
**CONTRACT BETWEEN THE
BREMERTON HOUSING AUTHORITY
AND**

INTRODUCTION

This contract (the “Contract”) by and between the Bremerton Housing Authority, (hereinafter “BHA”) and (hereinafter “the Consultant”) is hereby entered into this ____ day of ____, **20**____ (the “Effective Date”).

Services pursuant to this Contract **shall begin on** ____ ____, **20**____ **and the period of performance shall be 365 calendar days**, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this Contract. (See 3.4 Renewal Options)

1.0 DEFINITIONS:

- 1.1 Request For Proposals (RFP):** A competitive solicitation process conducted by BHA wherein award was made to the top-rated responsive and responsible proposer.
- 1.2 Contracting Officer (CO):** The Executive Director (ED) or an official authorized by the ED to enter into and/or administer contracts and make related determinations and findings.
- 1.3 Project Manager (“BHA PM”):** The BHA representative responsible for the planning, execution, and closing of a specific project.
- 1.4 Days:** All references to “days” are calendar days; in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time will automatically be extended to include the next work day.

2.0 APPENDICES AND ATTACHMENTS: The following documents are included as part of this Contract as individually referenced below.

- 2.1 Appendix No. 1: HUD General Conditions for Non-Construction Contracts, Section 1 (Without Maintenance Work), Form HUD-5370C (01/2014) (and any amendments thereto)**
 Attached Hereto Not Attached Hereto
- 2.2 Appendix No. 2: RFP No. ____** which states the Scope of Work/Services as issued by BHA and responded to by the Consultant noting any changes agreed upon by negotiation between BHA and the Consultant. RFP Attachments were provided with the open solicitation. Addenda ____ through ____ were issued during the RFP process and are incorporated by reference in this Contract.
 Attached Hereto Not Attached Hereto
- 2.3 Appendix No. 3: The Consultant’s submittal** which states their ability to perform the Scope of Work/Services. This includes the proposed fees submitted by the Consultant.
 Attached Hereto Not Attached Hereto
- 2.4 Priority:** In the case of any discrepancy between this Contract and any of the above noted documents, Appendix No. 1 will control. In the case of discrepancy between this Contract and the remaining appendices, the requirement(s) listed within the body of this Contract shall first take precedence, then the requirement(s) listed within each appendix will take precedence in the order they are listed above.

- 2.5 Any document referenced herein that has not been attached is hereby incorporated by reference and a copy of each such document is available from BHA upon written request.
- 2.6 The following are included by reference, each of which was either issued by BHA as a part of the competitive solicitation and/or was completed and returned by the Consultant:
 - 2.6.1 Current Insurance Certificate/Endorsement (naming BHA as “additional insured”);
 - 2.6.2 GSA Debarred and HUD Limited Denial of Participation Certifications;
 - 2.6.3 Profile of Firm Form;
 - 2.6.4 Sub-consultants Exceeding 5% and 1% Listings;
 - 2.6.5 Sub-consultant’s List;
 - 2.6.6 Sub-consultant’s Affirmative Action form;
 - 2.6.7 Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability;
 - 2.6.8 Consultant’s and Sub-consultant’s Non-Collusive Affidavits.

3.0 SERVICES AND PAYMENT:

- 3.1 **Scope of Work/Services:** Said services shall be provided on the dates and times determined by BHA at the designated BHA community and/or facilities. The following services are being contracted: _____
- 3.2 **Provisions of Any and All Work:** The Consultant shall not begin any additional or change to the work without the receipt of a written order covering those services from the CO.
- 3.3 **Cost/Value of Services:**
 - 3.3.1 **Contract Value:** Contractor shall perform the entire Work/Services described in this Contract for the firm fixed price of \$_____.
- 3.4 **Renewal Options:** This Contract is initially executed for one year only. BHA shall retain the right to renew this Contract at BHA’s option for _____ (____) additional years (+____/1).
- 3.5 **Assignment Clause:** BHA may assign this Contract without the Consultant's prior written approval and such assignment shall inure to the benefit of BHA and its successors and/or assigns, heirs and legal representatives and shall be binding upon Consultant, its successors and permitted assigns, if any, pursuant to the terms hereof. Said assignment agreement will require the assignee to assume all of the obligations of BHA under this Contract. Consultant may not assign this Contract without specific written permission from BHA in advance.
- 3.6 **Non-Escalation:** Unless otherwise specified, prices reflected on the Contract shall remain firm with no provision for price increases during the term of the Contract; however, BHA and the Consultant may renegotiate at contract renewal.
- 3.7 Variances from the original scope of work deemed by BHA to be substantial will require the project to go back out for bid.
- 3.8 **Claims by Consultant or by BHA:**
 - 3.8.1 **Consultant Claims:** If Consultant believes it is entitled to an adjustment in the allotted contract time or the contract price due to an act or failure to act by BHA,

