

INTERSTATE COOPERATIVE AGREEMENT
FOR
JOINT PARTICIPATION IN EACH STATE'S PURCHASING PROGRAM

By and Between

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

and

STATE OF OREGON
DEPARTMENT OF ADMINISTRATIVE SERVICES
ENTERPRISE GOODS AND SERVICES DIVISION

WA/OR INTERSTATE COOPERATIVE AGREEMENT NO. DASPS-56815-14

**INTERSTATE COOPERATIVE AGREEMENT
FOR
JOINT PARTICIPATION IN EACH STATE'S PURCHASING PROGRAM**

This Interstate Cooperative Agreement (Agreement) is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (DES) and the State of Oregon acting by and through the Department of Administrative Services, an Oregon State governmental agency (DAS) and is dated as of January 1, 2015.

RECITALS

- A. DES, pursuant to Chapter 39.34 RCW and other provisions of Washington law, has established a process to authorize MCUA Members to make use of "master contracts" entered into by DES.
- B. DAS, pursuant to ORS 190.110, 190.210, 190.240 and other provisions of Oregon law, has established a process to authorize ORCPP Members to make use of certain "statewide price agreements" entered into by DAS.
- C. This Agreement is intended to provide Washington's MCUA Members and Oregon's ORCPP Members, respectively, with access to the other state's contracts for goods and/or services.
- D. By entering into this Agreement, Oregon and Washington seek to improve service to, and cost efficiencies for, MCUA Members and ORCPP Members in carrying out their purchasing functions.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. DEFINITIONS.

- 1.1. Agreement. This executed Interstate Cooperative Agreement between the State of Washington and the State of Oregon, as amended.
- 1.2. DAS. The Oregon Department of Administrative Services.
- 1.3. DES. The Washington Department of Enterprise Services.
- 1.4. Joint Participation Contract. A contract included on either the DES or the DAS list of contracts available for use by Members. Such contracts are posted on each state's respective Internet websites.
- 1.5. MCUA. Master Contract Use Agreement.
- 1.6. MCUA Members. MCUA Members include: political subdivisions (i.e. cities, counties, school districts, port or special purpose districts, etc.) and public benefit nonprofit corporations as defined in RCW 39.34.055, who have entered into a MCUA with DES. For purposes of this Agreement, however, MCUA Members does not include Washington state agencies.

- 1.7. Members. MCUA Members and ORCPP Members collectively ORCPP. Oregon Cooperative Procurement Program, an intergovernmental purchasing cooperative.
- 1.8. ORCPP Members. ORCPP Members include, but are not limited to: cities, counties, school districts, special districts, qualified rehabilitation facilities, residential programs in contract with the Oregon Department of Human Services, quasi-state agencies, and independent state agencies with their own procurement authority; public bodies created as governmental entities but not considered a unit of local or municipal government; Oregon constitutional offices, some Public Benefit Nonprofit Corporations, United States governmental agencies, and American Indian tribes or agencies. For purposes of this Agreement, ORCPP Members do not include Oregon state agencies subject to DAS procurement authority.

2. JOINT PARTICIPATION IN PURCHASING PROGRAMS.

- 2.1. Joint Participation by Washington. DES, pursuant to RCW 39.26.060 and RCW 39.34.030 - 39.34.055, will offer certain contracts for use by Members, if the contractor has agreed to such cooperative use as required in the applicable contract.
- 2.2. Joint Participation by Oregon. DAS, pursuant to ORS 190.410 - 190.430, will offer certain contracts for use by Members, if the contractor has agreed to such cooperative use as required in the applicable contract.
- 2.3. List of Joint Participation Contracts. DES and DAS each will maintain a list of contracts available for use by Members and will list them on their respective internet websites. Updates to the Internet listing will be done on a no-cost basis to the other state.
- 2.4. Use of Joint Participation Contracts. Any Member who wishes to use a Joint Participation Contract must accept the terms and conditions of such contract, without modification. Joint Participation Contracts may include a requirement to use a specific ordering instrument as described in the applicable contract.
- 2.5. Modification of Joint Participation Contracts. Only DES and DAS have the authority to change, modify, or amend their state's Joint Participation Contracts.
- 2.6. Authority to Use Joint Participation Contracts. Members are responsible for determining their legal authority to use the contracts and execute ordering instruments as a Member.
- 2.7. List of Members. Members pay an annual subscription fee or provide other consideration to participate in their respective state's purchasing cooperative. A listing of ORCPP members is maintained by DAS, and a listing of MCUA members is maintained by DES, for reference by the contractors. Contractors are responsible to ensure that those who endeavor to utilize the Joint Participation Contracts are eligible Members.

