

Contract No. [REDACTED]

On-Call Architect - Engineer Services

THIS CONTRACT, made and entered into between the Seattle Housing Authority, a public body corporate and politic (“SHA”) and [REDACTED] (“Design Professional”).

RECITALS

A. SHA solicited proposals from consultants qualified to provide on-call professional services (the “Services”) with respect to the planning, designing and administering construction or rehabilitation of certain projects for SHA in the following areas:

[Below is an example; scope generally will be consistent with that in the solicitation documents]

- Architecture;
- Interior Design;
- Site Planning;
- Structural Engineering;
- Mechanical Engineering;
- Energy Modelling;
- Electrical Engineering;
- Lighting Design & Engineering;
- Commissioning;
- Green Building;
- Acoustical Engineering;
- Civil Engineering;
- Transportation Engineering;
- Landscape Architecture;
- Cost Estimating; and
- Construction Contract Administration

The term “Services” includes all labor, materials, equipment and services provided or to be provided by the Design Professional to fulfill the Design Professional’s obligations under each Work Order (defined below) and this Contract.

B. SHA has determined that the Design Professional is qualified to provide the Services and has selected the Design Professional as a qualified firm for this work; and

C. The Design Professional represents that it is qualified, duly authorized and willing to provide the requested Services.

AGREEMENT

ARTICLE A: SERVICES

A.1.1 ON-CALL SERVICES

A.1.1.1. This is a standard form of agreement between SHA and the Design Professional, where work is provided under one or more task orders or work orders (each a “Work Order” and collectively, “Work Orders”). This Contract applies to all Work Orders issued within the Term until the completion of each Work Order. If there is a conflict between terms and conditions of this Contract and the terms and conditions in a Work Order, the terms and conditions in the Work Order control for the Services provided under the Work Order.

A.1.1.2 SHA is not required to issue any Work Orders, and there is no guarantee (express or implied) for any specific amount of work to be assigned under this Contract. SHA is entitled, in its sole and absolute discretion, to award contracts for any of the Services to other firms at any time.

Services will be provided in connection with properties located within the City of Seattle. The properties may or may not be owned by SHA and may or may not be vacant. Non-vacant properties may or may not be occupied at the time Design Professional renders the Services.

A.1.1.3. Description of project, scope of work, contract sum and contract time must be stated in each Work Order (see **Exhibit B** for a sample Work Order document). SHA shall contact the Design Professional for Work Order placement. The Design Professional will be provided information regarding the Services required and will be given an opportunity to ask questions. SHA and the Design Professional shall negotiate the cost and scope of the Services, subject, however, to the limitations on cost of Services set forth in this Contract. A Work Order will be prepared describing the Services, the cost, the schedule and the work products to be delivered. The Work Order must be signed by SHA and Design Professional.

Assigned Work Orders might include, but are not limited to, the development of typical dwelling unit plans, details, and specifications, feasibility studies for sites targeted for redevelopment, full services for design, permitting, and construction of buildings on one or more of the sites studied in the initial phase of an assigned Work Order, or other related professional services.

A.2 DESIGN PROFESSIONAL'S ADDITIONAL SERVICES

A.2.1 DESCRIPTION OF ADDITIONAL SERVICES

“Additional Services” means all those services provided by the Design Professional for SHA that are not initially required to be performed by the Design Professional under a Work Order. The term “Additional Services” does not include any work or services required to correct any errors, omissions, or failures on the part of the Design Professional to provide the Services or otherwise carry out any obligations set out in this Contract (including any Work Order), and Design Professional shall perform any such corrective work or services at its sole cost and expense.

A.2.2 CHANGE ORDER

All Additional Services must be mutually agreed to by both parties in writing through a Change Order to the Work Order. If the Design Professional determines that any Additional Services are required, the Design Professional shall notify SHA in writing, including a description of the Additional Services requested and the Design Professional’s best estimate of the cost of such Additional Services. Design Professional shall obtain SHA’s written approval with respect to all aspects of the Additional Services (e.g., scope, cost, deliverables, etc.) prior to commencing such Additional Services. Failure to provide notice to and secure approval of SHA with respect to any Additional Services constitutes Design Professional’s irrevocable and conclusive waiver of any claim for additional compensation for such Additional Services.

