

**OREGON STATE BOARD OF EXAMINERS
FOR ENGINEERING AND LAND SURVEYING**

Issues the following:

**REQUEST FOR QUALIFICATIONS
FOR
PROFESSIONAL REVIEWERS AND EXPERT WITNESSES**

Date of Issuance: August 11, 2006

Date of Revision Approval: September 9, 2008

Contact Person: James R. (JR) Wilkinson, Investigator
Oregon State Board of Examiners for Engineering and Land Surveying
670 Hawthorne Avenue SE, Suite 220
Salem, OR 97301

Phone: (503) 362-2666 ext. 24

Fax: (503) 362-5454

E-mail: wilkinsonjr@osbeels.org

SECTION 1 – BACKGROUND/PURPOSE

1.1 BACKGROUND

The Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) is the Oregon state agency responsible for examining, licensing, and disciplining engineers, engineering interns, land surveyors, land surveying interns, and photogrammetrists. In addition, OSBEELS has authority to sanction persons who, without first becoming licensed, engage in the practice of engineering, the practice of land surveying, or photogrammetric mapping. OSBEELS' statutory authority is set forth at ORS 672.002 to 672.325, as amended by Oregon Laws 2005, chapter 445.

1.2 CONTRACT AUTHORITY

As a semi-independent state agency, OSBEELS has authority to enter into contracts. ORS 182.466(2).

1.3 PURPOSE

In fulfilling its statutory duties, under ORS 672.300, OSBEELS desires to contract with qualified Providers (hereinafter referred to as "Providers") for the purpose of providing a professional review and expert opinion on selected cases handled by OSBEELS' Law Enforcement Committee. The Providers will assist the Committee in determining whether, and in what respects, identified persons have violated the laws administered by OSBEELS. In particular, they will provide expert review and opinions on issues such as negligence, gross negligence or incompetence in the practices of engineering or land surveying. In addition, qualified Providers will be available to provide expert witness testimony in administrative proceedings, or other forums, as needed by OSBEELS. OSBEELS intends, through this Request for Qualifications (RFQ), to identify a list of Providers who will be available to provide the services outlined (hereinafter the "Services").

1.4 CONTRACT AND CONTRACT DATES

If, and when, a Provider is selected from the list by OSBEELS, a personal services contract will be executed between OSBEELS and the Contractor. A sample form personal services contract (hereinafter referred to as the "Contract") is attached hereto as RFQ Exhibit 1. The dates of the Contract will be selected based upon the Services sought and the anticipated duration for providing those Services.

SECTION 2 – SCOPE OF WORK

2.1 SCOPE OF WORK

A Scope of Work shall be incorporated into the resulting Contract as Contract Exhibit A.

- 2.1.1 Contractor will review all documentation provided by the Law Enforcement Committee (hereinafter referred to as “Committee”) in accordance with a given case or cases. Contractor will analyze, in particular, the quality of the work performed in accordance with generally accepted standards for land surveying or engineering, as the case may be.
- 2.1.2 Contractor will provide a written report to the Committee describing, in Contractor’s professional opinion, whether any of the activities reported indicate negligence, gross negligence, incompetence or any deficiency in standards governing professional land surveyors or engineers, as the case may be.
- 2.1.3 When requested, Contractor will meet with the Committee, Committee members, the Committee’s attorneys, or assigned Assistant Attorneys General with the Oregon Department of Justice.
- 2.1.4 When requested, Contractor will testify on behalf of OSBEELS and give any proper opinion if such opinion is allowed by the Administrative Law Judge, OSBEELS or Court, as the case may be.
- 2.1.5 When requested, Contractor shall provide professional assistance to OSBEELS staff and the committee’s attorneys.

2.2 KEY PERSON

If Providers are firms offering engineering, land surveying or photogrammetric mapping services, OSBEELS will require that there be one or more named “Key Persons” who will provide the Services subject to the Contract. The term “Provider” and “Contractor,” as used in this RFQ, includes Key Persons.

SECTION 3 – MINIMUM QUALIFICATIONS

3.1 INDEPENDENT CONTRACTOR REQUIREMENTS

All Providers must be independent contractors. Although OSBEELS reserves the right (a) to determine (and modify) the delivery schedule for the Services and (b) to evaluate the quality of the completed performance, OSBEELS cannot and will not control the means or manner of Provider’s performance. A list of further criteria for independent contractor status is provided in the Contract (RFQ Exhibit 1) as Contract Exhibit C.

