with a consultant with expertise in the relevant subject matter. Agency will authorize the selected consultant to assist the Grantee or Subgrantee using a Work Order Contract substantially in the form indicated in Exhibit D (Sample Work Order Contract), and Agency will pay the selected consultant for the costs of this TA as authorized by a properly approved and executed Work Order Contract.

Consultant must perform all Work under this Agreement only pursuant to its respective Work Order Contracts. No Work under a Work Order Contract or an amendment to a Work Order Contract shall begin before Agency and Consultant have signed the Work Order Contract or amendment. There is no guarantee that any specific level of work or overall dollar amount will be assigned to Consultant.

Work Order Contract expiration dates must not exceed this Agreement’s expiration or termination date. All outstanding Work Order Contracts will terminate upon expiration or termination of this Agreement.

**EXHIBIT B**

**INSURANCE REQUIREMENTS**

(May be negotiated based on project’s risk assessment)

**INSURANCE REQUIREMENTS**

Consultant shall obtain at Consultant’s expense the insurance specified in this Exhibit B prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Consultant shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon 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. Consultant shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY**

All employers, including Consultant, 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). Consultant shall require and ensure that each of its subcontractors complies with these requirements. If Consultant is a subject employer, as defined in ORS 656.023, Consultant shall also obtain employers' liability insurance coverage with limits not less than $500,000 each accident. If Consultant is an employer subject to any other state’s workers’ compensation law, Consultant 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**

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 Agreement, 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 per occurrence. Annual aggregate limit shall not be less than $2,000,000.

**AUTOMOBILE LIABILITY INSURANCE**

**Required**

Automobile Liability Insurance covering Consultant’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 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**

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Consultant and Consultant’s subcontractors, agents, officers or employees in an amount not less than $1,000,000 per claim. Annual aggregate limit shall not be less than $2,000,000. 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 Consultant shall provide Continuous Claims Made 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**

All liability insurance, except for Workers’ Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement 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 Consultant’s activities to be performed under this Agreement. 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 07 04 or equivalent.

**WAIVER OF SUBROGATION**

Consultant shall waive rights of subrogation which Consultant or any insurer of Consultant may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Consultant will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Consultant or the Consultant’s insurer(s).

**CONTINUOUS CLAIMS MADE COVERAGE**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Consultant shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Agreement, for a minimum of 24 months following the later of:

1. Consultant’s completion and Agency’s acceptance of all Services required under the Agreement, or
2. Agency or Consultant termination of this Agreement, or
3. The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE**

Consultant shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. 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 Agreement.

**NOTICE OF CHANGE OR CANCELLATION**

The Consultant 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**

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

**STATE ACCEPTANCE**

All insurance providers are subject to Agency acceptance. If requested by Agency, Consultant 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 B.

**EXHIBIT C**

**OHCS STANDARD INVOICE**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Consultant name** | **Price Agreement #** | **Work Order Contract #** | | **Invoice #** | **Invoice date** |
|  |  |  | |  |  |
| **Invoice period** | **Billable hours** | | **Hourly billing rate** | **Invoice amount** | |
| From:       to: |  | | $ | $ | |

**PRICE AGREEMENT BALANCE**

|  |  |  |
| --- | --- | --- |
| **A** | **Price Agreement**  **not-to-exceed amount**  **(from section 3 of the PA)** | $ |
| **B** | **Price Agreement**  **amount previously invoiced:**  **(under all work orders)** | $ |
| **C** | **Invoice amount:**  **(this invoice)** | $ |
| **D** | **Price Agreement**  **remaining balance**  **(A – B – C = D)** | **$** |

**WORK ORDER CONTRACT BALANCE**

|  |  |  |
| --- | --- | --- |
| **E** | **Work Order Contract**  **not-to-exceed amount:**  **(from section 3 of the WOC)** | $ |
| **F** | **Work Order Contract**  **amount previously invoiced:**  **(this WOC only)** | $ |
| **G** | **Invoice amount:**  **(this invoice)** | $ |
| **H** | **Work Order Contract**  **remaining balance**  **(E – F – G = H)** | **$** |

**PROJECT STATUS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Project name** | **% Complete** | **Completion date**  **(estimated)** | **Completion date**  **(actual)** |
|  |  |  |  |
| **Description of work completed during invoice period** | | | |
|  | | | |