a changed condition, or a differing or unexpected project condition (collectively, an "Event"), Consultant shall give BHA written notice thereof within seven (7) days after it becomes or should have become aware of the Event. The notice shall contain a request for change that includes a description of the Event, a statement outlining the reasons for the change, and the total effect on the allotted contract time and on the cost of performance necessarily caused by the identified Event. If the CO agrees with the proposed change, the Contract shall be modified in writing accordingly and signed by both parties; if the CO disagrees with the proposed change, it will notify the Consultant that the request for change is denied. If the Consultant disputes a decision by the CO regarding a requested change, the Consultant shall comply with the "Disputes" provision. Failure to give any notice as required by this section with regard to an Event constitutes a waiver of the right to make a claim for that Event. In no case shall an adjustment to contract time or value be made for an Event to the extent the contract time or value would have also been impacted by any other cause, including the fault or negligence of the Contractor.

No part of any claim will be allowed if not supported by adequate evidence showing the impacts of the Event.

If a modification to contract time or value is signed by both parties because of an Event, the parties' signatures indicate their acceptance of the modification as full and final compensation for that Event, including the cumulative effects of all other Events up through the signature date.

3.8.2 BHA Claims: Any Consultant-caused delays or defects in Contractor performance may lead to withholding of payment on any monthly invoices until Contractor corrects the delay or defect. All outstanding invoices withheld for this reason will then be paid current within 30 days of BHA's acceptance of the correction.

In the event of Consultant non-compliance or unsatisfactory performance issues, BHA may choose to warn the Consultant, verbally or in writing. Such warning may include placing the Consultant on probation, thereby giving the Consultant a certain period of time to correct the deficiencies or potentially suffer termination. If the Consultant does not agree with such action, the Consultant shall have ten (10) days to dispute or protest in writing. The written protest must detail all relevant information including details of BHA's alleged incorrect action(s). If the Consultant does not do so within the ten (10) day period, then the Consultant shall have no recourse but to accept BHA's position on the issue.

3.9 Delays by BHA or Consultant:

3.9.1 Time of the Essence: Time is of the essence under this Contract as to each provision in which time of performance is a factor.

3.9.2 BHA: If the performance of all or any part of the work is, for an unreasonable period of time, delayed by an act of BHA in the administration of this Contract, or by its failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract necessarily caused by such unreasonable delay, and the Contract shall be modified in writing accordingly and signed by both parties. However, no adjustment shall be made under this clause for any suspension or delay to the extent that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Consultant.

3.9.3 Consultant: Any Consultant-caused delays in the deliverables outlined in this Contract will lead to withholding of any monthly invoices received between the time of the deliverable deadline and the date it is submitted to BHA. All outstanding invoices withheld for this reason will then be paid current within 30 days of the date the product is submitted to BHA.

3.9.3.1 In the event of Consultant non-compliance or unsatisfactory performance issues, BHA may choose to warn the Consultant, verbally or in writing. Such warning may include placing the Consultant on probation, thereby giving the Consultant a certain period of time to correct the deficiencies or potentially suffer termination. If the Consultant does not agree with such action, the Consultant shall have ten (10) days to dispute or protest, in writing. The written protest must detail all relevant information pertaining to the dispute including details of BHA's alleged incorrect action(s). If the Consultant does not do so within the ten (10) day period, then the Consultant shall have no recourse but to accept BHA's position on the issue.

3.9.3.2 No part of any claim shall be allowed if not supported by adequate evidence showing that the cost was due solely to the delay.