3.2 MANDATORY QUALIFICATIONS

The following are mandatory qualifications:

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL REVIEWERS AND EXPERT WITNESSES

- 3.2.1 All Providers will have an active driver's license, not restricted or subject to suspension. Providers will provide a copy of their license in their response to this RFQ.
- 3.2.2 All Providers will have a licensed vehicle and will carry automobile liability insurance in an amount of at least that required under the Oregon Financial Responsibility Law.
- 3.2.3 All Providers will have a place of business, academic offices, or similar other office, from which they conduct business, and will not be provided office space or conduct business at the OSBEELS' office.
- 3.2.4 All Providers will have a personal computer with (a) CD-ROM, (b) Internet capabilities, and (c) software that is compatible with Microsoft WORD 97, or newer, software, and Microsoft Excel 97, or newer, software.
- 3.2.5 All Providers will have a printer, copier, and fax machine. Providers will provide supplies, including but not limited to paper, toner, and ink for such equipment.
- 3.2.6 All Providers will have a cellular telephone or a business telephone line, with voice mail capabilities.
- 3.2.7 All Providers will have a physical mailing address.
- 3.2.8 All Providers will have an e-mail address.
- 3.2.9 All Providers seeking to provide professional review services related to engineering will hold an active Oregon registration as a registered professional engineer.
- 3.2.10 All Providers seeking to provide professional review services related to land surveying must hold an active Oregon registration as a registered professional land surveyor.
- 3.2.11 All Providers seeking to provide professional review services related to photogrammetric mapping must hold an active Oregon registration as a registered professional photogrammetrist.
- 3.2.12 All Providers will be current (not delinquent) in their professional development hours.
- 3.2.13 All Providers must not be subject to current investigation of conduct by the Law Enforcement Committee, or OSBEELS, at the time of submitting a proposal or entering into a Contract.
- 3.2.14 To qualify, a Provider shall not have any record of a disciplinary action imposed by OSBEELS against the Provider within the five years previous to entry of the

Contract where such discipline involves any action against the Provider's license (denial, refusal to renew, suspension, or revocation) or any civil penalty in excess of \$250.

3.3 DESIRABLE QUALIFICATIONS

Preference will be given to Providers who have the following desirable qualifications:

- 3.3.1 Providers that have engaged in the professional practice of engineering or land surveying, or academic research and instruction, for a period of at least 10 years.
- 3.3.2 Providers that have been active in professional organizations or who have served previously as members of the board of OSBEELS.
- 3.3.3 Providers that are recognized by other professionals as having exemplary credentials in their area of expertise.
- 3.3.4 Providers that have been successfully examined or are licensed in a branch or discipline recognized by OSBEELS that is relevant to the particular cases subject to review by the Law Enforcement Committee, *e.g.*, electrical engineering, structural engineering, etc.
- 3.3.5 Providers that have had experience appearing as experts in trials and other similar proceedings.
- 3.3.6 Providers that have an ability to communicate well orally, as demonstrated by teaching classes, delivering speeches, making presentations to planning councils, and similar other activities.
- 3.3.7 Providers that have an ability to communicate well in writing.
- 3.3.8 Providers that have and maintain a professional appearance.

SECTION 4 – COMPENSATION

Payment will be approximately \$50.00 per hour for time worked, including, but not limited to, travel expenses incurred on behalf of OSBEELS. In exceptional cases, such as where a Contractor's customary and usual fees substantially exceed \$50.00 per hour, the Board may approve compensation in excess of 50.00 per hour, but not in an amount of the customary and usual fees. There will be a maximum, not to exceed compensation, for each project on which Contractor works.

Contractor shall submit invoices for Services performed on a monthly basis. Each invoice must describe all Services with particularity, the dates of performance, and by whom the

Services were performed. Payment will be made on a monthly basis for Services that are completed and conform to the specifications in the Contract.

SECTION 5 – APPLICATION AND REVIEW PROCESS

5.1 GENERAL INFORMATION

5.1.1 Persons interested in becoming professional reviewers and expert witnesses for OSBEELS shall submit a Statement of Qualifications (“SOQ”) using only 8-½” by 11” white paper. There is no set form or format required. SOQs shall be typed and not contain extensive art work, unusual printing or other materials not essential to the utility and clarity of the SOQ.

