

**State of Oregon**

**Contract for Services**

**Housing Needs Technical Assistance Project  
Contract 19122**

**Recitals**

This contract was procured using a public procurement process. Agency Department of Land and Conservation Development issued Request for Proposals (RFP Number **660-1045-20**) seeking proposals for Services and Deliverables as described in this Contract.

Consultant ECONorthwest submitted its proposal on April 23, 2020. Following an evaluation of proposals submitted, Consultant's proposal was selected for award. This Contract is entered into as a result of that successful proposal. Therefore, DLCD and Consultant agree as follows:

**Contract**

This Contract for Services (this "Contract") is by and between the State of Oregon, acting through its **Department of Land Conservation and Development** (Agency), and **ECONorthwest** (Consultant), and is effective as of the Effective Date.

Consultant's Contract Administrator for this Contract is:

**Cindy O'Connell, Controller**  
**ECONorthwest**  
**222 SW Columbia Street, Suite 1600**  
**Portland, OR 97201**  
**503-222-6060**  
oconnell@econw.com

Agency's Contract Administrator for this Contract is:

**Jeff Hunt – Contracts Coordinator**  
**Administrative Services Division**  
**635 Capitol Street NE, Suite 150**  
**Salem, Oregon 97301**  
**Phone: 503-934-0029**  
Jeff.hunt@state.or.us

Either party may change its Contract Administrator by providing the other notice in compliance with Section 17.6 of this Contract. Agency has authority to enter this Contract pursuant to House Bill 2001 (2019).

**1. Contract Term.**

The "Effective Date" of this Contract is the date this Contract has been fully executed by each party and, approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Contract terminates on **June 15, 2021**. The termination of this Contract will not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Consultant that has not been cured.

**2. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence:

**2.1.** This Contract less all Exhibits;

- 2.2. Exhibit A (the Statement of Work);
- 2.3. Exhibit B (Required Insurance); and
- 2.4. Exhibit C (Independent Consultant Certification)

The foregoing documents and Exhibits are attached hereto and made a part of the Contract by this reference.

### 3. Services and Deliverables.

**3.1. Performance of Services.** Consultant shall perform the services (the “Services”) set forth in Exhibit A, the Statement of Work (the “Statement of Work”). The Statement of Work includes the delivery schedule for the Services. Consultant shall perform the Services in accordance with the terms and conditions of this Contract.

**3.2. Submission and Acceptance of Deliverables.** When the Statement of Work requires Consultant to deliver Deliverables, then Consultant shall deliver Deliverables that comply with the requirements forth in this Contract, including the Statement of Work. Consultant shall provide written notice to Agency upon delivery of a completed Deliverables. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, Agency will determine whether the Deliverables have the characteristics and otherwise meets all criteria set forth in the Statement of Work, which Agency shall do in consultation with the relevant entity to whom Consultant is providing Deliverables. If Agency determines that the Deliverables have the characteristics and all criteria set forth in the Statement of Work in all material respects, Agency will notify Consultant in writing of acceptance of the Deliverables.

**3.3. Rejection of Services or Deliverables; Corrections.** If Agency determines that a Deliverables does not have the characteristics or otherwise meet all criteria set forth in this Contracting, including the Statement of Work in all material respects or that Services are not in compliance with all terms and conditions of this Contract, Agency will notify Consultant in writing of Agency’s rejection of the Deliverables or Services, and describe in reasonable detail in such notice the Agency’s basis for rejection of the Deliverables or Services. Upon receipt of notice of non-acceptance, Consultant shall, within a 15 business day period, modify or improve the Deliverables or Services at Consultant’s sole expense so that the Deliverables has the characteristics and meet the criteria described in this Contract, including the Statement of Work and meets, in all material respects or that Services are in compliance with all terms and conditions of this Contract, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverables to Agency. Agency will thereafter review the modified or improved Deliverables or Services within 15 business days of receipt of the Consultant's delivery of the Deliverables or Services. Failure of the Deliverables to have the characteristics or meet in all material respects the criteria set forth in this Contract, including the Statement of Work after the second submission will constitute a default by Consultant. Failure of Services to comply with all terms and conditions of this Contract after the second provision will constitute a default by Consultant. In the event of such default, Agency may either, (i) notify Consultant of such default and instruct Consultant to modify or improve the Deliverables or Services as set forth in this Section, or (ii) notify Consultant of such default and pursue its remedies for default provided for by law or the terms of this Contract.