ARTICLE B: INTENTIONALLY OMITTED

ARTICLE C: RESPONSIBILITIES

C.1 DESIGN PROFESSIONAL'S RESPONSIBILITIES

C.1.1 BASIC SERVICES

The Design Professional shall provide the Services set out in each Work Order. Design Professional shall perform the Services with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances. The Design Professional

shall perform the Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the project. The Design Professional shall notify SHA in a prompt and timely manner of any discrepancies, inconsistencies, or missing information necessary to provide the Services. Upon SHA's request, Design Professional shall coordinate its Services with services provided by other parties, including other design professionals (e.g., engineers, land surveyors).

C.1.2 ADDITIONAL SERVICES

[see **A.2 DESIGN PROFESSIONAL'S ADDITIONAL SERVICES**]

C.1.3 GENERAL RESPONSIBILITIES

The Design Professional is responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by or on behalf of the Design Professional under this Contract.

C.1.4 NO CONFLICTS

Except with SHA's knowledge and consent, Design Professional shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Design Professional's judgment with respect to this Contract or any Work Order.

C.1.5 CONSTRUCTION DOCUMENTS

In preparing documents pertaining to construction of any projects as part of the Services, the Design Professional shall certify that the relevant contract documents will, to the best of its knowledge, conform to reasonable interpretation of all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by governmental agencies having jurisdiction over the applicable project, and upon approval by SHA, shall submit to those agencies all documents which the agencies have the right to review for approval. The Design Professional shall also submit a copy of the relevant construction documents to all other agencies: (1) who will furnish services to the completed project(s); and (2) whose approval is required to ensure such service. If any agency referred to above is unwilling or without authority to give written approval prior to formal application for construction permits, then the Design Professional shall inform SHA and certify that, to the best of the Design Professional's knowledge and belief, the documents as submitted will meet the approval of such agency or agencies. If obtaining any governmental approvals would require noncompliance with the Contract or any Work Order, the Design Professional shall promptly notify SHA in writing. The Design Professional shall make all changes in the construction documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations: If subsequent to the date SHA issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional is entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, shall notify SHA of all significant code or regulatory changes within sixty (60) days of their change, and such notification is required in order for the Design Professional to be entitled to any additional compensation or reimbursement. At SHA's request, Design Professional shall interpret and decide matters concerning performance under, and requirements of, any applicable contract documents. Design Professional's interpretations and decisions must be consistent with the applicable contract documents and be in writing or in the form of drawings.

C.1.6 PROFESSIONAL SEAL

Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Contract when required by law or requested by SHA.

C.1.7 ATTENDANCE AT CONFERENCES

The Design Professional shall attend conferences and meetings involving matters related to the Services.

C.2 OWNER'S RESPONSIBILITIES

C.2.1 INFORMATION

SHA shall provide information regarding requirements for any project requiring Services, including providing SHA's objectives and schedule with respect to the Services. The Design Professional, however, is responsible for ascertaining and knowing applicable state and federal requirements and other limitations placed on the project.

C.2.2 NOTICE OF DEFECTS

If SHA observes or otherwise becomes aware of any faults, defects, or material non-conformities regarding the construction of any project for which Design Professional is providing Services, SHA shall give prompt written notice of those faults, defects or non-conformities to the Design Professional.

C.2.3 AUTHORIZED REPRESENTATIVE

SHA shall designate a representative authorized to act on its behalf with respect to the Services provided under each Work Order. The representative shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Services.

C.2.4 DUTIES TO FURNISH

SHA shall provide the Design Professional such items, documents, and information in SHA's actual possession and control that SHA reasonably determines are necessary to permit Design Professional to provide the Services. These include, for example, (i) topographic, property line and utility information; (ii) "as built" drawings of buildings or properties, architect surveys, and test reports; (iii) any waivers of local codes, ordinances, or regulations or standards affecting the design of a particular project; and (iv) applicable schedules of minimum wage rates as approved by the U.S. Secretary of Labor, the U.S. Department of Housing and Urban Development, or the State of Washington Department of Labor and Industries for inclusion in the bidding and contract documents.

C.2.5 TESTS

When expressly agreed to in writing by both SHA and the Design Professional, SHA shall reimburse the Design Professional for the actual costs for any laboratory or field tests, inspections, investigations and reports required for a project.

C.2.6 CONTRACT TERMS

SHA or its legal counsel is entitled to provide the Design Professional text to be incorporated into any applicable bidding and contract documents.