5.1.2 The SOQ must include the following:

5.1.2(1) Name, address, telephone number, fax number, e-mail address of Provider.

5.1.2(2) OSBEELS or other state registration numbers, if applicable.

5.1.2(3) Copy of Provider’s driver’s license.

5.1.2(4) Copy of Provider’s automobile insurance.

5.1.2(5) Description of how Provider satisfies the Independent Contractor Requirements outlined in section 3.1 and detailed in Contract Exhibit C.

5.1.2(6) Detailed description of how Provider satisfies the Mandatory Qualifications outlined in section 3.2.

5.1.2(7) Detailed description of Provider’s desirable qualifications, as outlined in section 3.3.

5.1.2(8) A current curriculum vitae (CV) or resume, providing, at a minimum, information about the Provider’s education, academic background, experience, publications, presentations, awards, honors, affiliations and other similar information.

5.1.2(9) A sample of Provider’s writing of at least 1,000 words. Names of clients or other identifying material may be redacted.

5.1.2(10) At least three names, addresses, telephone numbers and e-mail addresses of professional references for Provider, based on services provided or work performed by Provider.

5.1.3 Regarding Provider’s availability and requested compensation, the SOQ should provide the following information:

- 5.1.3(1) Any information relative to Provider's customary and usual fees that supports a request for payment in excess of \$50.00 and the amount of the payment requested.
- 5.1.3(2) Provider's availability to perform Services over the next 12 months. Indicate if there are any specific periods of time during which Provider would be unavailable or unable to provide Services.
- 5.1.3(3) Any geographical regions or areas where Provider offers and conducts its business, or provides services.

5.1.4 Providers will submit two hard copies by mail, and one electronic copy by e-mail, to the person listed on page 1 of this RFQ.

5.2. REVIEW PROCESS

5.2.1 OSBEELS will review the initial SOQs received on or before September 30, 2006, to compile its initial list of qualified reviewers and expert witnesses. Subsequent submissions may be reviewed to add to the list at a future time.

5.2.2 OSBEELS will review each submission to determine that it meets the independent contractor qualifications and the minimum qualifications, which are requirements for being listed as a qualified reviewer and expert witness.

5.2.3 In addition, OSBEELS will review the CV or resume, references and desirable qualifications to determine whether the Provider, at the time of the review, should be placed upon the list. OSBEELS may limit the number of reviewers, for example, in the same area or branch of practice, or by geographical area. Any Provider not placed upon the list by OSBEELS during the initial review may be considered in subsequent reviews for placement upon the list. Evaluation criteria, to be considered of equal value, are:

- 5.2.3(1) Demonstration of how Provider meets the independent contractor, mandatory, and desirable qualifications.
- 5.2.3(2) Knowledge and experience as demonstrated by SOQ and CV or resume.
- 5.2.3(3) Clarity and readability of writing and quality of analysis, as demonstrated by writing sample.
- 5.2.3(4) Provider's expertise and quality of work as demonstrated by references.

5.2.4 BEING PLACED UPON THE LIST OF QUALIFIED PROFESSIONAL REVIEWERS AND EXPERT WITNESSES IS NOT A GUARANTEE OF RECEIVING A PERSONAL SERVICES CONTRACT OR BEING PROVIDED WORK.

5.2.5 OSBEELS will notify each Provider submitting an SOQ of the list formulated by OSBEELS listing professional reviewers and expert witnesses. Notification will be by e-mail or regular mail, postage-prepaid, (each Provider will be deemed to have received such notice two business days after the date of mailing).

SECTION 6 – RESERVATION OF OSBEELS RIGHTS

6.1 SELECTION FOR PLACEMENT UPON LIST

OSBEELS may, overall or for any area or branch of practice, select only one or more reviewers with exceptional credentials. OSBEELS may decide not to list any reviewer, for an area, branch, geographical region, or overall, if no reviewer satisfies the evaluation criteria to an adequate degree.