### 4. Compensation.

**4.1. Not to Exceed Compensation.** The maximum, not-to-exceed compensation payable to Consultant under this Contract, which includes any and all payments under this Contract for all work outlined in the Statement of Work, is **\$228,005.00**. Agency will not pay Consultant any amount in excess of the not-to-

exceed compensation of this Contract and will not pay for Services performed or Deliverables provided before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Consultant performs Services or provides Deliverables subject to the amendment.

**4.2. Payments.** Payments, including interim payments, to Consultant will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A. Overdue payments are subject to ORS 293.462.

**4.3. Invoices.** Consultant shall submit invoices to Agency as set forth in the Statement of Work to Agency's Contract Administrator. The invoices must describe all Services performed and Deliverables provided with particularity, including the dates Consultant performed the Services or provided the Deliverables for which it is requesting payment, and by whom the Services were performed or Deliverables. Agency will review invoices and either accept or reject the invoice within 30 days of receipt. An invoice shall only be rejected if the invoice fails to comply with this section 4.3 and the relevant provisions of the Statement of Work or if Agency determines that Consultant has not completed the Services or Deliverables included on the invoices as required under this Contract, including the statement of work. Agency will determine if Consultant has completed the Services or Deliverables by conferring with the relevant entity to whom Consultant providing the Services or Deliverables. If the invoice is accepted, agency will provide payment at that time.

**4.4. Expenses.** Agency will not pay for or reimburse any expenses incurred by Consultant during the completion of the Services or the provision of Deliverables.

**4.5. Funds Available and Authorized.** Consultant will not be compensated for Services performed or Deliverables provided under this Contract by any agency or department of the State of Oregon other than Agency. Agency believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within Agency's biennial appropriation or limitation. Consultant understands and agrees that Agency's payments under this Contract are contingent on Agency receiving appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

## **5. State Premises.**

**5.1.** Consultant and Consultant staff shall comply with all policies, rules, procedures, and regulations established by Agency and the State for access to and activities in and around premises controlled by Agency or any other agency of the State.

## **6. Independent Consultant; Responsibility For Taxes And Withholding.**

**6.1. Independent Consultant.** Consultant shall perform all Services and provide all Deliverables as an independent Consultant. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; 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 Services and providing Deliverables.

**6.2. No Conflicts.** Consultant, by signature to this Contract, represents and warrants that Consultant's performance of the Services and provision of Deliverables under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules or regulations of any State of Oregon or federal agency for which Consultant currently performs work would prohibit Consultant from performing the Services or providing Deliverables under this Contract.

**6.3. Affiliation.** 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 or otherwise.

**6.4. Taxes and Benefits.** Consultant is responsible for all federal, state, or other taxes applicable to compensation or payments paid to Consultant under this Contract, and, unless required by applicable law, Agency will not withhold from such compensation or payments any amount 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 Contract, except as a self-employed individual.

## **7. Subcontracts, Successors, and Assignments.**

**7.1. Subcontracts.** Consultant shall not enter into any subcontracts for any of the Services or Deliverables required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Consultant shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Consultant. Agency's consent to any subcontract does not relieve Consultant of any of its duties or obligations under this Contract.

**7.2. Successors and Assigns.** The provisions of this Contract are binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns, if any.

**7.3. No Assignment.** Consultant shall not assign or transfer any of its rights or delegate its obligations under this Contract without Agency's prior written consent.

