

State of Oregon  
Contract for Services  
Improving Recycling Systems in Oregon

This Contract for Services (this "Contract") is by and between the State of Oregon, acting through its Department of Environmental Quality, ("DEQ" or "Agency") and Cascadia Consulting Group, Inc., A Corporation of Washington ("Contractor"), collectively the Parties and is effective as of the Effective Date.

Contractor's Contract Administrator for this Contract is:

Amity Lumper, Co-President  
1109 First Avenue, Suite 400  
Seattle, WA 98101  
Phone: (206) 449-1111  
[amity@cascadiaconsulting.com](mailto:amity@cascadiaconsulting.com)

Agency's Contract Administrator for this Contract is:

Brian Stafki  
Materials Management  
700 NE Multnomah Street  
Portland, Oregon 97232  
Phone: (503) 229-5492  
[stafki.brian@deq.state.or.us](mailto:stafki.brian@deq.state.or.us)

Either party may change its Contract Administrator by providing the other notice in compliance with Section 17.6 of this Contract.

**1. Contract Term.**

The "Effective Date" of this Contract is the date this Contract has been fully executed by each party and approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Contract terminates on **December 31, 2019**. If the parties agree, the Contract may be extended for additional terms ("Extension Terms") but the total terms shall not exceed 5 years. The termination of this Contract will not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Contractor that has not been cured.

**2. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence:

- 2.1. this Contract less all exhibits;
- 2.2. Exhibit C (Special Terms and Conditions);
- 2.3. Exhibit A (Statement of Work);
- 2.4. Exhibit B (Required Insurance), and
- 2.5. Exhibit D (Independent Contractor Certification)
- 2.6. Exhibit E Change Order Form

The foregoing documents and Exhibits are attached hereto and made a part of the Contract by this reference.

### 3. Services.

- 3.1. Performance of Services.** Contractor shall perform the services (the "Services") and deliver to agency the deliverables ("Deliverables") set forth in Exhibit A, the Statement of Work (the "Statement of Work"). The Statement of Work includes the delivery schedule for the Deliverables and Services. Contractor shall perform the Services in accordance with the terms and conditions of this Contract.
- 3.2. Submission and Acceptance of Deliverables.** When the Statement of Work requires Contractor to deliver Deliverables to Agency, then Contractor shall deliver Deliverables that comply with the requirements and acceptance criteria set forth in the Statement of Work. Contractor shall provide written notice to Agency upon delivery of a completed Deliverables to Agency. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, Agency will determine whether the Deliverables has the characteristics and otherwise meets the acceptance criteria set forth in the Statement of Work. If Agency determines that the Deliverables has the characteristics and meets acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency's acceptance of the Deliverables.
- 3.3. Rejection of Deliverables; Corrections.** If Agency determines that a Deliverables does not have the characteristics or otherwise meet the acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency's rejection of the Deliverables, and describe in reasonable detail in such notice the Agency's basis for rejection of the Deliverables. Upon receipt of notice of non-acceptance, Contractor shall, within a 15 business day period, modify or improve the Deliverables at Contractor's sole expense so that the Deliverables has the characteristics described in the Statement of Work and meets, in all material respects, the acceptance criteria, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverables to Agency. Agency will thereafter review the modified or improved Deliverables within 15 business days of receipt of the Contractor's delivery of the Deliverables. Failure of the Deliverables to have the characteristics or meet in all material respects the acceptance criteria set forth in the Statement of Work after the second submission will constitute a default by Contractor. In the event of such default, Agency may either, (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this Section, or (ii) notify Contractor of such default and pursue its remedies for default provided for by law or the terms of this Contract.

### 4. Compensation.

- 4.1. Not to Exceed Compensation.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$40,000**. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract, and will not pay for Services performed before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Services subject to the amendment.
- 4.2. Payments.** Payments, including interim payments, to Contractor are subject to ORS 293.462, will be made only for completed and accepted Deliverables and Services set forth in Exhibit A.