3. TERM & TERMINATION.

- 3.1. Term. This Agreement is effective on the date it has been signed by DES and DAS and shall continue in effect until terminated by either DES or DAS.
- 3.2. Termination. This Agreement may be terminated, at their convenience, by either DES or DAS by delivering written notice of termination to the other state's Chief Procurement Officer or their designee at least forty-five (45) days prior to the proposed termination date specified in the written notice.

- 3.3. Contractor Notice of Termination. In the event of termination of this Agreement, DES and DAS shall provide written notice to each of their respective contractors who are participating in this cooperative procurement program. Notices to these contractors must include: the termination of contractor's authority to extend the contract to the other state's Members, the effective date of termination of this Agreement, and a statement that the contract may need to be amended or will be amended to address changes associated with the termination of this Agreement.
4. RIGHTS & RESPONSIBILITIES.
- 4.1. Costs. Each state is responsible for its own costs incurred in executing, maintaining, and terminating this Agreement.
- 4.2. Contract Solicitation. DES and DAS shall use their best efforts to communicate and share their respective solicitation documents and calendars. Prior to solicitation advertisements, DES and DAS will use best efforts to provide notice to the other party of an opportunity to discuss specific contracts being considered for expansion to the other state's Members. The contact person for DES is its Manager – Master Contracts & Consulting, and for DAS is its Procurement Services Manager, or each of their designees.
- 4.3. Responsibilities. DES and DAS will:
- 4.3.1. Respond to Member questions regarding their respective contracts.
 - 4.3.2. Provide training and materials regarding their respective contracts to eligible Members.
 - 4.3.3. Assist in resolving disputes between contractors and Members for their respective contracts.
 - 4.3.4. Determine appropriate actions, remedies, and other contract administration actions for their respective contracts.
 - 4.3.5. Educate their respective contractors regarding how Members membership should be confirmed, who Members are, and the appropriate protocol for approaching Members.
 - 4.3.6. Participate in a semi-annual meetings (which may be held by conference call) to provide updates and discuss participation by Members. Meeting scheduling, conference line and facility reservation responsibilities will alternate between the states.
- 4.4. Notices. Any notices required or desired shall be in writing and may be delivered by one of the following methods: personally, by messenger, by facsimile or sent by U.S.P.S certified mail, return receipt requested and shall be sent to the respective addressee at the respective address set forth below or to such other address as the parties may specify in writing.

DES

Attn: Chief Procurement Officer
State of Washington
Department of Enterprise Services
Master Contracts & Consulting
1500 Jefferson St SE, Floor 6
PO Box 41411
Olympia, WA 98504-1411
Fax: 360-586-2426

DAS

Attn: State Procurement Services
Manager
State of Oregon
Department of Administrative Services
Enterprise Goods and Services Division,
Procurement Services
1255 Ferry Street Southeast
Salem, OR 97310
Fax: 503-373-1626

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if sent via facsimile, upon confirmed facsimile transmission to the designated fax number of said addressee. DAS or DES may change its authorized representative, address or facsimile number by written notice to the other in accordance with this section 4.4.

- 4.5. Sovereign Immunity. The states of Oregon and Washington each are independent, sovereign entities. Nothing in this Agreement shall be construed as a waiver of either state's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to proceedings or jurisdiction based thereon.

5. **GENERAL PROVISIONS.**

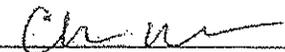
- 5.1. Time Is of the Essence. Time is of the essence for each and every provision of this Agreement.
- 5.2. Integrated Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 5.3. Amendment or Modification. This Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- 5.4. Authority. Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 5.5. No Agency. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- 5.6. Binding Effect; Successors & Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 5.7. Severability. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Agreement, and to this end the provisions of this Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt

to amend such provision as nearly as possible to be consistent with the intent of this Agreement.