## **8. Representations and Warranties.**

**8.1. Consultant's General Representations and Warranties.** Consultant represents and warrants to Agency that:

**8.1.1.** Consultant has the power and authority to enter into and perform this Contract;

**8.1.2.** This Contract, when executed and delivered, is a valid and binding obligation of Consultant enforceable in accordance with its terms;

**8.1.3.** Consultant shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services and provide the Deliverables;

**8.1.4.** Consultant prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or dishonesty; and

**8.1.5.** Consultant (to the best of Consultant's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date of this Contract, faithfully has complied with:

**8.1.5.1.** All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

**8.1.5.2.** Any tax provisions imposed by a political subdivision of this state that applied to Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant;

8.1.5.3. Any tax provisions imposed by a political subdivision of this State that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant;

8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; and

8.1.6. Consultant has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

## **8.2. Consultant's Performance Warranties.**

8.2.1. Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Consultant shall apply that skill and knowledge with care and diligence to perform the Services and provide the Deliverables in a professional manner and in accordance with the highest standards prevalent in Consultant's industry, trade, or profession;

8.2.2. The Services and each Deliverables delivered by Consultant pursuant to the Services will materially comply with any service descriptions, specifications, standards, and requirements set forth in this Contract;

8.2.3. Except as otherwise provided in this Contract (including Section 9), Consultant shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and

8.2.4. Except as otherwise set forth in this Contract, any subcontractors performing work for Consultant under this Contract have assigned all of their rights in the Deliverables to Consultant or Agency and no third party has any right, title or interest in any Deliverables supplied to Agency under this Contract.

8.3. **Warranties cumulative.** The warranties set forth in Section 8 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Contract.

## **9. Ownership of Work Product.**

9.1. **Definitions.** As used in this Section 9, and elsewhere in this Contract, the following terms have the meanings set forth below:

9.1.1. "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Services.

9.1.2. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Consultant.

9.1.3. "Work Product" means everything that is originally made, conceived, discovered, or reduced to practice by Consultant or Consultant's subcontractor or agents (either alone or with others) pursuant to this Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein

(whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

- 9.2. Original Works.** All Work Product created by Consultant pursuant to the Services, including derivative works and compilations of Work Product, and whether or not such Work Product is considered a work made for hire or an employment to invent, is the exclusive property of Agency. Agency and Consultant agree that such 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 the Work Product is not “work made for hire,” Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product, 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 shall execute such further documents and instruments necessary to fully vest such rights in Agency. Consultant forever waives any and all rights relating to Work Product, 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.
- 9.3. License in Consultant Intellectual Property.** In the event that a Deliverables delivered by Consultant under this Contract is or 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 Deliverables, and to authorize others to do the same on Agency’s behalf.
- 9.4. License in Third Party Intellectual Property.** In the event that a Deliverables delivered by Consultant under this Contract is or 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 Deliverables, and to authorize others to do the same on Agency’s behalf.
- 9.5. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Consultant any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Consultant Intellectual Property that is now owned or subsequently owned by Consultant.
- 9.6. Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.
- 9.7. Competing Services.** Subject to the provisions of this Section 9, and Consultant’s obligations with respect to Confidential Information, including as defined in Section 10, nothing in this Contract precludes or limits in any way the right of Consultant to: (i) provide services similar to those contemplated in this Contract, or consulting or other services of any kind or nature whatsoever to any individual or entity as Consultant in its sole discretion deems appropriate, or (ii) develop for Consultant or for others, Deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables delivered pursuant to this Contract. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop

during the course of performance under this Contract free of any use restriction or payment obligation to the other.

## 10. Confidential Information.

**10.1. Confidential Information.** Consultant acknowledges that it and its employees, officers, directors, agents or subcontractors (collectively, “Consultant Staff”) may, in the course of performing the Services and providing Deliverables under this Contract, be exposed to or acquire information that is confidential to Agency or Agency’s clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Consultant or any Consultant Staff may come into contact with or that is obtained by Consultant or Consultant Staff in the performance of this Contract shall be considered for the purposes of this Contract the confidential information of Agency (“Confidential Information”). Consultant shall, and shall cause Consultant Staff to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by Consultant or Consultant Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Consultant’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (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 Consultant or Consultant Staff who can be shown to have had no access to the Confidential Information.

**10.2. Non-Disclosure.** Consultant shall hold, and shall cause Consultant Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the performance of Services or provisions of Deliverables to Agency hereunder, and shall advise Consultant Staff of their obligations to keep Confidential Information confidential. Consultant shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise Agency immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Consultant will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Consultant against any such person. Consultant shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at Agency’s request, Consultant shall deliver to Agency all documents, papers, and other matter in Consultant’s possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Consultant may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services or provision of deliverables.

**10.3. Confidentiality Policies.** Consultant shall, upon Agency’s request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency’s review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Consultant will respond when a violation or possible violation occurs.

