

PROFESSIONAL SERVICES CONTRACT (NOT FOR A&E SERVICES)

This CONTRACT is made as of the ____ day of ____ in the year of ____.

BETWEEN _____

and the Contractor: _____

For the following Services: _____

The Contract Price shall be: _____

The Contract Term shall be: _____

Payment: The Contractor shall be paid in the amounts and on the terms set forth in **Appendix A**. Invoices shall be submitted on the following schedule [Check one]:

Monthly (5 th of following month)	☐
Quarterly (Jan.1; April 1; July1; Oct 1)	☐
At delivery of work product	☐
Other: Net 30 as invoiced	☐

Maximum Payment: The maximum payment to Contractor for all services and reimbursable expenses, if any, shall not exceed: **[ENTER AMOUNT]**

Prevailing Wage [Check one]: N/A ☐ Davis-Bacon ☐ Higher of State or Federal ☐ State ☐ HUD ☐

If prevailing wages are to be paid, the following types of wages must be paid [Check one]:

Residential ☐ Commercial ☐

Contract Documents: Contractor acknowledges receipt of and the undersigned agree to be bound by the following Contract Documents, all of which are incorporated herein by this reference:

Contract Documents	Contractor Initials
General Conditions	
Appendix A: Scope of Work & Payment Terms	
Appendix B: Indemnity Agreement	
Appendix C: Insurance Requirements	
Federal Clauses Addendum (Only Use for Federally Funded Projects)	

This Contract entered into the day and year written above.

Housing Opportunities of Southwest Washington

[ENTER CONTRACTOR NAME]

(Signature)

(Signature)

Jennifer Westerman, CEO

(Printed name and title)

GENERAL CONDITIONS

HOUSING OPPORTUNITIES OF SOUTHWEST WASHINGTON, a municipal corporation/political subdivision of the State of Washington, (referred to as "HOSWWA") and [ENTER CONTRACTOR NAME] (referred to as "CONTRACTOR") agree as follows:

1. CONTRACTOR'S SCOPE OF REQUIRED WORK SCHEDULE OF PERFORMANCE

- 1.1 The CONTRACTOR shall perform or provide the services described on **Appendix A** to this contract and on the schedule set forth in **Appendix A**.
- 1.2 The CONTRACTOR shall perform or provide the services diligently, completely, and at professional standards of quality and competence. CONTRACTOR will remove and replace any personnel assigned to the project by CONTRACTOR, if HOSWWA considers such removal necessary.

2. PAYMENT

- 2.1 HOSWWA shall make payments only in response to CONTRACTOR's invoice and only for services performed or provided as required by the Contract and shown on invoices. HOSWWA shall make such payments within thirty (30) days of receiving an invoice.

The invoices must detail the services performed or provided for the reporting period. The CONTRACTOR must deliver these invoices to HOSWWA at:

Housing Opportunities of Southwest WA
Attn: Accounts Payable
820 11th Ave
Longview, WA 98632

- 2.2 HOSWWA may withhold payment to the CONTRACTOR for any work not completed to HOSWWA's satisfaction, until and unless the CONTRACTOR modifies such work to HOSWWA's satisfaction or the parties reach some other adjustment.
- 2.3 All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

3. CONTRACTOR'S ADDITIONAL RESPONSIBILITIES

3.1 Risk to Children and Vulnerable Adults; Criminal Background Checks

If the work pursuant to this contract requires or may result in contact with children or vulnerable adults, the CONTRACTOR shall not use any employee, volunteer, intern, or agent for such contact who (i) it has reason to believe may pose a risk to such children or vulnerable adults; or (ii) who has been convicted of a crime against children or vulnerable adults. Before using any employee, volunteer, intern or agent for such contact, the CONTRACTOR will procure their criminal conviction record in accordance with RCW 43.43.830 through RCW 43.43.834, as applicable.

3.2 Training and Supervision

CONTRACTOR shall provide all appropriate orientation, training, and supervision for all its employees, interns, volunteers performing or providing services under this Contract.

3.3 Access to Records and Retention of Records

CONTRACTOR shall promptly provide HOSWWA or the Department of Housing and Urban Development, the Comptroller General of the United States or any of their duly authorized representatives with access to any of the CONTRACTOR's books, documents, papers, and records which are directly pertinent to this contract for the purpose of audits or examination.

CONTRACTOR shall retain all such records for six (6) years after the final payment on the contract and all other matters related to the contract are closed.

3.4 Confidentiality

Except to the extent required by Law, CONTRACTOR agrees not to divulge or release any information, reports, results of research or analysis, or recommendations developed or obtained in connection with performance of this Contract other than to authorized personnel of HOSWWA or upon HOSWWA's prior written approval.

3.5 Compliance with Laws

CONTRACTOR agrees to comply with all applicable laws, including but not limited to those listed in the Federal Clauses Addendum, which are incorporated herein by reference.