Agency shall submit payments to **Cascadia Consulting Group, 1109 First Avenue, Suite 400, Seattle, WA 98101**.

- 4.3. Invoices.** Contractor shall email one lump sum invoice to [DEQEXP@deg.state.or.us](mailto:DEQEXP@deg.state.or.us) upon Final Acceptance of the Deliverables in Phase 1 – Materials Evaluation Research.

**4.4. Expenses.** Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services.

**4.5. Funds Available and Authorized.** Contractor will not be compensated for Services performed under this Contract by any agency or department of the State of Oregon other than Agency. Agency believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payments under this Contract are contingent on Agency receiving appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

## **5. Contractor's Personnel.**

**5.1. Key Persons.** Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's key persons identified in the Statement of Work (each a "Key Person" and, together, "Key Persons"). Neither Contractor nor a Key Person may delegate performance of the powers and responsibilities that a Key Person is required to provide under this Contract to another Contractor employee, subcontractor or agent without first obtaining the written consent of Agency. Further, Contractor may not re-assign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of a Key Person, or if Contractor must replace a Key Person, Agency may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency in writing (email acceptable) will thereafter be deemed a Key Person for purposes of this Contract, and the Statement of Work will be deemed amended to include such Key Person.

**5.2. Payment for Replacement Key Personnel.** If Agency is paying Contractor on an hourly or other periodic basis, then Contractor will not charge Agency, and Agency will not pay, for a replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed upon by the parties.

**5.3. State Premises.** Contractor and Contractor staff shall comply with all policies, rules, procedures, and regulations established by Agency and the State for access to and activities in and around premises controlled by Agency or any other agency of the State.

## **6. Independent Contractor; Responsibility For Taxes And Withholding**

**6.1. Independent Contractor.** Contractor shall perform all Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**6.2. No Conflicts.** Contractor, by signature to this Contract, represents and warrants that Contractor's performance of the Services under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor from performing the Services under this Contract.

**6.3. Affiliation.** Contractor understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

**6.4. Taxes and Benefits.** Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless required by applicable law, Agency will not withhold from such compensation or payments any amount 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.

## **7. Subcontracts, Successors, And Assignments**

**7.1. Subcontracts.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor. Agency's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.

**7.2. Successors and Assigns.** The provisions of this Contract are binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns, if any.

**7.3. No Assignment.** Contractor shall not assign or transfer any of its rights or delegate its obligations under this Contract without Agency's prior written consent.

## **8. Representations and Warranties.**

**8.1. Contractor's General Representations and Warranties.** Contractor represents and warrants to Agency that:

**8.1.1.** Contractor has the power and authority to enter into and perform this Contract;

**8.1.2.** This Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;

**8.1.3.** Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services;

**8.1.4.** Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and

**8.1.5.** Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:

**8.1.5.1.** All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

**8.1.5.2.** Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

**8.1.5.3.** Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor;

8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; and

8.1.6. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

## **8.2. Contractor's Performance Warranties.**

8.2.1. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;

8.2.2. The Services and each Deliverables delivered by Contractor pursuant to the Services will materially comply with any service descriptions, specifications, standards or requirements set forth in this Contract;

8.2.3. Except as otherwise provided in this Contract (including Section 9), Contractor shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and

8.2.4. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or Agency and no third party has any right, title or interest in any Deliverables supplied to Agency under this Contract.

**8.3. Warranties cumulative.** The warranties set forth in Section 8 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Contract.

## **9. Ownership of Work Product.**

**9.1. Definitions.** As used in this Section 9, and elsewhere in this Contract, the following terms have the meanings set forth below:

9.1.1. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.

9.1.2. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

9.1.3. "Work Product" means everything that is originally made, conceived, discovered, or reduced to practice by Contractor or Contractor's subcontractors or agents (either alone or with others) pursuant to this Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

**9.2. Original Works.** All Work Product created by Contractor pursuant to the Services, including derivative works and compilations of Work Product, and whether or not such Work Product is considered a work made for hire or an employment to invent, is the exclusive property of Agency. Agency and Contractor agree that such Work Product is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product, whether arising from

copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to Work Product, 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.