**10.4. Injunctive Relief.** Consultant acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

**10.5. Publicity.** Consultant agrees that it will not disclose the form, content or existence of this Contract or any Deliverables in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Consultant's services, without the prior written consent of Agency.

## **11. Indemnity by Consultant.**

**11.1. Claims.** Consultant shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs, and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Consultant or its officers, employees, subcontractors, or agents under this Contract, including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, infringement of intellectual property rights, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services or provision of Deliverables set forth in this Contract.

**11.2. Legal Counsel.** If Consultant is required to defend the State of Oregon or Agency or their officers, employees or agents under Section 11.1, then Consultant shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Consultant's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

**11.3. Damages to State Property and Employees.** Consultant is liable for all Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Consultant or its officers, employees, subcontractors, or agents under this Contract

**11.4.** CONSULTANT IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

## **12. Limitation of Liabilities.**



EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

**13. Insurance.** Consultant shall maintain insurance as set forth in Exhibit B.

**14. Default; Remedies; Termination.**

**14.1. Default by Consultant.** Consultant will be in default under this Contract if:

- 14.1.1.** 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
- 14.1.2.** Consultant no longer holds a license or certificate that is required for Consultant to perform its obligations under the Contract and Consultant has not obtained such license or certificate within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or
- 14.1.3.** Consultant commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to perform the Services or provide the Deliverables under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Consultant's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice; or
- 14.1.4.** Consultant has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

**14.2. Agency's Remedies for Consultant's Default.** In the event Consultant is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- 14.2.1.** Termination of this Contract under Section 14.6.2; or
- 14.2.2.** Withholding all monies due for Services and Deliverables that Consultant has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or
- 14.2.3.** Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- 14.2.4.** Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Consultant, without penalty; or
- 14.2.5.** Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Consultant has been given notice if required by law.

**14.3. Remedies Cumulative.** The remedies set forth in Section 14.2 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 14.1, then Consultant will be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.6.1.

**14.4. Default by Agency.** Agency will be in default under this Contract if:

**14.4.1.** Agency fails to pay Consultant any amount required pursuant to the terms of this Contract, and Agency fails to cure such failure within 30 calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice; or

**14.4.2.** Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice.

**14.5. Consultant’s Remedies.** In the event Agency terminates this Contract under Section 14.6.1, or is in default under Section 14.4, and whether or not Consultant elects to exercise its right to terminate the Contract under Section 14.6.3, Consultant’s sole monetary remedy will be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced and authorized expenses incurred and interest, subject to ORS 293.462, and (ii) with respect to Deliverables-based Services, a claim for the sum designated for completing the Deliverables multiplied by the percentage of Services completed or Deliverables provided and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Consultant. In no event will Agency be liable to Consultant for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Consultant exceed the amount due to Consultant under this Section 14.5, Consultant shall pay immediately any excess to Agency upon written demand.

**14.6. Termination.**

**14.6.1. Agency’s Right to Terminate at its Discretion.** Agency may terminate this Contract:

14.6.1.1. Upon 30 calendar days’ prior written notice by Agency to Consultant;

14.6.1.2. Immediately upon written notice by Agency to Consultant if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Services or Deliverables; or

14.6.1.3. Immediately upon written notice by Agency to Consultant if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency’s purchase of the Services or Deliverables under this Contract is prohibited or Agency is prohibited from paying for such Services or Deliverables from the planned funding source.

**14.6.2. Agency’s Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Consultant, or at such later date as Agency may establish in such notice, if Consultant is in default under Section 14.1.

**14.6.3. Consultant’s Right to Terminate for Cause.** Consultant may terminate this Contract immediately upon written notice to Agency, or at such later date as Consultant may establish in such notice, if Agency is in default under Section 14.4.

**14.7. Return of Property.** Upon termination of this Contract for any reason whatsoever, Consultant shall immediately deliver to Agency all of Agency’s property (including without limitation any Services or

Deliverables 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.

**14.8. Effect of Termination.** Upon receiving a notice of termination of this Contract, Consultant shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Consultant shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Services and the Deliverables.