3.10 Billing Method:

3.10.1 To receive payment for services performed under this Contract, the Consultant must submit a fully completed invoice for only the work actually performed to:

Bremerton Housing Authority
Attn: [Accounts Payable](mailto:accounts.payable@bremertonhousing.org)
600 Park Avenue
Bremerton, WA 98337
accounts.payable@bremertonhousing.org

3.10.2 At a minimum, the invoice shall detail the following information:

3.10.2.1 Unique invoice number;

3.10.2.2 Consultant's name, address and telephone number;

3.10.2.3 Date of invoice and/or billing period;

3.10.2.4 Applicable Contract No. _____;

3.10.2.5 Brief description of services rendered, including applicable timeframe, total hours being billed for each service at each detailed site and the approved rate (may be submitted in the form of a report);

3.10.2.6 Total amount being billed.

3.10.3 BHA will pay each such properly completed invoice received on a Net/30 basis. Any invoice received which is *not* properly completed will *not* be paid unless and/or until the Consultant complies with the applicable provisions of this Contract.

3.10.4 Taxes: Per RCW 35.82.210 and the Washington Administrative Code (WAC) Section 458-20-189, 6A, **housing authorities are exempt** from paying certain Washington State Sales and Use Taxes and Federal Excise Taxes as detailed below.

3.10.4.1 Labor: Sales or use tax is not imposed on the purchases by the Consultant or sub(s) of labor or services in the performance of the Contract. Therefore, the Washington State retail sales tax or the compensatory use tax for these items should **not** be included in any invoice billings, and BHA will exclude any tax amounts from payment that are noted on any billings.

3.10.4.2 Material: All materials purchased by the Consultant in the performance of the work of the contract **are** subject to Washington State Use Tax (unless retail sales tax has been paid on the materials). When providing a contract bid to BHA, the cost of materials, and the tax on said materials must be included in the total contract amount submitted for review and selection. Contract billings presented for payment to BHA may include applicable retail, use or excise taxes paid by the Consultant in the cost of materials, but must not have any such tax itemized on the invoice.

3.10.5 Progress Payments: Progress payments are applicable to this Contract.

4.0 DISPUTED BILLINGS (CHARGES):

4.1 Procedures: As per 24 CFR 85.36 (11-12), recipients of federal funding shall be responsible for the settlement of all contractual and administrative issues arising out of procurements and have protest procedures to handle and resolve disputes relating to procurements. A protestor must exhaust all administrative remedies with BHA before pursuing a protest with the federal agency. In addition to the procedures detailed within Clause No. 7 of **Appendix No. 1, General Conditions for Non-Construction Contracts, Section 1 (With or Without Maintenance Work) Form HUD-5370C (01/2014)**, in the event BHA disputes any portion of its billing(s), BHA shall pay the undisputed portion of such billing and initiate the dispute-resolution procedures as follows:

4.1.1 BHA's representative shall, within ten (10) days after BHA's receipt of such billing, formally notify the Consultant's representative of all information pertaining to the dispute and request that he/she investigate and respond to this issue.

4.1.2 If such dispute cannot be resolved by the Consultant's response within ten (10) days after such notification is given, BHA's CO and the Consultant's representative shall meet to discuss the matter and attempt to arrive at a resolution.

4.1.3 If BHA's CO and/or representative and the Consultant's representative are unable to resolve the dispute through such discussion within ten (10) days, BHA shall, within ten (10) days thereafter, do one (1) of the following:

4.1.3.1 Pay the disputed charges and reserve the right to submit the matter to the Washington State Court Annexed Arbitration program if the disputed amount does not exceed \$40,000 or to the appropriate district court in the State of Washington if it does;

4.1.3.2 Not pay the disputed charge and BHA submits the matter to the Washington State Court Annexed Arbitration program if the disputed amount does not exceed \$40,000 or to the appropriate district court in the State of Washington if it does;

4.1.3.3 Not pay the disputed charge and allow the Consultant to submit the matter either to the Washington State Court Annexed Arbitration

program if the disputed amount does not exceed \$40,000 or to the appropriate district court in the State of Washington if it does.