6.2 ADDITIONAL RESERVATIONS

OSBEELS reserves all rights regarding this RFQ including, without limitation, the right to the following:

- 6.2.1 Amend or cancel this RFQ. Any addenda will be sent to every person who requests a copy of, or who received, the RFQ.
- 6.2.2 Reject any SOQ that fails to substantially comply with all prescribed procedures and requirements.
- 6.2.3 Waive any minor irregularity or non-conformance with the provisions or procedures of this RFQ.
- 6.2.4 Seek a clarification from any Provider.
- 6.2.5 Negotiate any term of Contract within the Scope of Work described.

SECTION 7 – PROTESTS OF SOLICITATION PROCESS

7.1 FILING

Any person may protest the solicitation process by filing a written protest, received by OSBEELS no later than 15 days after the issuance of the RFQ. The written protest shall be delivered or mailed to the person identified on page 1 of this RFQ. *All protests must contain the name, address, telephone number, fax number and e-mail address of the protester.*

7.2 STATEMENT OF PROTEST

All protests must state the basis for the protest in clear terms. The basis must be a violation of procurement law, rule or regulation that is applicable.

7.3 REVIEW OF STATEMENT OF PROTEST

OSBEELS will review the statement of protest for compliance with the requirements of this section. Protests that comply with the requirements of this section will be considered on the basis of merit. During the review, the protester may be asked to clarify or amplify statements or to provide proof of claims or other statements. This request may be made by OSBEELS by mail (in which case it shall be deemed made two business days after the date of mailing), by phone call, by fax, or by e-mail (in which case it shall be deemed made on the date of the phone call, fax, or e-mail). Any such request must be responded to fully by the protester within three (3) business days of the request. In the event a protester fails to respond, the protest will be dismissed and no further protest will be accepted.

7.4 RESPONSE TO PROTEST

After consideration of the protest, OSBEELS will provide the protester with a written response that is intended as a complete answer to the protest. OSBEELS may choose to issue addenda to the RFQ.

**SECTION 8 – PROTESTS OF PROCESS SELECTING PROVIDERS
TO CREATE LIST**

8.1 FILING

Any person may protest the process by which OSBEELS selects Providers to create a list of qualified professional reviewers and expert witnesses by filing a written protest, received by OSBEELS no later than 10 days after the date of mailing to Provider of the OSBEELS list. The written protest shall be delivered or mailed to the person identified on page 1 of this RFQ. *All protests must contain the name, address, telephone number, fax number and e-mail address of the protester.*

8.2 STATEMENT OF PROTEST

All protests must state the basis for the protest in clear terms. The basis must be a violation of procurement law, rule or regulation that is applicable.

8.3 REVIEW OF STATEMENT OF PROTEST

OSBEELS will review the statement of protest for compliance with the requirements of this section. Protests that comply with the requirements of this section will be considered on the basis of merit. During the review, the protester may be asked to clarify or amplify statements or to provide proof of claims or other statements. This request may be made by OSBEELS by mail (in which case it shall be deemed made two business days after the date of mailing), by phone call, by fax, or by e-mail (in which case it shall be deemed made on the date of the phone call, fax, or e-mail). Any such request must be responded to fully by the protester within three (3) business days of the request. In the event a protester fails to respond, the protest will be dismissed and no further protest will be accepted.

8.4 RESPONSE TO PROTEST

After consideration of the protest, OSBEELS will provide the protester with a written response that is intended as a complete answer to the protest. OSBEELS may choose to issue addenda to the RFQ.

SECTION 9 – PUBLIC RECORDS

This RFQ, all responding SOQs, any protests of solicitation process, responses to such protests, any protests of process of selecting Providers to create list, and responses to such protests, are public records subject to disclosure, unless exempt under the Oregon Public Records Law. See ORS 192.410 through ORS 192.505.

SECTION 10 – COSTS OF PREPARING AND SUBMITTING SOQ

All costs incurred in preparing and submitting an SOQ shall be the responsibility of the person submitting the proposal and will not be reimbursed, in any subsequent Contract or otherwise, by OSBEELS.

RFQ EXHIBIT 1

PROFESSIONAL REVIEWER/EXPERT WITNESS CONTRACT

This Contract is between the State of Oregon (the "State"), acting by and through its Oregon State Board of Examiners for Engineering and Land Surveying, (hereafter called "Agency"), and [____], (hereafter called "Contractor"). Agency's Contract Administrator for this Contract is identified in Section 22.