## **15. Compliance with Law.**

**15.1. Compliance with Law Generally.** Consultant shall comply, and cause all subcontractors to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract and the performance of the Services or provision of Deliverables. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Consultant's compliance with applicable the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Consultant shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as defined in ORS 279A.010(1)(ii)).

### **15.2. Compliance with Oregon Tax Laws.**

**15.2.1.** Consultant shall, throughout the duration of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes the tax laws described in Section 8.1.5.1 through 8.1.5.4.

**15.2.2.** Any violation of Section 15.2.1 constitutes a material breach of this Contract. Further, any violation of Consultant's warranty in Section 8.1.5 of this Contract that Consultant has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract. Any violation entitles Agency to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

15.2.2.1. Termination of this Contract, in whole or in part;

15.2.2.2. Exercise of the right of setoff, or garnishment if applicable, and withholding of amounts otherwise due and owing to Consultant without penalty; and

15.2.2.3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of Consultant's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services or Deliverables.

**15.2.3.** 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.

**15.3. Compliance with Federal Law.** Consultant shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit D, which is attached and incorporated into this Contract by this reference.

**15.4. Pay Equity.** As required by ORS 279B.235, Consultant shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Consultant's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Consultant's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Consultant may not prohibit any of Consultant's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Consultant may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

## **16. Governing Law; Venue and Jurisdiction.**

**16.1. Governing Law.** This Contract is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

**16.2. Venue and Jurisdiction.** Any claim, action, suit or proceeding between Agency (or any other agency or department of the State of Oregon) and Consultant that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONSULTANT, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this section be construed as (i) 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, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.

## **17. Miscellaneous Provisions.**

**17.1. Records Maintenance; Access.** Consultant shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Consultant, whether in paper, electronic or other form, that are pertinent to this Contract ("Records") 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 will have access to such financial records and other Records that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such financial records and other Records for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

- 17.2. Foreign Consultant.** If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services or provide Deliverables under this Contract in the State of Oregon prior to entering into this Contract.
- 17.3. Force Majeure.** Neither Agency nor Consultant may 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 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 this Contract.
- 17.4. Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 17.4, and provisions regarding Contract definitions, warranties and liabilities, independent Consultant status and taxes and withholding, maximum compensation, Consultant's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Consultant's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
- 17.5. Time is of the Essence.** Consultant agrees that time is of the essence under this Contract.
- 17.6. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, or mailing the same, postage prepaid, to Consultant or Agency at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means or by a confirmation for the person receiving the email that the email has been delivered to the intended email address.
- 17.7. No Third Party Beneficiaries.** Agency and Consultant are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may 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.
- 17.8. Severability.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions

will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

- 17.9. Merger Clause; Waiver.** This Contract 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 Contract. No waiver, consent, modification or change of terms of this Contract will 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, will be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.
- 17.10. Amendments.** The parties may amend this Contract by agreement to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the parties and has been approved as required by applicable law.
- 17.11. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.
- 17.12. Oregon False Claims Act.** Consultant acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Consultant pertaining to this Contract, including the procurement process relating to this Contract that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, 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 Contract. In addition to other penalties 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. Consultant understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.
- 17.13. Certifications.** The individual signing on behalf of Consultant hereby:
- 17.13.1.** Certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) Consultant is not subject to backup withholding because (i) Consultant is exempt from backup withholding, (ii) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, that Consultant is not in violation of any Oregon tax laws and that for a period of no fewer than six calendar years preceding the Effective Date of this Contract, Consultant faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant; (iii) any tax provisions imposed by a political subdivision of this state that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax

laws or provisions; (c) Consultant is an independent Consultant as defined in ORS 670.600; and (d) the supplied Consultant tax identification numbers are true and accurate;

**17.13.2.** Certifies that, to the best of the undersigned’s knowledge, Consultant has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;

**17.13.3.** Certifies that Consultant has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Consultant agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term.

**17.13.4.** Certifies that the information provided on the attached Exhibit C, Independent Consultant Certification, is true and correct as of the Effective Date; and

**17.13.5.** Certifies that 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 <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>.