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| ***FOR AGENCY USE ONLY*** | | | | | | | | | | |
| **APPROVED FOR PAYMENT** | **INDEX** |  | **PCA** |  | **GRANT/PH** |  | | **AOBJ** | |  |
|  | | | | | |  | |  | |
| **Reviewed & approved for payment by Agreement Administrator** | | | | | | | | **Date** | |
|  | | | | | |  | |  | |
| **Approved for funds by Manager** | | | | | | | | **Date** | |

**EXHIBIT D**

**SAMPLE WORK ORDER CONTRACT**

**OREGON HOUSING AND COMMUNITY SERVICES**

**WORK ORDER CONTRACT #\_\_\_\_\_\_\_\_\_\_\_**

**TO**

**PRICE AGREEMENT #\_\_\_\_\_\_\_\_\_\_\_**

**FOR**

**TECHNICAL ASSISTANCE: SHELTERING**

1. This is Work Order Contract No. [\_\_\_\_\_] to Price Agreement No. [\_\_\_\_\_] (as assigned ‘the Work’ from the “Agreement”) dated [\_\_\_\_\_], between the State of Oregon acting through its Housing and Community Services Department (“Agency”) and [consultant name], a [entity type] (“Consultant").
2. Term.

This Work Order Contract (“WOC”) shall become effective on the date this WOC has been signed by every party. Unless extended or terminated earlier in accordance with its terms, this WOC shall terminate on [\_\_\_\_\_].

1. Consideration.

The maximum, not-to-exceed amount under this Work Order Contract is $[\_\_\_\_\_] which includes any allowable expenses.

1. Statement of Work.

Consultant must provide Technical Assistance as follows:

**Project name:**

**TA category(ies) requested:**

*(check all that apply and provide specific request detail as applicable)*

**Needs assessment**

*(discussing and assessing Grantee/ Subgrantee/ Agency needs, determining whether Consultant can fulfill the needs, and how many hours would be required to fulfill the needs, etc.)*

**Specific request:**

**Funding**

*(applying for funding, strategies for braiding funding, State and federal funding requirements, budgeting, invoicing, fiscal compliance, reporting, audits, etc.)*

**Specific request:**

**Change management**

*(needs assessment; culture change related to diversity, equity, and inclusion; company organization or reorganization; growth management; etc.)*

**Specific request:**

**Program evaluation and design**

*(establishing performance metrics, using evidence-based practices, data collection and analysis, developing and implementing racial equity plans, community engagement, etc.)*

**Specific request:**

**Business operations**

*(onboarding new staff, resource mapping, technical writing, communication strategies and materials, project management, implementing new funding or programs, desk guide and template development, public image management, employee/ volunteer recruitment, etc.)*

**Specific request:**

**Facility rehabilitation and safety**

*(homeless shelter development, converting warehouse to shelter, emergency services, Narcan administration, housing quality standards, lead-based paint assessments, etc.)*

**Specific request:**

**Data management**

*(data literacy, data collection, data entry, data completeness/ quality, new user trainings, data ethics, exit/ entry, project type, etc.)*

**Specific request:**

**Delivery mode(s):**

*(check all that apply)*

**WHO:**

**1:1**

**Large group**

**Small group**

**Other:**

**HOW:**

**In-person**

**Webinar**

**Telephone**

**Posted for on-demand use**

**Other:**

**Entity(ies) needing technical assistance:**

*(delete/ add as needed)*

**Entity name:**

**Type:** Grantee Subgrantee

**Contact name:**

**Email:**

**Phone:**

**Entity name:**

**Type:** Grantee Subgrantee

**Contact name:**

**Email:**

**Phone:**

**Entity name:**

**Type:** Grantee Subgrantee

**Contact name:**

**Email:**

**Phone:**

**Entity name:**

**Type:** Grantee Subgrantee

**Contact name:**

**Email:**

**Phone:**

**Agency comments (if applicable):**

**Maximum number of hours authorized:**

**Hourly rate:**

1. Representations.

Except as expressly described above, all other terms and conditions of Price Agreement No. [\_\_\_\_\_] are still in full force and effect. Consultant certifies that the representations, warranties, and certifications contained in the Price 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.

**CONSULTANT: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO EXECUTION OF THIS WORK ORDER CONTRACT.**

**AS AGREED:**

**CONSULTANT**

By:

Authorized Signature Date

Printed Name Title

**OREGON HOUSING AND COMMUNITY SERVICES**

By:

Designated Procurement Officer (or delegate) Date

Reviewed and approved by Agency Agreement Administrator:

Joshua Fleming Date