**9.3. License in Contractor Intellectual Property.** In the event that a Deliverables delivered by Contractor under this Contract is or is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Deliverables, and to authorize others to do the same on Agency's behalf.

**9.4. License in Third Party Intellectual Property.** In the event that a Deliverables delivered by Contractor under this Contract is or is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Deliverables, and to authorize others to do the same on Agency's behalf.

**9.5. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

**9.6. Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.

**9.7. Competing Services.** Subject to the provisions of this Section 9, and Contractor's obligations with respect to Confidential Information, including as defined in Section 10, nothing in this Contract precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Contract, or consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, Deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables delivered pursuant to this Contract. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

## **10. Confidential Information.**

**10.1. Confidential Information.** Contractor acknowledges that it and its employees, officers, directors, agents or subcontractors (collectively, "Contractor Staff") may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Contractor or any Contractor Staff may come into contact with or that is obtained by Contractor or Contractor Staff in the performance of this Contract shall be considered for the purposes of this Contract the confidential information of Agency ("Confidential Information"). Contractor shall, and shall cause Contractor Staff to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other

than by disclosure by Contractor or Contractor Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by Contractor or Contractor Staff who can be shown to have had no access to the Confidential Information.

**10.2. Non-Disclosure.** Contractor shall hold, and shall cause Contractor Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise Contractor Staff of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at Agency's request, Contractor shall deliver to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

**10.3. Confidentiality Policies.** Contractor shall, upon Agency's request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency's review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.

**10.4. Injunctive Relief.** Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

**10.5. Publicity.** Contractor agrees that it will not disclose the form, content or existence of this Contract or any Deliverables in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Contractor's services, without the prior written consent of Agency.

## **11. Indemnity by Contractor.**

**11.1. Claims.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs (including attorneys' fees) and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract, including but not limited to, unauthorized disclosure of

Confidential Information, professional malfeasance, infringement of intellectual property rights, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services set forth in this Contract.

**11.2. Legal Counsel.** If Contractor is required to defend the State of Oregon or Agency or their officers, employees or agents under Section 11.1, then Contractor shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

**11.3. Damages to State Property and Employees.** Contractor is liable for all Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract

**11.4.** CONTRACTOR IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

## **12. Limitation of Liabilities.**

**12.1.** EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, CONTRACTOR'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO ONE AND ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED AMOUNT OF THIS CONTRACT.

**12.2.** EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

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

## **14. Default; Remedies; Termination.**

**14.1. Default by Contractor.** Contractor will be in default under this Contract if:

**14.1.1.** Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

**14.1.2.** Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or

**14.1.3.** Contractor commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, 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 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice; or

**14.1.4.** Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

**14.2. Agency's Remedies for Contractor's Default.** In the event Contractor is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

**14.2.1.** Termination of this Contract under Section 14.6.2; or

**14.2.2.** Withholding all monies due for Services and Deliverables that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or

**14.2.3.** Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or

**14.2.4.** Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty; or

**14.2.5.** Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

**14.3. Remedies Cumulative.** The remedies set forth in Section 14.2 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 a court determines that Contractor was not in default under Sections 14.1, then Contractor will be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.6.1.

**14.4. Default by Agency.** Agency will be in default under this Contract if:

**14.4.1.** Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

**14.4.2.** Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

**14.5. Contractor's Remedies.** In the event Agency terminates this Contract under Section 14.6.1, or is in default under Section 14.4, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 14.6.3, Contractor's sole monetary remedy will be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced and authorized expenses incurred and interest, subject to ORS 293.462, and (ii) with respect to Deliverables-based Services, a claim for the sum designated for completing the Deliverables multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event will Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the

amount due to Contractor under this Section 14.5, Contractor shall pay immediately any excess to Agency upon written demand.