**[SIGNATURE BLOCKS]**

**CONSULTANT**

**ECO Northwest**

By \_\_\_\_\_

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

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

**STATE OF OREGON** by and through its Agency **Department of Land Conservation and Development:**

By \_\_\_\_\_

Jim Rue, Director

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

## Exhibit A

### Statement of Work

#### **(6) CITY OF TUALATIN HPS**

##### A. Overview, Goals, and Objectives.

Consultant will develop a Housing Production Strategy (HPS) for the City of Tualatin (referred to as the City in this section (6)). The HPS will be informed by recently completed work on the City’s Housing Capacity Analysis (HCA) and the Tualatin Housing Strategy.

##### B. Deliverables, Delivery Schedule, and Payment.

###### 1. Tasks and Products.

#### **Task 1: Project Kickoff**

Consultant shall hold a meeting with City to kick off the project with City. Consultant will contact City via conference call, or in person to inquire about establishing project expectations and familiarize themselves with city-specific concerns.

At the project kick off, Consultant will obtain necessary information and background from City to familiarize Consultant with local conditions and with City’s planning documents.

Consultant will also use the kick off to confirm the objectives of the project laid out in this Contract with the City, refine the project schedule established in this Contract with City (meaning add more detail as necessary to the established schedule), and provide necessary information to City to allow City to prepare for the Project.

#### ***Task 1 Consultant Deliverables:***

- Summary of major tasks and action items for the project; and
- Proposed Project schedule.

#### **Task 2: Contextualized Housing Needs**

##### **Data Collection and Analysis**

Consultant will gather relevant data from the City’s Consolidated Plan, HCA, Regional Housing Capacity Analysis, and other available sources as needed for the HPS to describe current and future housing needs in the context of population and market trends. The City will provide Consultant access to all relevant available local data. The analysis of contextualized housing needs will include:

- Socio-economic and demographic trends of a jurisdiction’s population, disaggregated by race to the extent possible with available data;
- Market conditions affecting the provision of needed housing;
- Existing and expected barriers to the development of needed housing;
- Housing need for those experiencing homelessness, using the best available data;
- Percentage of Rent Burdened Households;



- Housing by Tenure (owner vs renter);
- Percentage of housing stock that is market rate vs. subsidized; and
- Units that are in the development pipeline by housing type;

The analysis of contextualized housing needs will also draw on information gathered through engagement with housing consumers, including underrepresented communities.

### **Outreach and Engagement**

Consultant will help plan engagement with housing consumers, including direct outreach to individuals through interviews, focus groups, or other means; contacting community-based organizations and service providers to connect with those they serve; and/or hosting events (virtual or in-person). This engagement will prioritize underrepresented communities within the City, including renters, low-income households, Hispanic/Latinx residents, other racial and ethnic minorities and immigrant or refugee communities, veterans, people with disabilities, seniors, agricultural workers, and formerly and currently homeless people. The engagement efforts will build from past engagement with the City’s Diversity Task Force and be coordinated with the event(s) required under HB4006 for severely rent burdened communities.

Due to the COVID-19 pandemic, engagement will seek to prioritize outreach to underrepresented groups to the extent reasonably and safely possible at this time within the limited engagement timeframe and resources of this project, and will emphasize outreach through agencies or non-profit groups that represent or work with underrepresented communities. While there will be a good faith effort around outreach generally, and particularly to under-served communities, it is understood that the current situation (with the COVID-19 pandemic) presents unique barriers to engagement. In addition, outreach and engagement discussions are likely to occur via videoconference, teleconference, or telephone calls, rather than in-person.

Consultant will help plan for the engagement, including helping to define the questions and topics for the outreach and methods to solicit input.

### **Summary Document**

Following data analysis and synthesis of outreach, Consultant will produce a summary of contextualized housing needs. While this will initially be produced as a stand-alone memorandum, it will later become a section of the HPS. Consultant will present the draft to the City’s Advisory Committee and make it available for public comment. (This is assumed to be presented at one of the committee meetings listed in Task 3, and not its own Advisory Committee meeting.)

This task will begin immediately following the kick-off and continue through the process of evaluating strategies.

#### ***Task 2 Consultant Deliverables:***

- Outline (via email) of suggested questions and topics for outreach Meeting (via teleconference) with staff to plan for engagement with housing consumers; and
- Contextualized Housing Needs memorandum.