4.1.4 The decision from arbitration will be binding upon both parties. If the decision is in favor of the Consultant, BHA shall pay Consultant within ten (10) days of BHA's receipt of the decision. If the decision is in favor of BHA, the Consultant will either:

4.1.4.1 Clear the amount which is ordered from the BHA account; or

4.1.4.2 Repay BHA the amount ordered.

4.1.4.3 Either option shall be completed within ten (10) days after the Consultant's receipt of the arbitrator's decision.

5.0 BHA'S OBLIGATIONS: Pursuant to this Contract, BHA agrees to provide the specific services detailed herein and also shall be responsible for the following:

5.1 BHA agrees not to provide to the Consultant authorization to proceed on additional or a change in the work without the prior written approval of the CO.

6.0 CONSULTANT'S OBLIGATIONS: Pursuant to this Contract, the Consultant agrees to provide the specific services detailed herein and in the RFP and shall be responsible for the following:

6.1 Salaries and Expenses Relating to the Consultant's Employees: The Consultant shall pay all salaries and expenses of, and all federal social security taxes, federal and state unemployment taxes, and any similar taxes relating to its employees used in the performance of the Contract. The Consultant further agrees to comply with all federal, state, and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this Contract.

6.2 Supervision and Oversight: The Consultant shall be solely responsible for providing supervision and oversight to all of the Consultant's personnel.

6.3 Qualified Personnel: The Consultant warrants and represents that it will assign only qualified personnel to perform the services. For the purposes of this Contract, the term "qualified personnel" means those personnel that have been investigated, tested, and trained in the manner described within this Contract and as proposed by the Consultant within its proposal or as provided by the Consultant during the Consultant's normal conduct of business.

6.4 Work on BHA Property: If the Consultant's work under the Contract involves operations by the Consultant on any BHA premises, the Consultant shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and shall be responsible for the safe execution of the Services by itself and its Subcontractors of all tiers.

6.5 Sub-consultants: The Consultant may not use any sub-consultants to accomplish any portion of the services required by this Contract without the prior written permission of the CO.

6.6 Progress Meetings: The Consultant shall attend progress meetings as required by BHA according to the schedule BHA will provide. Progress meetings shall be used to discuss work progress, payments, problems or deficiencies noted, overdue reports, the status of the schedule, and any other matters relevant to this Contract.

6.7 Modifications/Amendments: This Contract shall not be modified, revised, amended, or extended except by written amendment, executed by both parties. The Consultant acknowledges that contract amendment requests will not be summarily approved. All amendment requests must be submitted to BHA's CO for approval, prior to undertaking the

additional work, in accordance with **Clause No. 2 of Form HUD-5370C-1, General Conditions for Non-Construction Contracts** (01/2014). Consultant agrees not to accept or perform any assigned work initiated by an amendment without the prior written approval of the BHA CO.

6.8 Insurance Requirements: The Consultant shall maintain the following insurance coverage during the effective term(s) of this Contract. Failure to maintain the following coverages, including naming the Bremerton Housing Authority (spelled out) as an additional insured (where appropriate) during the term(s) of this Contract shall constitute a breach thereof. Acceptable evidence of such coverage must be provided prior to beginning work under this Contract. Evidence shall be in the **form of a certificate with endorsement** as described.

Commercial General Liability Insurance:

Consultant shall carry and maintain Comprehensive General Liability insurance to include Personal Injury, Property Damage, Product and Completed Operations, and Contractual Liability. The insurance shall cover ongoing and completed operations. Further:

- Personal Injury coverage shall include usual coverage for personal injury liability and coverage for damages because of bodily injury, occupational sickness or disease, or death, and coverage of advertising injuries.
- Property Damage coverage shall include claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- Product and Completed Operations coverage shall continue for one (1) year beyond completion and acceptance of the Project.
- Contractual Liability shall cover the liability and indemnification provisions of this agreement.

The following minimum coverage is required:

- \$2 million each occurrence, and
- \$2 million aggregate

Professional Liability Insurance:

A certificate showing the Consultant's professional liability and/or "errors and omissions" coverage. While a specific deductible is not required by BHA, the coverage must indemnify BHA for the entire claim/lawsuit regardless of the amount.