4. OWNERSHIP OF WORK PRODUCT

4.1 “Data” developed pursuant to this Contract shall be “works for hire” as defined by the U.S. Copyright Act of 1976, as amended, and HOSWWA shall be its sole owner. Pursuant to 17 U.S.C. § 201, HOSWWA shall be deemed the author of the Data and will own all copyrights in the Data. “Data” shall include but shall not necessarily be limited to all work product the CONTRACTOR shall produce or provide under this Contract, draft and final reports, documents, pamphlets, advertisements, books, magazines, surveys studies, computer programs, films, tapes and/or sound reproductions. The CONTRACTOR shall obtain HOSWWA’s prior written approval for any publication of any Data or results of studies and/or services performed pursuant to this contract. This provision shall not apply to any data that the CONTRACTOR develops independently of this contract.

4.2 Methodology and logic systems developed under this Contract are the property of both the CONTRACTOR and HOSWWA. Either may use these systems as it sees fit, including the right to revise or publish such systems without limitation.

4.3 The CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

5. INDEPENDENT CONTRACTOR STATUS

CONTRACTOR is an independent contractor of HOSWWA. This contract does not create any agency, employment, joint employer, joint venture or partnership between HOSWWA and CONTRACTOR. Neither party will have the right, power, or authority to select, train, manage or supervise the employees, volunteers or agents of the other or to act on behalf of the other in any manner whatsoever as a result of this contract.

CONTRACTOR is responsible for payment of all wages, compensation, salaries, benefits and taxes associated with its employees and other staff.

The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

6. INDEMNIFICATION, RELEASE, AND INSURANCE

6.1 Indemnification

CONTRACTOR agrees to indemnify HOSWWA to the extent set forth in **Appendix B** to this contract.

6.2 Release

CONTRACTOR fully and completely waives and releases all claims against HOSWWA for any losses or other damages sustained by CONTRACTOR or any person claiming through CONTRACTOR resulting from any accident or occurrence arising from CONTRACTOR’s performance or failure to perform the contract.

6.3 Consequential Damages Waiver

CONTRACTOR and HOSWWA waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Section 7 except HOSWWA’s termination of CONTRACTOR for cause. Notwithstanding the foregoing, HOSWWA is not waiving claims for consequential damages to the extent damages are (1) covered by insurance CONTRACTOR is required to provide under this Agreement; or (2) sought by a third party for which CONTRACTOR has an obligation to indemnify HOSWWA.

6.4 Insurance

CONTRACTOR shall keep insurance coverage in full force and effect of the type and to the extent set forth in **Appendix C** to this Agreement.

7. TERMINATION OF CONTRACT

7.1 Termination for Cause

If a party concludes that the other party has breached this contract, it shall give the breaching party a written notice. The written notice must describe the alleged breach. The written notice must also give the breaching party a reasonable amount of time to fully cure the breach. This cure period shall be at least ten (10) business days long unless urgent circumstances justify a shorter time. The

breaching party must cure its breach within the cure period. If the breaching party has failed to cure the breach within the cure period, the other party may then terminate the contract by serving a termination notice.

HOSWWA may terminate the contract if its funding for the contract either is eliminated, reduced, or used up. In that event, HOSWWA shall give CONTRACTOR written notice of the termination as far in advance as possible.

7.2 Termination for Convenience

HOSWWA may terminate this contract in whole or in part without cause for its convenience. It may do this by giving 30-day written notice to CONTRACTOR stating the effective date of the termination.

7.3 Rights Upon Termination

Upon Termination for Cause, CONTRACTOR is entitled to no further payment from HOSWWA until the completion of the Project, subject to the conditions herein. HOSWWA may offset all its direct and consequential damages resulting from CONTRACTOR'S default, including legal fees and costs, against payments otherwise due CONTRACTOR. If, after HOSWWA has been made whole and applied its offsets, sums remain due and owing CONTRACTOR, HOSWWA will remit payment of those sums within ninety (90) days of final completion of the project. In the event HOSWWA's Termination for Cause is deemed invalid or unjustified, then such termination shall automatically become a Termination for Convenience under Section 7.2.

Upon Termination for Convenience, CONTRACTOR shall be compensated for services performed up to the time of termination as CONTRACTOR's sole remedy. CONTRACTOR is not entitled to lost profits, additional overhead, or earnings on services not performed in the event it is terminated for convenience. HOSWWA may offset any disputed amounts, including legal fees and costs, against payments otherwise due CONTRACTOR. If, after HOSWWA has been made whole and applied its offsets, sums remain due and owing CONTRACTOR, HOSWWA will remit payment of those sums within ninety (90) days of final completion of the project.

8. MISCELLANEOUS PROVISIONS

8.1 Time is of the essence in this contract.

8.2 Changes in the Work

HOSWWA, at its sole discretion, shall have the right by written order, to direct changes, additions, deletions, or alterations to the scope of work to be performed under this contract. Should CONTRACTOR claim any such order by HOSWWA would cause additional costs, or if CONTRACTOR otherwise believes it is entitled for any reason to an adjustment of the contract price or time, CONTRACTOR shall submit written notice to HOSWWA within seven (7) calendar days of said claim arising, and prior to commencing such work; otherwise, such claim shall be deemed waived, and CONTRACTOR shall have no right to maintain an action in court or arbitration to recover for extra work.