### **Task 3: Strategies to Accommodate Future Housing Need**

#### **Summary of Existing Measures and Past Recommendations**

Consultant will review and provide input to the City on a City provided summary of measures already adopted by the City that promote the development of needed housing, and existing practices that affirmatively further fair

housing, link housing to transportation, provide access in Opportunity Areas, address equitable distribution of services, and create opportunities for rental housing and homeownership as those terms and requirements are defined in the final rules and state guidance for the HPS. The City will identify and provide all available information about existing relevant measures.

### **Gap Review**

Based on the Consultant and City evaluation of contextualized housing needs and the summary of the City's existing measures, Consultant will identify gaps where identified housing needs are not being met by the private market, and where there is inadequate public support to fully meet the identified needs. Consultant will review the list of strategies identified in the City's HCA produced in 2019 against the identified gaps to evaluate how well the strategies identified in the HCA address the contextualized housing needs, and where additional strategies may be needed. This evaluation will be qualitative rather than quantitative. In other words, it is not a numerical comparison of units needed of a specific type to units being produced through existing measures, but rather an assessment of whether the City's existing measures and previously identified strategies address the relevant needs where greater public intervention is needed.

Based on the identified gaps, Consultant will work with the City to identify any additional strategies needed to supplement those previously identified. Consultant will combine information on existing measures, previously identified strategies, and possible additional strategies to more fully address contextualized housing needs in a memorandum to share with the City Advisory Committee along with the Contextualized Housing Needs memorandum.

### **Strategy Refinement**

Consultant will work with the City and the City Advisory Committee to select strategies that are promising for near- to mid-term implementation and that would benefit from additional consideration to refine and provide additional guidance about how the strategy might best be implemented in the City. Consultant will provide additional information and qualitative and/or quantitative evaluation of up to five strategies. The purpose of this evaluation is to inform whether the City should include them in the HPS, and how (e.g. implementation considerations, pros and cons, or discussion of options in how to implement or apply the strategy).

### **Outreach and Engagement**

During the course of Task 3, Consultant will conduct outreach to housing producers and service providers to seek input on the potential housing strategies, focusing on those that have been identified as most promising. Consultant will participate in eight interviews or focus groups (to be conducted via teleconference or videoconference) with housing producers (e.g. for-profit housing developers, non-profit housing developers, homeless service providers).

### **Final Strategies**

For the strategies that are recommended for inclusion in the City's HPS, Consultant will produce the following for each strategy, based on Consultant's evaluation, input from staff, and feedback gathered through outreach and engagement:

- A description of the strategy;
- Identified Housing Need being fulfilled (tenure and income) and analysis of the income and demographic populations that will receive benefit and/or burden from the strategy, including low-income communities,

communities of color, and other communities that have been discriminated against, according to fair housing laws;

- Approximate magnitude of impact, including (where possible/applicable) an estimate of the number of housing units that may be created, and the time frame over which the strategy is expected to impact needed housing;
- Timeline for adoption and implementation;
- Actions necessary for the local government and other stakeholders to take in order to implement the strategy; and
- Opportunities, constraints, or negative externalities associated with adoption of the strategy.

While this will initially be produced as a stand-alone memorandum, it will later become a section of the HPS.

**Task 3 Consultant Deliverables:**

- Memorandum summarizing existing measures, previously identified strategies, and additional strategies for consideration to address contextualized housing needs;
- Memorandum providing additional evaluation and refinement of selected strategies;
- Memorandum summarizing the information required per the list above for each strategy;
- Up to eight documented discussions with housing producers and/or service providers to seek input on the potential housing strategies;
- Agendas and presentations/meeting materials for up to three meetings (likely by videoconference) with the Advisory Committee; and
- One presentation to the Planning Commission.

**Task 4: Draft and Final Report**

The draft HPS Report will include the following:

- Contextualized housing needs from Task 2;
- Summaries of existing measures and final proposed strategies from Task 3;
- How the City’s existing measures and final proposed strategies help to achieve fair and equitable housing outcomes, affirmatively further fair housing, and overcome discriminatory housing practices and racial segregation; and
- A conclusion addressing the following:
  - A qualitative assessment of how the strategies collectively address the contextualized housing needs identified in the HCA and HPS;
  - Discussion of how the proposed actions, taken collectively, will increase housing options for population groups experiencing a current or projected disproportionate housing need;
  - How the City’s existing measures and proposed strategies will affirmatively further fair housing, link housing to transportation, provide access to Opportunity, address needs for people facing homelessness and equitable distribution of services, create opportunities for rental housing and homeownership, and mitigate vulnerabilities to displacement and housing instability;
  - The rationale for any identified needs not being addressed; and
  - The City’s plan for monitoring progress on the housing production strategies.