1. Contract Term. This Contract is effective on the date this Contract has been fully executed by every party and, when required, approved by the Department of Justice, and unless earlier terminated, will continue until_____, _____ . Contract termination shall not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Statement of Work; Key Person.

2.1 Statement of Work. Contractor shall provide the services (the "Services") described in the Statement of Work, attached hereto as Exhibit A.

2.2 Key Person. [Optional]Contractor acknowledges and agrees that a significant reason Agency selected Contractor and is entering into this Contract is because of the special qualifications of_____, who shall hereinafter be referred to as the "Key Person." Under this Contract, Agency is engaging the expertise, experience, judgment and personal attention of the Key Person. Neither Contractor nor the Key Person shall delegate performance of the management powers and responsibilities such Key Person is required to provide under this Contract to any other employee or agent of Contractor unless Agency provides prior written consent to such delegation. Contractor shall not reassign or transfer the Key Person to other duties or positions such that the Key Person is no longer available to provide Agency with such Key Person's services unless Agency provides prior written consent to such reassignment or transfer. In the event Contractor requests Agency to consent to a delegation, reassignment, transfer or other replacement of the Key Person, Agency may interview and review the qualifications of the proposed substitute personnel before providing its consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency shall thereafter be deemed a Key Person for purposes of this Contract.

3. Consideration.

3.1 As payment in full for Services, Agency shall pay Contractor pursuant to the rates set forth in Exhibit A.

3.2 Agency shall not reimburse Contractor for any costs or expenses.

3.3 The maximum, not-to-exceed compensation payable to Contractor under this Contract, including all payments pursuant to Section 3.1 is \$_____. Contractor shall not submit invoices for, and Agency shall not pay, any amount in excess of the foregoing amount. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs any Services subject to the amendment.

3.4 Agency shall not be obligated to pay Contractor for any Services unless such Services are complete, conform to the specifications in the Statement of Work, and otherwise conform to the warranty and other terms of this Contract.

3.5 Contractor shall submit monthly invoices for Services performed on a monthly basis. Each invoice must describe all Services performed with particularity, itemize and explain all expenses for which Contractor claims reimbursement, the dates of performance, and by whom such Services were performed. Invoices must be mailed to Agency at the address set forth in Section 22.

4. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Required Insurance), and Exhibit C (Independent Contractor Itemization). The aforementioned Exhibits are incorporated herein by this reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

5.1. Contractor shall perform all Services as an independent contractor and is not intended to be an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265. Contractor is responsible for determining the appropriate means and manner of performing the Services.

5.2 If Contractor is currently performing work for the State or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Services to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Services under this Contract.

5.3 Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts, Successors, and Assignments. Contractor shall not enter into any subcontracts for any of the Services required by this Contract without Agency's prior written consent. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent.

7. No Third Party Beneficiaries. Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

8. Funds Available and Authorized; Payments. Contractor shall not be compensated for Services performed under this Contract by any other agency or department of the State. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within the Agency's current biennial appropriation or limitation. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract. In the event the Oregon Legislative Assembly fails to appropriate sufficient appropriations, limitations, allotments, or other expenditure authority to Agency, or Agency fails to adequately budget sufficient funding, Agency may terminate this Contract without penalty or liability to Agency.

9. Representations and Warranties.

9.1 Contractor's Representations and Warranties. Contractor represents and warrants to Agency that (i) Contractor has the power and authority to enter into and perform this Contract, (ii) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (iii) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or

profession, (iv) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

9.2 Warranties cumulative. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

10. Ownership of Work Product; Confidentiality.

10.1 Definitions. As used in this Section 10, and elsewhere in this Contract, “Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Agency pursuant to the Services.

10.2 Ownership of Work Product. All Work Products shall be the exclusive property of Agency. Contractor hereby irrevocably assigns to Agency all of its rights, title, and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor forever waives any and all rights relating to such Work Products, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

10.3 Confidentiality. Contractor acknowledges that Contractor and its employees or agents may, in the course of performing responsibilities under this Contract, be exposed to or acquire communication which is confidential, privileged communication not intended to be disclosed to third parties.