The following minimum coverage is required:

- \$1 million each occurrence, and
- \$2 million aggregate

If the Professional Liability Insurance policy is written on a claims-made form, the Consultant warrants continuation of coverage, either through policy renewals or the purchase of an extended reporting period ("tail") for a minimum of three (3) years from the date of completion of the work authorized by the Contract. In the event that the selected respondent is authorized to engage sub-consultants, each shall provide evidence of separate professional liability coverage equal to the levels specified above, unless such requirement is waived in writing by BHA.

Workers Compensation Coverage: Unless the Consultant is exempt from the

Title 51 RCW requirements for mandatory Worker's Compensation Coverage, the Consultant must carry and maintain Worker's Compensation insurance in statutory amounts and Employer's Liability (Washington Stop Gap insurance) in the minimum amount of \$1,000,000.

Automobile Insurance: Consultant shall carry and maintain Automobile Liability insurance in a minimum amount of \$1,000,000 combined single limit per occurrence. This insurance shall cover scheduled, hired, and non-owned vehicles.

➔ Consultant shall furnish to BHA a Certificate of Insurance evidencing the coverages required above prior to the commencement provision of Work hereunder and shall continue to provide BHA with subsequent Certificates of Insurance evidencing uninterrupted compliance with these insurance requirements until the termination of this Contract. Renewal certificates must be provided prior to expiration of the term of the then-existing policy, for the term of coverage required by the Contract. The required insurance documentation shall be forwarded to:

Andi Reed
Contracts & Procurement Administrator
Bremerton Housing Authority
600 Park Avenue
Bremerton, WA 98337
Email Preferred: areed@bremertonhousing.org
(360) 616-2909 Fax (Desktop)

6.8.1 Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions shall be the sole responsibility of the Consultant and must be declared to and approved by BHA. At the option of BHA, either: the Consultant will reduce or eliminate such deductibles or self-insured retentions as respects BHA, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to BHA guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6.8.2 Other Insurance Provisions: The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

6.8.2.1 BHA, its officers, employees, and volunteers are to be covered as additional insured with respect to liability arising from services provided by the Consultant including bodily injury or equipment furnished; or arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant. General Liability coverage can be provided in the form of an appropriate endorsement to the Consultant's insurance or as a separate policy for services of this Contract.

6.8.2.2 For any claims related to this Contract, the Consultant's insurance coverage shall include waivers of subrogation and be primary and non-contributory as respects BHA, its officers, employees and volunteers. Any insurance or self-insurance maintained by BHA, its officers, employees, or volunteers shall be in excess of the Contractor's insurance unless such claims are caused by the sole negligence, errors or omissions of BHA.

6.8.2.3 Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after 30 days prior written notice, by certified mail, return receipt requested, has been given to BHA.

6.8.2.4 Maintenance of the proper insurance for the duration of this Contract is a material element of the Contract. Material changes in the required coverage or cancellation shall constitute material breach of the Contract by the Consultant.

6.8.3 Acceptability of Insurers: Insurance shall be placed with insurers with a current A.M. Best's rating of no less than B+:VI.

6.8.4 Verification of Coverage: Consultant shall furnish BHA with certificates of insurance together with amendatory endorsements effecting coverage required by these specifications. The endorsements shall conform fully to the requirements. All certificates of insurance and endorsements are to be received and approved by BHA in sufficient time prior to work commencing to permit the Contractor to remedy any deficiencies. BHA reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting coverage required by these specifications at any time.

6.9 Licensing Requirements: Copies of the following license(s) shall be provided unless they were already provided in the Consultant's proposal.

City of Bremerton:

A copy of the Consultant's business license allowing the Consultant to provide such services within the City of Bremerton.

State of Washington Master Business or Legal Entity License:

A copy of the Consultant's license issued by the State of Washington Secretary of State allowing the Consultant to provide the services detailed herein.

➔ The above licenses shall be forwarded to:

Andi Reed
Contracts & Procurement Administrator
Bremerton Housing Authority
600 Park Avenue
Bremerton, WA 98337
Email Preferred: areed@bremertonhousing.org
(360) 616-2909 Fax (Desktop)

6.10 Permits: Unless otherwise stated in the Contract documents, all local, state or federal permits which may be required to provide the services of this Contract, whether or not they are known to either BHA or the Consultant at the time of the submittal deadline or the award, shall be the sole responsibility of the Consultant and any costs that were submitted by the Consultant shall reflect all costs required by the Consultant to procure and provide such necessary permits.