ARTICLE D: TIME FOR BEGINNING AND COMPLETION

The Design Professional shall not begin any work under the terms of this Contract until authorized to do so in writing by a fully executed Work Order. All Services must be completed between the date authorized to begin work and the completion date specified in the Work Order. The established completion time for the Services and the entire Work Order period is not extended because of any delays attributable to the Design Professional, but may be extended by SHA in the event of a delay attributable to SHA, or because of unavoidable delay caused by an act of God or governmental actions or other conditions beyond the control of the Design Professional. Any extension agreed upon by the parties must be in writing, signed by both parties, and incorporated as a Change Order to the Work Order.

ARTICLE E: TERM OF CONTRACT

The term of this Contract (the "Term") is three years from the date the last party signs the Contract. By mutual agreement, the Term may be extended in one-year increments for up to two additional years.

ARTICLE F: PAYMENTS

F.1 WORK ORDER COMPENSATION

F.1.1 Compensation under each Work Order will be on either a fixed fee or an hourly not-to-exceed basis. If Additional Services are authorized by Change Order to the Work Order, it is anticipated that such Additional Services will be compensated on a fixed-fee basis to be negotiated for each project.

The Design Professional shall perform all of the Services set forth in each Work Order for an amount not to exceed the Maximum Amount specified in the Work Order. Such compensation constitutes full and complete payment for the Services, including all supervision, labor, supplies, materials, equipment or use of the same, and for all other expenses and incidentals necessary to complete the Services.

F.1.2 It is understood that for any Services (including Additional Services) compensated on a fixed fee basis, this is a fixed amount and will not be increased because of any difference between the estimated and actual costs of performing the Services.

F.1.3 The basis of payments (hourly rate, lump sum, etc.) will also be specified in the Work Order or Change Order. Payments will be made in the amount of the fixed fee or up to the Maximum Amount, upon receipt of invoices and progress reports prepared by the Design Professional and submitted to SHA not more often than monthly for the duration of the Work Order. Payment of any amounts due under the Work Order do not relieve the Design Professional of the obligation to perform all Services set forth in the Work Order in a satisfactory manner.

F.1.4 Hourly Rates for Work Orders entered into during the first year of this Contract are set forth in **EXHIBIT A** to this Contract. Hourly rates may be changed by Change Order to this Contract not more often than annually, but any such changes apply to new Work Orders only and not to Work Orders in progress.

Hourly rates for subsequent years will be adjusted to the lesser of (a) a price mutually agreed upon between SHA and Design Professional, or (b) the proportionate cumulative increase (or decrease) in the CPI, if any, during the previous calendar year. For purposes of this section, CPI means the United States Department of Labor, Bureau of Labor Statistics, All Urban Consumers, not seasonally adjusted, database code CUUR0000SA0, or if such index is no longer published, a successor or substitute index designated by SHA.

F.1.5 REIMBURSABLE EXPENSES

SHA will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount to be defined in each Work Order. Reimbursable Expenses are in addition to the compensation for Services and are for certain actual expenses incurred by the Design Professional directly related to the Services. Approved reimbursable expenses must not exceed 110% of actual costs.

F.1.5.1 ALLOWABLE REIMBURSABLE EXPENSES

- Delivery Costs: Courier services and overnight delivery costs;
- Reproduction and postage: Costs of required drawings, photos, excluding the cost of reproductions for the Design Professional or its subcontractor's own use;
- Permit fees will ordinarily be paid SHA or others, but if paid by Design Professional shall be reimbursed by SHA at actual cost plus 5%.

F.1.5.1.1 ADDITIONAL REIMBURSABLE EXPENSES

The Design Professional and SHA are entitled to agree in a Change Order to a Work Order to include certain other expenses not enumerated above as Additional Reimbursable Expenses. These Additional

Reimbursable Expenses are not limited by the Maximum Amount agreed to in the Work Order. A separate Maximum Amount for these Additional Reimbursable Expenses will be established.

F.1.5.2 EXPENSES NOT ALLOWED

- Travel costs of any kind and description, including but not limited to mileage, tolls, and parking;
- Telephone costs.

F.1.5.3 MARKUP FOR SUB-CONSULTANTS INVOICES

Where a scope of work includes hourly services provided by sub-consultants, subject to the approval of SHA, payments will be subject to a markup of up to 10% to cover the Design Professional's costs for Business and Occupation taxes, insurance, management of the sub-consultant's work, and administration of the sub-consultant agreement. Design Professional's time spent in management of the sub-consultant's work, and administration of the sub-consultant agreement must not be separately billed.