Contractor agrees that any Work Products created by Contractor pursuant to this Contract and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed “Confidential Information” of Agency. “Confidential Information” shall not include information which (i) is or becomes (other than by disclosure by Contractor) publicly known; or (ii) is a publicly available document. Contractor agrees to hold Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such information for any purposes whatsoever other than the provision of Services to Agency. Contractor agrees to advise each of its employees and agents of their obligations to keep such information confidential.

11. Indemnity.

11.1 INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND AGENCY AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ALLEGED NEGLIGENT OR WILLFUL ACTS, OMISSIONS, OR ANY BREACH OF THIS CONTRACT BY THE CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

11.2 CONTROL OF DEFENSE AND SETTLEMENT. CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTION 11.1; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL REVIEWERS AND EXPERT WITNESSES

STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

12. Insurance. Contractor shall maintain insurance as set forth in Exhibit B.

13. Events of Default.

13.1 Contractor shall be in default under this Contract if:

13.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

13.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within thirty (30) business days after delivery of Agency's notice or such longer period as Agency may specify in such notice; or

13.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided herein, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within thirty (30) business days after delivery of Agency's notice or such longer period as Agency may specify in such notice.

14. Remedies for Default.

14.1 Agency's Remedies. In the event Contractor is in default under Section 13.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, which include, without limitation:

14.1.1 termination of this Contract under Section 15.2;

14.1.2 withholding all monies due for Services that Contractor is obligated but has failed to perform within thirty (30) days after Agency has notified Contractor of the nature of Contractor's default;

14.1.3 initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Sections 13.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 15.1.

15. Termination.

15.1 Termination by Agency for Convenience. At its sole discretion, Agency may terminate this Contract for its convenience upon fifteen (15) days written notice to Contractor.

15.2 Termination by Agency for Cause. In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract, in whole or in part, immediately upon written notice to Contractor, or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:

15.2.1 If funding from federal, state, or other sources is not obtained and continued at levels sufficient to pay for Contractor's Services;

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL REVIEWERS AND EXPERT WITNESSES

15.2.2 Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Contract is prohibited or Agency is prohibited from paying for such Services from the planned funding source;

15.2.3 Contractor no longer holds a license or certificate that is required for it to perform the Services;

15.2.4 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the requirements and warranties provided herein, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten (10) business days after delivery of Agency's notice or such longer period as Agency may specify in such notice.

15.3 Termination by Contractor. Contractor may terminate this Contract if Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) days after Contractor's notice or such longer period as Contractor may specify in such notice.

15.4 Termination of this Contract pursuant to this Section 15 shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination. However, upon receiving a notice of termination under this Section 15, Contractor shall immediately cease all activities under this Contract, unless expressly directed otherwise by Agency in the notice of termination. Further, upon termination, Contractor shall deliver to Agency all documents, information, works-in-progress, Work Products, and other property that are or would be deliverables had this Contract been completed.

16. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

17. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract.

18. Limitation of Liabilities. NEITHER PARTY SHALL BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES UNDER THIS CONTRACT OR (ii) ANY DAMAGE OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS

19. Force Majeure. Neither Agency nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

20. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 13, 14, 18, 23, and 24.

21. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL REVIEWERS AND EXPERT WITNESSES

22. Notice. Except as otherwise expressly provided in this Contract, any notices between the parties hereunder shall be given in writing, personal delivery, express courier, facsimile, or United States Postal Service, postage prepaid, to Contractor or Agency at the address or number set forth below, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of a successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any notice given by personal delivery shall be deemed to be given immediately upon such delivery, provided such delivery is made to the person indicated below.

If to Agency: Mari Lopez, Executive Secretary
 OSBEELS
 670 Hawthorne Avenue SE, Suite 220
 Salem, Oregon 97301

Attention: Mari Lopez, Agency Contract Administrator
Phone: (503) 362-2666
Fax: (503) 362-5454

If to Contractor:

Attention: _____
Phone: _____
Fax: _____

23. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.

24. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

25. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

26. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver,

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL REVIEWERS AND EXPERT WITNESSES

consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract shall not constitute a waiver by Agency of that or any other provision.

27. Contractor Data and Certification.

Contractor Tax Identification Information. Contractor shall provide Contractor's Social Security number or Contractor's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385. Social Security Numbers provided pursuant to this Section will be used for the administration of state, federal and local tax laws.