#### **14.6. Termination.**

##### **14.6.1. Agency's Right to Terminate at its Discretion.** Agency may terminate this Contract:

14.6.1.1. Upon 30 calendar days' prior written notice by Agency to Contractor;

14.6.1.2. Immediately upon written notice by Agency to Contractor if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Services or Work Products; or

14.6.1.3. Immediately upon written notice by Agency to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Services or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Services or Work Products from the planned funding source.

**14.6.2. Agency's Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice, if Contractor is in default under Section 14.1.

**14.6.3. Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract immediately upon written notice to Agency, or at such later date as Contractor may establish in such notice, if Agency is in default under Section 14.4.

**14.7. Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Services or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time.

**14.8. Effect of Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Services and the Deliverables.

#### **15. Compliance with Law.**

**15.1. Compliance with Law Generally.** Contractor shall comply, and cause all subcontractors to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract and the performance of the Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;

(viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**15.2. Compliance with Oregon Tax Laws.**

**15.2.1.** Contractor shall, throughout the duration of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes the tax laws described in Section 8.1.5.1 through 8.1.5.4.

**15.2.2.** Any violation of Section 15.2.1 constitutes a material breach of this Contract. Further, any violation of Contractor's warranty in Section 8.1.5 of this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract. Any violation entitles Agency to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

15.2.2.1. Termination of this Contract, in whole or in part;

15.2.2.2. Exercise of the right of setoff, or garnishment if applicable, and withholding of amounts otherwise due and owing to Contractor without penalty; and

15.2.2.3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.

**15.2.3.** 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.

**15.3. Compliance with Federal Law.** Contractor shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit D, which is attached and incorporated into this Contract by this reference.

**16. Governing Law; Venue and Jurisdiction.**

**16.1. Governing Law.** This Contract is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

**16.2. Venue and Jurisdiction.** Any claim, action, suit or proceeding between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this section be construed as (i) 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, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.

## **17. Miscellaneous Provisions.**

- 17.1. 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, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract ("Records") 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 will have access to such financial records and other Records 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 and other Records for a minimum of 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.
- 17.2. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.
- 17.3. Force Majeure.** Neither Agency nor Contractor may 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.
- 17.4. Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 17.4, and provisions regarding Contract definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
- 17.5. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.
- 17.6. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the 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 communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by

demonstrating through other technological means that the email has been delivered to the intended email address.

- 17.7. 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 may 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.
- 17.8. 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 otherwise invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17.9. 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 will bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.
- 17.10. Amendments.** Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the parties, and has been approved as required by applicable law.
- 17.11. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.
- 17.12. Oregon False Claims Act.** Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract, that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.
- 17.13. Pay Equity. Pay Equity Compliance.** As required by ORS 279B.235 or ORS 279C.520, Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected class.

Commencing on January 1, 2019, Contractor must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected

class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor’s compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

**17.14. Certifications.** The individual signing on behalf of Contractor hereby:

- 17.14.1.** Certifies and swears under penalty of perjury to the best of the individual’s knowledge that: (a) 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; (b) 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, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.657; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate;
- 17.14.2.** Certifies that, to the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;
- 17.14.3.** Certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term.
- 17.14.4.** Certifies that the information provided on the attached Exhibit E, Independent Contractor Certification, is true and correct as of the Effective Date; and
- 17.14.5.** Certifies that Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>.

**CONTRACTOR:**


  
\_\_\_\_\_  
**Amity Lumper/Ruth Bell, Co-Presidents**

2/8/2019  
**Date**

**AGENCY:**

  
\_\_\_\_\_  
**Lydia Emer, Land Quality Division Administrator**

2-11-19  
**Date**

  
\_\_\_\_\_  
**Mark A. Brown, Financial Services Manager-DPO**

Feb 12, 2019  
**Date**

19-13340-30253 N30223-00  
Index/PCA/Project

**Exhibit A**  
**Statement of Work**

**PART I — DEFINITIONS**

Definitions below are subject to change, as well as additional terms and definitions, as a result of Task 1.0.