F.1.6 INVOICES

Invoices must include the following information: invoice date and number; SHA's Contract number; Work Order number; the Work Order title; the period of time for which Services are being invoiced; a detailed description of the Services performed for which payment is requested; and an itemization of reimbursable expenses. Documentation must be attached for reimbursable expenses as follows: backup documentation for any reimbursable expense items being invoiced that total \$250.00 or more, and sub-consultant invoices, regardless of the amount. SHA shall process all payments within sixty (60) days after accurate billing and backup documentation are received by SHA. Invoices must be mailed to the attention of SHA's authorized representative as specified in the individual Work Order.

ARTICLE G: PROHIBITION OF ASSIGNMENT

The Design Professional shall not assign, subcontract or transfer any Services, rights, obligations, or interest in this Contract without prior written consent of SHA. Any such assign, subcontracting or transfer without SHA's consent is voidable at SHA's option. Any approved assignment, transfer, or subcontract is subject to each provision of this Contract and any procurement procedures required by SHA, the State of Washington, or the United States. No assignment, subcontracting, or transfer of any of the Services, with or without SHA's consent, relieves Design Professional of its responsibility to perform the Services in accordance with this Contract. Design Professional is fully responsible for the performance, acts, and omissions of Design Professional's employees, subcontractors, and any other person for whom Design Professional is legally liable.

ARTICLE H: SUBCONTRACTS

If Design Professional enters into a subcontract for all or any portion of the Services, the Design Professional shall cause all applicable provisions of this Contract to be inserted in its subcontracts.

ARTICLE I: SUBSTITUTIONS

I.1 The Design Professional's key personnel identified in each Work Order are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify SHA reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the Work Order and this Contract. Any proposed substitute must have qualifications equal to or better than the key personnel being replaced. No diversion or substitution of such key personnel may be made by the Design Professional without the prior written consent of SHA, which consent is not to be unreasonably withheld.

I.2 KEY PERSONNEL

For the Contract as a whole, the following are Design Professional's Key Personnel:

- _____
- _____
- _____
- _____
- _____

Each Work Order will specify the Design Professional’s key personnel for the Work Order, including any additional or substitute personnel pre-approved by SHA.

ARTICLE J: DISPUTES

J.1 All disputes arising under or relating to this Contract, including any claims for damages for the alleged breach of this Contract which are not disposed of by agreement, must be resolved under this clause. All claims by the Design Professional must be made in writing and submitted to SHA.

J.2 SHA shall, with reasonable promptness (no more than sixty days), render a decision concerning any claim under this Contract. Unless the Design Professional, within 30 days after receipt of SHA's decision, notifies SHA in writing that it takes exception to such decision, the decision is final and conclusive.

J.3 Provided the Design Professional has (1) given the notice within the time stated in clause **J.2**; (2) excepted its claim relating to such decision from the final release; and (3) brought suit against SHA not later than one year after receipt of final payment under the applicable Work Order, or if final payment has not been made, not later than one year after the Design Professional has had a reasonable time to respond to a written request by SHA that it submit a final voucher and release, whichever is earlier, then SHA's decision is not final or conclusive, but the dispute will be determined on the merits by a court identified in clause **J.6** below, or by consent of SHA and Design Professional by other dispute resolution methods. Design Professional agrees to prepare or modify all agreements between Design Professional and its consultants to reflect this option to use alternative dispute resolution procedures.

J.4 Claims between SHA and any general contractor or its subcontractors, general contractor and Design Professional, and SHA and Design Professional or its sub-consultants must, upon demand by SHA, be submitted in the same litigation, arbitration or mediation. Design Professional agrees to prepare or modify all agreements between Design Professional and its consultants to reflect SHA’s right to make this demand.

J.5 The Design Professional shall proceed diligently with performance of this Contract pending final resolution of any request for relief, claim, appeal, or action arising under the Contract, and comply with any decision of SHA, provided that SHA continues to perform its obligation, including the timely payment of undisputed amounts.

J.6 This Contract is to be interpreted under Washington law. Jurisdiction and venue for any legal action to resolve a Dispute are in King County Superior Court, Seattle, Washington, or in the United States District Court for the Western District of Washington at Seattle

ARTICLE K: COMPLIANCE WITH LAWS

In performing and providing the Services, the Design Professional shall comply with all applicable laws of the United States, the State of Washington, and the City of Seattle, and the applicable rules, regulations, orders and directives of their administrative agencies and officers. Such provisions include, but are not limited to the following:

K.1 ANTI-LOBBYING CERTIFICATION

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Design Professional, to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

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

The Design Professional further agrees to include the language of this certification in the award documents for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

K.2 NONDISCRIMINATION/EQUALITY OF OPPORTUNITY

The Design Professional shall comply with applicable non-discrimination and equal opportunity provisions of the laws and regulations of the United States, the State of Washington, and the City of Seattle.