Should the parties be unable to agree as to the value of any work to be added, deleted, or altered, CONTRACTOR shall proceed with the work promptly, but only upon written order of HOSWWA, and the amount due for the disputed work shall be resolved by litigation or arbitration.

8.3 Continuing Performance

Pending final resolution of any dispute, CONTRACTOR shall, unless otherwise directed by HOSWWA in writing, perform all its obligations under this contract, provided that HOSWWA continues to make undisputed payments as they come due.

8.4 No Subcontracting or Assignment

CONTRACTOR shall not subcontract or assign its obligations under this contract without HOSWWA's advance, written consent, which HOSWWA may grant or withhold in its sole discretion.

8.5 Lower Tier Contractors

Prior to commencing performance of any obligation herein, CONTRACTOR shall list, in writing to HOSWWA, all lower tier subcontractors and suppliers it intends to use, subject to HOSWWA's approval, which approval shall not be unreasonably withheld, and it shall not subsequently change such lower tier subcontractors without HOSWWA's prior written approval. CONTRACTOR shall bind all lower tier subcontractors and suppliers to

CONTRACTOR in the same manner as CONTRACTOR is bound to HOSWWA.

8.6 Governing Law and Venue

Washington State law shall govern the interpretation of this Contract. Cowlitz County shall be the venue of any arbitration or lawsuit arising out of this Contract.

8.7 Severability

If one or more of the clauses of this Contract is found to be unenforceable, illegal or contrary to public policy, the Contract will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

8.8 Entire Agreement

This contract constitutes the entire agreement between HOSWWA and CONTRACTOR. It replaces and supersedes all prior oral or written proposals and agreements. No amendment or modification of this agreement shall have any force or effect whatsoever unless and until the parties agree to it in a signed writing.

APPENDIX A

1. **SCOPE OF WORK; SCHEDULE OF WORK**

[enter here the total scope of work that this contract requires. If you want to use the exact scope the contractor gave you, you may copy and paste into this space.]

2. **PAYMENT FOR WORK**

HOSWWA will pay CONTRACTOR as follows within the maximums and other limits set forth in section 2 of this contract:

Activity	Total
[you may use this chart if it is helpful but it is not required if there is an alternate way to indicate when and how the payments for the work will be made]	
TOTAL	

APPENDIX B: INDEMNIFICATION

Contractor hereby releases and shall indemnify, defend, and hold harmless HOSWWA, its subsidiaries, affiliates, officers, agents, employees, successors, assigns, and authorized representatives of all of the foregoing (individually each an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of any kind or nature, including but not limited to those arising out of injury to or death of Contractor's employees, whether arising before or after completion of the work hereunder, in any manner directly or indirectly arising out of, or claimed to arise out of in whole or in part any act, omission, fault, or negligence of Contractor, and/or Contractor's sub-contractors, and/or anyone acting under its/their direction of control, or on its/their behalf (collectively, "those for whom Contractor is responsible") in connection with or incidental to the performance of this contract ("Indemnity Claims"). Contractor's aforesaid release, indemnity, defense and hold harmless obligations, shall apply even in the event of the concurrent fault, negligence, or strict liability of the Indemnified Parties. Provided, however, that (i) in no event shall Contractor be obligated to release, indemnify, defend or hold harmless Indemnified Party(ies) against Indemnity Claims caused by or resulting from the sole negligence of an Indemnified Party(ies); and (ii) with respect to release, indemnity, defense and hold harmless obligations against Indemnity Claims caused by or resulting from the concurrent negligence of (a) Indemnified Party(ies) on the one hand, and of (b) Contractor and those for whom Contractor is responsible on the other hand, Contractor's release, indemnity, defense and hold harmless obligations extend only to the extent caused by the negligence of Contractor and those for whom Contractor is responsible.

For the sole purpose of effecting the release, indemnity, defense and hold harmless obligations hereunder and not for the benefit of the Contractor's employees or any third parties unrelated to an Indemnified Party, the Contractor specifically and expressly waives any immunity that may be granted it under any applicable Workers' Compensation Act, disability benefit acts or other employee benefit acts (Title 51 RCW or otherwise). The release, indemnity, defense and hold harmless obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under worker compensation acts, disability benefit acts or other employee benefit acts.

Contractor hereby agrees to require all its sub-contractors of every tier or anyone acting under its/their direction, control, or on its/their behalf in connection with, or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming the Indemnified Parties as indemnitees.

HOSWWA AND THE CONTRACTOR ACKNOWLEDGE THAT THE ABOVE WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES.

INITIALS OF AUTHORIZED OFFICER OF HOSWWA: (____)

INITIALS OF AUTHORIZED OFFICER OF THE CONTRACTOR: (____)

APPENDIX C

{Insert appropriate Insurance Requirements for 2019}

SAMPLE

SAMPLE