**Bulky Rigid Plastic** means large rigid plastic products including bottles and containers greater than two gallons. Many of these products are intended for long-term use or to be re-used multiple times. Examples include buckets, baskets, crates, pallets, pipes, lawn furniture, and large mostly plastic toys. Items are typically HDPE (#2) or PP (#5), but others resins are present.

**Cartons** means aseptic and gable-top cartons containing beverages or flowable food composed of polyethylene-coated bleached packaging board.

**Corrugated Boxes** means boxes with three or more layers and at least one curly/wavy layer in the middle and white top corrugated boxes (i.e. electronics and small appliance packages, etc.).

**Glass containers** means food and beverage glass containers, including beverage containers subject to Oregon's bottle bill that are not returned for the deposit.

**HDPE Bottles and Jars** means high-density polyethylene bottles. A bottle has a neck (threaded or snap top) or mouth narrower than the base. Examples include translucent gallon milk and juice jugs, beverage bottles, laundry detergent bottles, some shampoo/personal care product bottles. Examples also includes jars or canisters that may straight up and down, but are blow molded or injection blow molded. **Newsprint** means newspaper made mostly from groundwood pulp.

**Metal packaging** means metal containers and packaging including:

- Aluminum beverage, food, and aerosol cans, including beverage cans subject to Oregon's bottle bill that are not returned for the deposit.
- Aluminum pie pans, trays, and foil.
- Steel food cans, including 2- and 3-piece cans.

**Newsprint** means newspaper made mostly from thermos-mechanical pulp.

**Other Boxes and Paperboards** means non-corrugated boxes, chipboard, cereal, gray shoeboxes, wrapping papers, bleached high-end packaging, etc.)

**Other polycoated containers** means hot and cold drink cups and ice cream cartons made from polyethylene-coated bleached packaging board. Excludes straws, plastic lids, sleeves for hot drink cups, frozen food boxes, deli containers, and quick serve restaurant plates, baskets, trays, and clamshells.

**Partners** means members of the Recycling Steering Committee convened by DEQ.

**PE Film** means polyethylene plastic bags and wrap, and other thin film plastic commonly. Examples include carry out bags, bread bags, tissue overwrap, air pillows, plastic only shipping envelopes, and pallet wrap.



**Pet Bottles and Jars** means polyethylene terephthalate bottles and jars. A bottle has a neck (usually threaded) and a mouth narrower than the base. Jars may be straight up and down, but are blow molded like bottles. Examples include bottles and jars containing:

- Soda, juice, water, alcohol and other beverages.
- Ketchup, peanut butter, mayonnaise, mustard, and other food products.
- Shampoo, cleaning products, and other non-food household products.

**PP Bottles, PP Containers and Other Small Rigid PP** means polypropylene bottles, containers, packaging and non-packaging products. Examples include some beverage, food and personal care product bottles, tubs, deli and takeout containers, small storage containers, drink cups and non-packaging like hangers.

**Pet Thermoforms** means polyethylene terephthalate thermoformed non-bottle containers and packaging. Examples include tubs, trays, clamshells, single-use drink cups, lids, egg cartons, cake domes, covers, deli containers, and other PET thermoform packaging.

**Plastic Pouches** means flexible containers, many of which are stand up pouches, for food and non-food products. Focus is on those replacing other packaging types, such as rigid plastic packaging. Layers may be multi-resin and multi-material. The material is highly varied with polyethylene, EVOH, PP, PET, nylon, and metals.

**Printing and Writing Paper** means:

- Uncoated freesheet paper — office and copy-type paper
- Coated freesheet papers — high gloss, high-quality papers, high-end brochures, some magazines, etc.
- Coated mechanical papers — magazine paper
- Uncoated mechanical papers — directory, financial publications, flyer inserts (excluding newspaper)

**Process** means a series of actions or steps taken in order to achieve a particular end within a facility or organization in one location.