K.3 COMPLIANCE WITH FEDERAL SECTION 3 REQUIREMENTS

In order to meet SHA's goal of economic opportunity for lower-income persons, the Design Professional shall abide by the terms and conditions of this Section, established pursuant to the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701u.

K.3.1 The work to be performed under this Contract and associated Work Orders is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u.

K.3.2 The Design Professional shall comply, and require its sub-consultants to comply, with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations set forth at 24 CFR 75 (as each of the same has been or may be amended, modified, or replaced from time to time, and including any successor statutes or regulations, collectively, "Section 3"). As evidenced by its execution of this Contract, the Design Professional certifies that it is under no contractual or other impediment that would prevent it and its sub-consultants from complying with Section 3.

K.3.3 The Design Professional agrees to include this Section 3 clause in every subcontract subject to compliance with Section 3, and agrees to take all necessary action to ensure compliance with Section 3 by its sub-consultants. Upon a finding that a sub-consultant is in violation of Section 3, the Design Professional will take appropriate action, as provided in an applicable provision in the subcontract or in this Section 3 clause. The Design Professional will not subcontract with any sub-consultant where the Design Professional has notice or knowledge that the subcontractor has been found in violation of Section 3.

K.3.4 Noncompliance with Section 3 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD-assisted contracts.

K.3.5 The Design Professional agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions and intent of this Section or otherwise to ensure compliance with Section 3.

K.4 CLEAN AIR AND WATER (Applicable to contracts in excess of \$150,000)

Because of 2 CFR §200.326(g) and Federal law, the Design Professional shall comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

K.5 ENERGY EFFICIENCY

Pursuant to Federal regulations (2 CFR §200.326 (h)) and Federal law, except when working on an Indian Housing Authority Project on an Indian reservation, the Design Professional shall comply with the 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 (42 U.S.C. 6201).

ARTICLE L: INDEMNIFICATION

The Design Professional shall indemnify, defend, and hold harmless SHA from and against any and all Claims to the extent arising out of, in connection with, or incident to any negligent acts, errors, omissions, or intentional misconduct by Design Professional (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Contract. Design Professional's obligations under this Section apply whether a Claim is asserted directly against SHA or whether it is asserted indirectly against SHA, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from SHA. Design Professional's duty to defend, indemnify, and hold harmless is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of Design Professional. Design Professional shall not indemnify or defend SHA for Claims caused solely by the negligence of SHA. If (1) RCW 4.24.115 applies to a particular Claim, and (2) the bodily injury or damage to property for which Design Professional is to indemnify and defend SHA is caused by or results from the concurrent negligence of (a) Design Professional, its employees, subcontractors/subconsultants or agents and (b) SHA, then Design Professional's duty to indemnify or defend SHA is valid and enforceable only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify, defend, and hold harmless SHA, Design Professional specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Design Professional recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this paragraph: (1) "SHA" includes SHA's officers, employees, agents, and representatives and (2) "Claims" includes, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Design Professional employs or engages subconsultants or subcontractors, then Design Professional shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) expressly agrees to defend, indemnify, and hold harmless SHA to the extent and on the same terms and conditions as Design Professional pursuant to this Section.

ARTICLE M: INSURANCE

[Below is sample language. Insurance article in the contract will be revised on a case-by-case basis.]

M.1 GENERAL REQUIREMENTS

M.1.1 Prior to undertaking any work under this Contract and for the duration of this Contract, the Design Professional will procure and continuously maintain at its own expense, insurance coverage as specified below, covering performance of the work under this Contract by the Design Professional and its agents, representatives, employees and/or subcontractors if applicable.

M.1.2 The Design Professional's insurance will be primary and non-contributory as respects any insurance or self-insurance maintained by SHA and will include a severability of interests clause for applicable coverages.

M.1.3 Failure of the Design Professional to fully comply with the insurance requirements of this order will be considered a material breach of contract and, at the option of SHA, will be cause for such action as may be available to SHA under other provisions of this Contract or otherwise in law, including immediate termination of the Contract.

M.1.4 SHA reserves the right to waive any of the insurance requirements of this Contract at its sole discretion.