6.11 Warranty:

6.11.1 The services provided under the Contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned specifications contains more stringent requirements than the other, the more stringent requirements shall apply.

6.11.2 The liability of the Consultant to BHA (except as to title) arising out of the furnishing of the services or of its use under the terms of the Contract shall not exceed the correcting of the defect(s) in the services as provided under the Contract, and upon expiration of the warranty period all such liability shall

terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.

6.12 Financial Viability and Regulatory Compliance:

- 6.12.1** The Consultant warrants and represents that it is in good standing with all applicable federal, state, and local licensing authorities and that it possesses all requisite licenses to perform the services required by this Contract. The Consultant further warrants and represents that it owes no outstanding delinquent federal, state, or local taxes or business assessments.
- 6.12.2** The Consultant agrees to promptly disclose to BHA any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this Contract. The failure by the Consultant to disclose such issue to BHA in writing within five (5) days of receipt of such notification will constitute a material breach of this Contract.
- 6.12.3** The Consultant further agrees to promptly disclose to BHA any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Consultant may undergo during the term(s) of this Contract. The failure of the Consultant to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this Contract.
- 6.12.4** All disclosures made pursuant to this section of the Contract shall be made in writing and submitted to BHA within the time periods required herein.

7.0 APPLICABLE LAWS:

- 7.1 Compliance with Federal and State Laws:** All work performed by the Consultant, pursuant to this Contract, shall be done in accordance with all applicable federal, state and local laws, regulations, codes and ordinances.
- 7.2 Jurisdiction of Law:** The laws of the State of Washington shall govern the validity, construction, and effect of this Contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This Contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Kitsap County, Washington State is the appropriate forum for any action relating to this Contract.
- 7.3 Government Standards:** It is the responsibility of the Consultant to ensure that all items and services proposed conform to all local, state, and federal law concerning safety and environmental control and any other enacted ordinance, code, law, or regulation. The Consultant shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law, or regulation. No time extensions shall be granted or financial consideration given to the Consultant for time or monies lost due to violations of any such ordinance, code, law, or regulations that may occur.

8.0 NOTICES AND REPORTS:

- 8.1** All notices and/or reports submitted to BHA by the Consultant pursuant to this Contract shall be in writing and delivered to the attention of the following person:

If to BHA:

Bremerton Housing Authority

Bremerton, WA

Email: ____@bremertonhousing.org

Phone: (360) 616-

Fax: (360) -

Or, Upon BHA Direction:

Services
Contract #:

8.2 All notices submitted to the Consultant pursuant to this Contract shall be in writing and mailed to the attention of:

If to Consultant:

Email: _____
Phone: () -
Fax: () -

Or, Upon Consultant Direction:

9.0 ADDITIONAL CONSIDERATIONS:

9.1 **Funding Restrictions and Order Quantities:** BHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to BHA, if:

9.1.1 Funding is not available;

9.1.2 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or

9.1.3 BHA's requirements in good faith changed after the award of the Contract.

9.2 **Freight on Bill and Delivery:** The Consultant agrees to deliver to the designated location(s) on or before the date as specified in this Contract. Failure to deliver on or before the specified date constitutes an event of default by the Consultant. Upon default, the Consultant agrees that BHA may, at its option, rescind this Contract under the default clause herein and seek compensatory damages as provided by law.

9.3 **Backorders:**

9.3.1 The CO must be notified in writing by the Consultant within ten (10) days of any and all backordered materials and/or any incomplete services as well as the estimated delivery date.

9.3.2 Unless otherwise stipulated in the Contract, any order that will take more than a maximum of ten (10) days past the original agreed upon delivery date, may at the option of BHA, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interest of BHA to do so.

9.4 **Independent Consultant:** The Consultant is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the Consultant and BHA and neither shall have any authority to bind the other in any way.

9.5 **Time of the Essence:** Time is of the essence under this Contract as to each provision in which time of performance is a factor.