Name (tax filing): _____

Address:

Citizenship, if applicable: Non-resident alien Yes No

Business Designation (check one):

Professional Corporation Partnership Limited Partnership Limited Liability Company
 Limited Liability Partnership
 Sole Proprietorship Other

Federal Tax ID#: _____-_____ or SSN#: _____-_____

Oregon State Tax ID# _____

Agency may report the information set forth above to the Internal Revenue Service (IRS) under the name and social security number or taxpayer identification number provided.

Certification. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including without limitation a state tax imposed by ORS 401.792 to 401.816 (Tax Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any other local taxes administered by the Department of Revenue under ORS 305.620 and (e) the supplied Contractor data is true and accurate.

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL REVIEWERS AND EXPERT WITNESSES

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR

By: _____ Title: _____ Date: _____

AGENCY

By: _____ Title: _____
Date: _____

Approved for Legal Sufficiency

Assistant Attorney General
(Required for Contracts in excess of \$100,000)

Date

EXHIBIT A

**STATEMENT OF WORK
PROFESSIONAL REVIEWER/EXPERT WITNESS CONTRACT**

Part I. Services.

- (a) Contractor will review materials and information provided by Agency, or independently obtained or prepared by Contractor, to assist Agency in evaluating whether one or more persons have violated the laws that Agency is charged with administering. Contractor will utilize Contractor's expertise in the fields of engineering or land surveying to evaluate matters referred by the Agency.
- (b) Contractor shall set forth in writing all of its findings and opinions if requested by Agency.
- (c) Contractor will consult with and assist Agency with preparation for settlement discussions, for hearing in a contested case, or in trial preparation, and during the settlement negotiations, hearing or trial, as requested by Agency. At Agency's request, Contractor will testify on behalf of Agency and give any proper opinion if such opinion is allowed. Contractor will provide professional assistance to Agency or Agency's attorney in preparing for hearing or trial. Contractor shall take all steps reasonably necessary to provide the services in a professional manner.
- (d) Contractor shall make expert personnel available to Agency at reasonable hours, upon sufficient notice, to consult upon any and all matters, which are the subject of this Contract, as requested by Agency. Contractor understands and agrees that the commencement date of a contested case or trial may change and that its performance is not excused by any change in such date.

Part II. Payment

Contractor's charges are based on the following hourly billing rates:

_____ \$ _____
_____ \$ _____

EXHIBIT B

**INSURANCE REQUIREMENTS
PROFESSIONAL REVIEWER EXPERT WITNESS CONTRACT**

During the term of this Contract, Contractor shall maintain in force at its own expense, each insurance noted below:

(Agency must check boxes for #2, #3, & #4 as to whether insurance is required or not.)

1. Required by Agency of contractors with one or more workers, as defined by ORS 656.027.

Workers' Compensation: All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

2. Required by Agency Not required by Agency.

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each claim, incident or occurrence This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. Required by Agency Not required by Agency.

General Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the State of Oregon, the Oregon State Board of Examiners for Engineering and Land Surveying and their divisions, officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract;

4. Required by Agency Not required by Agency.

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than X Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, or \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to the Oregon State Board of Examiners for Engineering and Land Surveying;

6. Certificates of insurance. As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to the Oregon State Board of Examiners for Engineering and Land Surveying prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

EXHIBIT C

Standards for Independent Contractors (ORS 670.600)

1. The Contractor will be free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results.
2. The Contractor will be customarily engaged in an independently established business by:

(At least three of the five listed below):
 - a. Maintaining a business location that is separate from the business or work location for the person for whom the services are provided; or that is in a portion of the Contractor's residence and that portion is used primarily for business.
 - b. Bearing the risk of loss related to the business or provision of services as shown by factors such as:
 - The Contractor enters into fixed-price contracts.
 - The Contractor is required to correct defective work.
 - The Contractor warrants the services provide or the Contractor negotiates indemnification agreements or purchases liability insurance performance bonds or errors and omissions insurance.
 - c. Providing contract services for two or more different persons within a 12-month period, or the Contractor routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - d. Making significant investment in the business, through means such as:
 - Purchasing tools or equipment necessary to provide the services.
 - Paying for the premises or the facilities where the services are provided; or
 - Paying for the licenses, certificates, or specialized training required to provide the services.
 - e. Having the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.