M.1.5 Coverage will be placed with financially sound and responsible companies acceptable to SHA which are authorized to do business in the State of Washington.

M.1.6 The Design Professional's policies will provide waivers of subrogation by endorsement or otherwise when applicable.

M.2 REQUIRED INSURANCE COVERAGE

The Design Professional will maintain and provide evidence of insurance in the following types and amounts:

M.2.1 COMMERCIAL GENERAL LIABILITY INSURANCE

M.2.1.1 A policy of Commercial General Liability insurance including bodily injury, property damage, and products/completed operations, written on an industry standard form (GC 0001 or equivalent) occurrence form, with limits of at least \$1,000,000 each occurrence, and \$2,000,000 in the aggregate.

M.2.1.2 Coverage will extend to cover the use of any mobile equipment on the site or sites of the work of this contract. In the event that the services to be provided under this Contract involve the Design Professional's unsupervised access to by minor children, and/or elderly, disabled or vulnerable adults as defined in RCW 74.34.020, the Design Professional may be asked to provide evidence that sexual misconduct coverage has not been excluded from the policy. Acceptable evidence of sexual misconduct coverage is subject to approval by SHA's Risk Manager.

M.2.2 EMPLOYERS LIABILITY OR WASHINGTON STOP GAP LIABILITY

A policy of Employers Liability, or a Washington Stop Gap Liability insurance endorsement, with limits of at least \$1,000,000 each accident/occupational disease.

M.2.3 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

A policy of Commercial Business Auto Coverage, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, with limits of at least \$1,000,000 per accident.

M.2.4 WORKER'S COMPENSATION

The Design Professional will provide coverage in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW).

M.2.5 PROFESSIONAL LIABILITY, ERRORS AND OMISSIONS

M.2.5.1 A policy of Errors and Omissions or Professional Liability insurance appropriate to the Design Professional's licensed profession with limits of at least \$1,000,000 per occurrence and in the aggregate.

M.2.5.2 If coverage is provided on a claims-made form, the Design Professional will maintain coverage for a minimum of three (3) years from the date of completion of the work authorized by the Contract.

M.3 PROOF OF INSURANCE AND INSURANCE EXPIRATION

M.3.1 The Design Professional will furnish certificates of insurance (and policy endorsements if needed) as evidence of compliance with the insurance requirements of the Contract.

M.3.2 SHA, and any limited liability partnership for which SHA serves as managing agent, will be named as an Additional Insureds on all liability policies of the Design Professional other than professional liability policies.

M.3.3 SHA reserves the right to request complete copies of all required insurance policies at any time during the term of the contract.

M.3.4 If subcontractors will perform work under this Contract, the Design Professional will

- include all subcontractors at any tier as insureds, and ensure that the Design Professional's coverage of subcontractors under the Design Professional's policies is not excluded by any policy provision or endorsement, or, alternatively,
- Obtain from each subcontractor not insured under the Design Professional's policy or policies of insurance, evidence of insurance meeting all the requirements of this order and maintain such evidence on file for a period of one year after the completion of this Contract and, upon request, submit such evidence to SHA for examination.

M.3.5 The Design Professional's insurance will not be reduced or canceled without forty-five (45) days prior written notice to SHA.

M.4 CRIMINAL BACKGROUND INVESTIGATION

The Design Professional will conduct a criminal background investigation of all employees, volunteers, subcontractors and sub-consultants performing any work who may reasonably be expected to have direct or incidental contact with SHA residents, SHA staff members, or vulnerable population. In addition, a criminal background investigation will be performed for any person performing work under this Contract who is given use of an SHA building-access card or who collects payments of any kind. The criminal background investigation will include, but not necessarily be limited to, a Washington State Patrol background report or if the employee, volunteer, subcontractor or subconsultant resides in a state other than Washington, the background report should be obtained from the state patrol office where the employee, subcontractor or subconsultant has resided for the last 3 years. In the event a background check provides evidence of a felony conviction that information will be provided to the SHA Project Manager. If any person performing work under this Contract is charged with a felony, the Design Professional agrees to remove that person from performing any further work on the project unless and until SHA agrees in writing to allow the person to continue.

ARTICLE N: INTENTIONALLY OMITTED

ARTICLE O: STATUS OF DESIGN PROFESSIONAL AND EMPLOYEES

O.1 NON-REPRESENTATION

Design Professional is an independent contractor and neither the Design Professional nor any of its subconsultants, employees, agents, or volunteers is deemed to be nor is entitled to represent themselves as employees, agents, or representatives of SHA with regard to the performance of the Services. Design Professional is not authorized to enter into any agreement or undertaking for or on behalf of SHA.