9.6 **Indemnification:**

9.6.1 The Consultant shall indemnify, defend, and hold BHA (and its officers, employees, and agents) harmless from and against any claims, damages, losses, suits, actions, decrees, judgments, attorney fees, court costs, and other expenses of any kind or character, which are caused by, arise out of, or occur due to the performance or nonperformance of the Services or breach of the Contract by the Consultant. This includes, without limitation, a failure by the Contractor to:

9.6.1.1 Abide by any of the applicable professional standards within its industry;

- 9.6.1.2** Comply with the terms, conditions, or covenants that are contained in this Contract;
- 9.6.1.3** Comply with the "Washington Industrial Insurance Act," or any other law, ordinance, or decree; or
- 9.6.1.4** Ensure that any sub-consultants abide by the terms of this provision and this Contract; provided, however, that the Consultant will not be required to indemnify BHA against any loss or damage which was specifically caused by BHA providing inaccurate information to the Consultant, failing to provide necessary and requested information to the Consultant, or refusing to abide by a recommendation of the Consultant.

Notwithstanding anything herein to the contrary, if (and only if) the provisions of RCW 4.24.115 apply to the Services and any injuries to persons or property arising out of performance of this Contract are caused by or result from the concurrent negligence of (a) Consultant, its agents or employees; and (b) BHA, its agents and employees, Consultant's duty to indemnify, defend and hold harmless in regard to such injuries does not apply to the comparative extent of the negligence of BHA, its agents or employees. Nothing in this Section 9 shall require Consultant to indemnify, defend or hold harmless BHA, its agents or employees for their own sole negligence.

Consultant specifically assumes potential liability for actions brought by Consultant's own employees against BHA and for that purpose Consultant specifically waives any immunity against claims by BHA under the Workers Compensation Act, RCW Title 51;

CONSULTANT AND BHA ACKNOWLEDGE THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION.

- 9.6.2** In this connection, and subject to the limitations above, it is expressly agreed that the Consultant shall, at its own expense, defend BHA, its officers, employees, and agents against any and all claims, suits, or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act, the consequences of which the Consultant has indemnified BHA. If the Consultant shall fail to do so, BHA shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the Consultant including attorney fees and court costs.
- 9.6.3** Any money due to the Consultant under and by virtue of this Contract which BHA believes must be withheld from the Consultant to protect BHA, may be retained by BHA so long as it is reasonably necessary to ensure BHA's protection; or in case no money is due to the Consultant by BHA, the Consultant's surety may be held until all applicable claims have been settled and suitable evidence to that effect has been furnished to BHA; however, the Consultant's payments shall not be withheld if the Consultant is able to demonstrate that it has adequate liability and damage insurance to protect BHA from any potential claims.
- 9.6.4** The Consultant shall provide that any contractual arrangement with a sub-consultant shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Consultant guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its sub-consultants in connection with the Contract.

9.7 Officials, Officers, Agents and Employees of BHA Not Personally Liable: It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of BHA in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Contract.

9.8 Severability: The invalidity of any provision of this Contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

9.9 Waiver of Breach: A waiver of either party of any term or condition of this Contract for a particular instance or situation shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this Contract shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation, or agreement of either party.

9.10 Limitation of Liability: In no event shall BHA be liable to the Consultant for any indirect, incidental, consequential, or exemplary damages.

9.11 Attorney Fees: In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this Contract or for any other judicial remedy, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including reasonable attorney fees. The amount so allowed as attorney fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.

9.12 Lobbying Certification: By execution of this Contract with BHA, the Consultant thereby certifies to the best of his or her knowledge and belief that:

9.12.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement.

9.12.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit **Standard Form-LLL, Disclosure Form to Report Lobbying**, in accordance with its instructions.

9.12.3 The Consultant shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

10.0 Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards: BHA and the Consultant each agree to comply with the provisions identified below.

10.1 Remedies for Consultant Breach: Pertaining to contract-related issues, it is the responsibility of both BHA and the Consultant to communicate with each other in as clear and complete a manner as possible. If, at any time during the term of this Contract, BHA or the Consultant is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action. The other party shall, within ten (10) days, respond in writing to the other party (however,

BHA shall retain the right to, if conditions warrant, require the Consultant to respond in a shorter period of time). Further, BHA shall, at a minimum, employ the following steps in dealing with the Consultant as to any performance issues.