- 5.8. Waiver. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Agreement, nor shall any purported oral modification or rescission of this Agreement by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.
- 5.9. Fair Construction & Interpretation. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Agreement. Each party hereto and its counsel has reviewed and revised this Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Agreement. Each term and provision of this Agreement to be performed by either party shall be construed to be both a covenant and a condition.
- 5.10. Further Assurances. In addition to the actions specifically mentioned in this Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Agreement.
- 5.11. Exhibits. All exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety.
- 5.12. Captions & Headings. The captions and headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.
- 5.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.

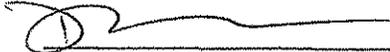
EXECUTED as of the date and year first above written.

State of Washington
Department of Enterprise Services

By: 
Christine Warnock
Its: Chief Procurement Officer

Date: 12/29/14

State of Oregon
Department of Administrative Services

By: 
Dianne Lancaster
Its: Chief Procurement Officer / Debbie Dennis
State Procurement Mgr

Date: 12/29/14

**INTERSTATE COOPERATIVE AGREEMENT DASPS-56815-14
AMENDMENT 1**

This is Amendment No. 1 (Amendment) to Interstate Cooperative Agreement No. DASPS-56815-14, dated December 29, 2014, as amended from time to time (Agreement) between the State of Oregon acting by and through the Department of Administrative Services (DAS) and the State of Washington acting by and through the Department of Enterprise Services (DES). This Amendment is effective upon signature by all the parties and approvals as required by law ("Amendment Effective Date").

I. Purpose. The purpose of this Amendment is to correct a scrivener's error in Section 1 Definitions.

II. The Agreement is hereby amended as follows (new language is indicated in bold and underlined and deleted language is indicated by strikethroughs and brackets):

"1. DEFINITIONS.

1.1 **Agreement.** This executed Interstate Cooperative Agreement between the State of Washington and the State of Oregon, as amended.

1.2 **DAS.** The Oregon Department of Administrative Services.

1.3 **DES.** The Washington Department of Enterprise Services.

1.4 **Joint Participation Contract.** A contract included on either the DES or the DAS list of contracts available for use by Members. Such contracts are posted on each state's respective Internet websites.

1.5 **MCUA.** Master Contract Use Agreement.

1.6 **MCUA Members.** MCUA Members include: political subdivisions (i.e. cities, counties, school districts, port or special purpose districts, etc.) and public benefit nonprofit corporations as defined in RCW 39.34.055, who have entered into a MCUA with DES. For purposes of this Agreement, however, MCUA Members does not include Washington state agencies.

1.7 **Members.** MCUA Members and ORCPP Members collectively.

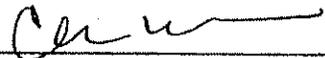
1.8 **ORCPP.** Oregon Cooperative Procurement Program, an intergovernmental purchasing cooperative.

~~[1-8]~~ 1.9 **ORCPP Members.** ORCPP Members include, but are not limited to: cities, counties, school districts, special districts, qualified rehabilitation facilities, residential programs in contract with the Oregon Department of Human Services, quasi-state agencies, and independent state agencies with their own procurement authority; public bodies created as governmental entities but not considered a unit of local or municipal government; Oregon constitutional offices, some Public Benefit Nonprofit Corporations, United States governmental agencies, and American Indian tribes or agencies. For purposes of this Agreement, ORCPP Members do not include Oregon state agencies subject to DAS procurement authority.

III. Except as expressly amended above, all other terms and conditions of the Agreement are still in full force and effect.

VI. Signatures: Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Amendment, understands it, and agrees to be bound by its terms and conditions. Each person signing this Amendment represents and warrants that he/she has the authority to execute this Amendment.

State of Washington
Department of Enterprise Services

By: 
Christine Warnock
Its: Chief Procurement Officer

Date: 2/3/15

State of Oregon
Department of Administrative Services

By: 
Debbie Dennis
Its: State Procurement Services Manager

Date: 2/5/15