O.2 INVOLVEMENT OF FORMER SHA EMPLOYEES

The Design Professional agrees to inform SHA of any former SHA employee who terminated SHA employment in the last twelve (12) months prior to execution of any Work Order and who will be working on or subcontracting for any of the Services. The Design Professional further agrees that no work will be done by a former SHA employee who terminated SHA employment in the last twelve (12) months prior to execution of any Work Order, and who, in the course of official SHA duties, was involved in, participated in or acted on any matter related to the Work Order.

O.3 NO CONFLICT OF INTEREST

The Design Professional confirms that the Design Professional does not have a business interest or a close family relationship with any SHA employee who was, is, or will be involved in the consultant selection, negotiation, drafting, signing, administration, or evaluating the Design Professional's performance. As used in this section, the term "Design Professional" includes any employee of the Design Professional who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of any Work Order to the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any household of an SHA employee described above.

The Design Professional confirms agreement to provision 4. Organizational Conflicts of Interest Certification on HUD form 5369-C-Certifications and Representations of Offerors-Non-Construction Contract, by its signature on and submission of form 5360-C with its proposal, incorporated by reference.

The Design Professional acknowledges the requirements of RCW 42.23.030, which prohibits anyone in the Design Professional's organization, who has an official relationship with SHA, to receive compensation in excess of \$1,500 per month from this Contract.

ARTICLE P: SUSPENSION

SHA is entitled to give written notice to the Design Professional to suspend all or any portion of the Services provided under any Work Order, and the Design Professional is not entitled to any additional compensation because of any such suspension.

ARTICLE Q: TERMINATION FOR CONVENIENCE AND DEFAULT

Q.1. SHA is entitled to terminate any Work Order or this Contract in whole, or from time to time in part, for SHA's convenience or the failure of the Design Professional to fulfill the Work Order or Contract obligations (default). SHA shall terminate by delivering to the Design Professional a written notice of termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Design Professional shall: (1) immediately discontinue all Services affected (unless the notice directs otherwise), and (2) deliver to SHA all information, reports, papers, and other materials accumulated or generated in performing this Contract and associated Work Orders, whether completed or in process.

Q.2. If the termination is for the convenience of SHA, SHA is liable only for payment for services rendered before the effective date of the termination.

Q.3. If the termination is due to the failure of the Design Professional to fulfill its obligations under any Work Order or the Contract (default), SHA is entitled to (1) require the Design Professional to deliver to it, in the manner and to the extent directed by SHA, any work as described in clause **Q.1.(2)** above at Design Professional's cost and expense; (2) take over the work and prosecute the same to completion by contract or otherwise, and the Design Professional is liable for any additional cost incurred by SHA; and (3) withhold any payments to the Design Professional, for the purpose of set-off or partial payments, as the case may be, of amounts owed SHA by the Design Professional.

If, after termination for failure to fulfill contract obligations (default), it is determined that the Design Professional had not failed, the termination is deemed to have been effected for the convenience of SHA, and the Design Professional is entitled to payment as described in clause **Q.2.** above.

Q.4. Any disputes with regard to this section are expressly made subject to the terms of the Disputes section of this Contract.

ARTICLE R: DELAYS BY SHA

If the performance of all or any part of the work is, for an unreasonable period of time, delayed by an act of SHA in the administration of this Contract other than a suspension of work, or by its failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), Design Professional is entitled to an adjustment for any increase in cost of performance of a Work Order (excluding profit) necessarily caused by such unreasonable delay, and the Work Order modified in writing accordingly.

However, no adjustment will be made under this article for any suspension or delay to the extent: (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Design Professional; or (2) for which an equitable adjustment is provided for as an exclusion under any other provision of this contract.

No claims under this article are allowed: (1) for any costs incurred more than 20 days before the Design Professional notified SHA in writing of the act, or failure to act; and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but no later than the date of final payment. No part of any claim based on this clause is allowed unless it is supported by adequate evidence showing that the cost would not otherwise have been incurred.

ARTICLE S: CERTIFICATE AND RELEASE

Prior to final payment of any Work Order or prior to settlement upon termination of any Work Order, and as a condition precedent to final payment or settlement, as applicable, the Design Professional shall execute and deliver to SHA a Certificate and Release in form acceptable to SHA, containing a release of all claims against SHA by the Design Professional under and by virtue of the Work Order, other than such claims, if any, as may be specifically excepted by the Design Professional in stated amounts set forth in the Certificate and Release.