- 10.1.1** If the Consultant is in material breach of the Contract, BHA may promptly invoke the termination clause detailed within **Appendix 1, General Conditions for Non-Construction Contracts, Section 1 (With or Without Maintenance Work), Form HUD-5370C (01/2014) Clause 3** and terminate the Contract for cause. Such termination must be delivered to the Consultant in writing and shall fully detail all relevant issues pertaining to the cause of and justification for the termination.
- 10.1.2** Prior to termination, BHA may choose to warn the Consultant, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such warning may include placing the Consultant on probation, thereby giving the Consultant a certain period of time to correct the deficiencies or potentially suffer termination. BHA shall maintain in the contract file a written record of any such warning detailing all relevant information. If the Consultant does not agree with such action, the Consultant shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the ten (10) day period, he/she shall have no recourse but to accept and agree with BHA's position on the issue. The written protest must detail all relevant information pertaining to the dispute including details of BHA's alleged incorrect action(s).
- 10.1.3** After termination, if the Consultant does not agree with BHA's justification for the termination, the Consultant shall have ten (10) days to dispute, in writing, such action. The written protest must detail all relevant information pertaining to the dispute, including justification detailing BHA's alleged incorrect action(s); if he/she does not do so within this ten (10) day period, he/she shall have no recourse but to accept and agree with BHA's position on the issue.
- 10.1.4** The response to any protest received shall be conducted in accordance with the "Right to Protest" section of the **Instructions to Proposers and Contractors** document issued with the RFP. Recipients of federal funding shall be responsible for the settlement of all contractual and administrative issues arising out of procurements and have protest procedures to handle and resolve disputes relating to procurements. A protestor must exhaust all administrative remedies with BHA before pursuing a protest with the federal agency.
- 10.2** **Termination for Cause and Convenience:** As detailed within **Appendix 1, General Conditions for Non-Construction Contracts, Section 1 (With or Without Maintenance Work), Form HUD-5370C (01/2014), Clause 3**, which is attached hereto, BHA may terminate this Contract in whole or from time to time in part, for BHA's convenience or for the failure of the Consultant to fulfill the contract obligations (default).
- 10.3** **Patents, Trademarks and Copyrights:** Both parties hereby agree to comply with the requirements of 37 CFR Part 401, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.
- 10.4** **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended:** Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- 10.5 Debarment and Suspension (Executive Orders 12549 and 12689):** A contract award will not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM) which contains the names of parties debarred, suspended, or otherwise excluded by agencies as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 10.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):** Consultants awarded contracts exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

11.0 ADDITIONAL FEDERALLY REQUIRED ORDERS/DIRECTIVES:

- 11.1 Records Access:** As further described in **Appendix 1, General Conditions for Non-Construction Contracts, Section 1 (With or Without Maintenance Work), Form HUD-5370C (01/2014) Clause 4**, the Consultant shall grant access to any books, documents, papers, and/or records which are directly pertinent to this Contract for the purpose of an audit, examination, excerpts, and transcriptions to the grantee (BHA), the subgrantee (if applicable), federal grantor agency, Comptroller General of the United States, or any of their duly authorized representatives.
- 11.2 Record Retention:** As further described in **Appendix 1, General Conditions for Non-Construction Contracts, Section 1 (With or Without Maintenance Work), Form HUD-5370C (01/2014) Clause 4**, all required records shall be retained a period of three (3) years or such other period as is required by the Washington State Secretary of State after grantee (BHA) or subgrantees (if applicable) makes the final payment and all other pending matters associated with the Contract are closed.
- 11.3 Energy Policy and Conservation Act:** As further described in **Appendix 1, General Conditions for Non-Construction Contracts, Section 1 (With or Without Maintenance Work), Form HUD-5370C (01/2014) Clause 6**, both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- 11.4 Executive Order 11063**, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 11.5 Public Law 88-352, Title VI of the Civil Rights Act of 1964**, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. BHA hereby extends this requirement to the Consultant and its sub-consultants. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 11.6 Public Law 90-284, Title VIII of the Civil Rights Act of 1968**, popularly known as the **Fair Housing Act**, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to