Following review by staff and revisions as needed, Consultant will produce a public review draft HPS for review and comment by the City’s Advisory Committee, Planning Commission, City Council, and interested parties. Consultant

will summarize Advisory Committee comments on the draft (if addressing comments would require major updates) or make minor updates to the draft following the Advisory Committee review.

Following public review and comment, Consultant will produce a Final HPS document.

**Task 4 Consultant Deliverables:**

- Public Review Draft HPS;
- Agenda and presentation/meeting materials for one Advisory Committee meeting;
- Presentation to Planning Commission;
- Presentation to City Council; and
- Final Housing Production Strategy.

1. Payment Schedule (Tualatin HPS)

Consultant shall submit invoices to Agency in accordance with the payment schedule below, as described in more detail in Section 4 of the Contract.

Consultant shall submit an invoice to Agency for the amount shown below after the relevant task is completed.

Consultant must submit final invoice within 30 days of the completion of task 4 below.

Labor Expenses	HOURS BY TASK					TOTALS		
	Task 1	Task 2	Task 3	Task 4	Hours	\$	% of Budget	
	Task 1: Project Kickoff	Task 2: Contextualized Housing Needs	Task 3: Evaluation of Existing Measures and Identification of Gaps	Task 4: Draft and Final Report				
ECONorthwest								
Project Director (Beth Goodman)	165	4	8	13	10	35	\$5,775	12%
Project Manager (Becky Hewitt)	145	9	12	62	36	119	\$17,255	35%
Associate (Sadie DiNatale)	120	11	32	79	64	186	\$22,320	45%
Research Associate	95	1	16	22	10	49	\$4,655	9%
<b>Sub-Total</b>		<b>25</b>	<b>68</b>	<b>176</b>	<b>120</b>	<b>389</b>	<b>\$50,005</b>	<b>100%</b>

Totals by Task	Task 1	Task 2	Task 3	Task 4	Totals	Summary of Expenses	
Total ECONorthwest Labor	\$3,380	\$8,420	\$22,705	\$15,500	ECO Labor	\$50,005	100%
Direct Expense	\$0	\$0	\$0	\$0	Non-Labor	\$0	0%
Total by Task	\$3,380	\$8,420	\$22,705	\$15,500	<b>Budget</b>	<b>\$50,005</b>	<b>100%</b>
% of Total Budget	7%	17%	45%	31%			

## **Exhibit B**

### **Required Insurance**

#### **INSURANCE REQUIREMENTS:**

Consultant shall obtain at Consultant's expense the insurance specified in this section prior to 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. 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 sub-Consultants 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, 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 sub-Consultants 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 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 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**AUTOMOBILE LIABILITY INSURANCE:**

Required  Not 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  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 Consultant and Consultant’s sub Consultants, 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 Tail Coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY:**

Required  Not required

Consultant shall provide network security and privacy liability insurance for the duration of the contract and for the period of time in which Consultant (or its Business Associates or sub Consultant(s)) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$\_\_\_\_\_ per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to,

Personally Identifiable Information (“PII”), Payment Card Data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

**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 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 Consultant'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 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).

**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, Consultant 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) Consultant’s completion and Agency’s acceptance of all Services required under this Contract, or, (ii) Agency or Consultant termination of this Contract, or, (iii) The expiration of all warranty periods provided under this Contract.

**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 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. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. 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 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 Contract 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 Section.



**Exhibit C**

**Independent Consultant Certification**

**Consultant certifies he/she meets the following standards:**

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent Consultant in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following):**  
  
 A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.  
 B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.  
 C. Telephone listing used for the business is separate from the personal residence listing.  
 D. Labor or services are performed only pursuant to written contracts.  
 E. Labor or services are performed for two or more different persons within a period of one year.  
 F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

**Consultant Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_