ARTICLE T: RETENTION OF RIGHTS

Neither SHA's review, approval or acceptance of, nor payment for, all or any portion of the Services operates as a waiver of any rights under this Contract, releases Design Professional from any of its obligations under this Contract, or waives any cause of action arising out of the performance of this Contract, and the Design Professional remains liable to SHA for all damages caused by the Design Professional's performance of any of the Services.

ARTICLE U: OWNERSHIP

All drawings, specifications, studies and other materials prepared under this Contract are the property of SHA and at the termination or completion of the Services must be promptly delivered to SHA. The Design Professional has no claim for further employment or additional compensation as a result of exercise by SHA of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose, unless so

stipulated in a Work Order. If SHA re-uses the subject data without the Design Professional's written verification, such re-use is at the sole risk of SHA without liability to the Design Professional.

ARTICLE V: ROYALTIES AND PATENTS

The Design Professional shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save SHA harmless from loss on account of such suits and claims; except that SHA is responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Design Professional has no reason to believe that the specified design, process, or product is an infringement. If, however, the Design Professional has reason to believe that any design, process or product specified is an infringement of a patent, the Design Professional shall promptly notify SHA. Failure to give such notice makes the Design Professional responsible for resultant loss.

ARTICLE W: AUDITS AND RECORDS RETENTION

W.1. SHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives is entitled, until 3 years after final payment under this Contract, to have access to and the right to examine any of the Design Professional's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.

W.2. The Design Professional agrees to include in first-tier subcontracts under this Contract a clause substantially the same as in clause **W.2.** above.

W.3. The periods of access and examination in paragraphs **W.1.** and **W.2.** above for records relating to litigation or settlement of claims arising from the performance of this Contract, or costs and expenses of this Contract to which SHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception continues until disposition of such litigation, claims, or exceptions.

ARTICLE X: CONTRACT MODIFICATION

X.1. Only SHA has authority to modify any term or condition of this Contract. Any contract modification must be authorized in writing.

X.2. SHA is entitled to modify the contract unilaterally: (1) pursuant to a specific authorization stated in a contract clause; or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in SHA address). All other contract modifications must be in the form of Change Order signed by the Design Professional and SHA.

ARTICLE Y: COMPLETE CONTRACT

This Contract, including all Attachments to this Contract, contains all covenants, stipulations and provisions agreed upon by the parties with respect to the Services.

ARTICLE Z: NOTICE REQUIREMENTS

Any and all notices required under this Contract, including any Work Order or Change Order issued under this Contract (each, a "Notice") must be in writing to the addresses specified below or to such subsequent respective addresses as either party designates in writing and is deemed delivered as follows:

- Three (3) Business Days after being posted by certified or registered mail to the other party's contact person;
- One (1) Business Day after being sent by recognized national overnight courier service to the other party's contact person;
- On the same Day when delivered in person to the other party's contact person;
- On the same Day when sent by email to the contact person at the designated email address of the party with confirmed receipt, provided the email is sent on a Business Day and prior to 3:00 pm on that Business Day, and otherwise, the Notice is deemed delivered one (1) Business Day after being sent by e-mail with confirmed receipt; or
- On the same Day when sent by facsimile to the contact person at the designated facsimile number of the party with confirmed receipt, provided the facsimile is sent on a Business Day and prior to 3:00 pm on that Business Day, and otherwise, the Notice is deemed delivered one (1) Business Day after being sent by facsimile with confirmed receipt.

If to SHA:

Deputy Director of Procurement and Contracts
Seattle Housing Authority
190 Queen Anne Ave N,
P.O Box 19028,
Seattle WA 98109-1028

If to the Design Professional:

ARTICLE AA: Execution and Acceptance

This Contract may be simultaneously executed in several counterparts, each of which is deemed to be an original having identical legal effect. The Design Professional ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in this Contract.

The parties have executed this Contract by having their representatives affix their signatures below.

Seattle Housing Authority
190 Queen Anne Ave N,
P.O Box 19028,
Seattle WA 98109-1028

By: _____
Signature Date

By: _____
Signature Date

Rodrick C. Brandon
Executive Director

EXHIBITS:

- A. Schedule of Hourly Rates
- B. Sample Work Order

DRAFT