**PS Foam and Non-Foam Containers and Packaging** means polystyrene foam and non-foam rigid containers and packaging. Examples include foam protective packaging, foam and solid/rigid deli and takeout containers and clamshells, drink cups and other food service items, single serve yogurt containers and lids.

**System** means a set of processes working together as parts or an interconnecting network to achieve a particular end — such as capturing, sorting and converting scrap materials into commodities that can be used in the production of new products — across multiple geographies.

## **PART II — STATEMENT OF WORK**

Contractor will conduct research on materials, recycling collection, and sorting and processing infrastructure for DEQ and Oregon's Recycling Steering Committee (Partners) as part of a statewide process to reset Oregon's recycling systems. The research will be iterative with results from early tasks informing the services provided by Contractor in later tasks. Contractor will present draft results from each task, either in person or by using conferencing technology, to DEQ and Partners. DEQ and Partners will provide Contractor with feedback on draft results and written direction on how to proceed with the Phase 1 Tasks 1 and 2. Each task will include a draft report with a presentation followed by a final report. Where possible, Cascadia will consolidate presentations for multiple tasks that are interrelated and conducted in parallel. Contractor will compile all results from all tasks into one report.

## **PHASE 1 — MATERIALS EVALUATION RESEARCH**

### **Task 1. Project Future Material Types and Volumes**

#### ***Subtask 1.0. Develop shared understanding of materials collected, processed and marketed***

DEQ will convene and facilitate a conference call to discuss materials for potential focus of research and ensure there is a common understanding of materials and their definitions used by the recycling industry. DEQ will invite:

- Interested Oregon and Washington recycling sorting and processing facility owners and operators.
- Other interested Partners.

Contractor will invite and coordinate with key persons on Contractor's team who will be researching materials.

On the conference call, DEQ will review materials DEQ plans to provide Contractor as part of Subtask 1.1 and provide any clarification of definitions. Contractor and key persons will review materials for consideration for Subtask 1.2 and their common definitions. Facility owners and operators will clarify the materials they are handling and marketing including clarification of definitions. Contractor will update material list with commonly-shared definitions for use with further tasks.

#### ***Subtask 1.1. Develop baseline material projections***

Using feedback and shared understanding from Subtask 1.0, Contractor will analyze current generation and projecting baseline generation of materials disposed and recovered in Oregon and Washington. DEQ will support this task by providing available data regarding baseline quantities of materials by material type, material stream, geographic location, generator, and year using a template provided by the Contractor. DEQ will also provide baseline growth factors such as population, household, and employment projections.

This analysis will include the recyclable and contaminant materials currently collected on-route in the commingled systems around the state and at depots. Contractor will summarize current generation and project 5- to 7-year generation of all overall quantities and targeted recyclable materials in particular, for urban and rural areas and for residential, commercial, and self-haul generators (depending on data availability). Contractor will propose an initial list of focus materials by email including groups of materials, specific materials or both to DEQ and Partners for feedback. Contractor and DEQ will agree on the final list for projecting future changes prior to conducting Subtask 1.2.

#### ***Subtask 1.2. Project future changes in material generation***

To project future changes in types and volumes of targeted materials generated in Oregon in 2025, Contractor will combine research and analysis with industry expertise to identify anticipated changes in targeted materials agreed on with DEQ.

Materials for baseline and forecasting with industry-trend adjustments could include, but are not limited to:

- Paper:
  - Corrugated boxes
  - Newsprint
  - Other boxes and paperboards
  - Printing and writing paper — divided into four sub categories

- **Plastics:**
  - PET bottles and jars
  - HDPE bottles and jars
  - PET Thermoforms
  - PP bottles, containers, and other small rigid PP
  - PS form and non-foam containers and packaging
  - PE Film
  - Pouches
- **Other:**
  - Cartons
  - Polycoated containers (e.g., cups)

Materials for baseline and forecasting using population or employment growth factors only include:

- Glass
- Metals

Research into industry trends will include interviewing production industry experts and reviewing available proprietary paper and plastic industry databases.

Research could consider factors such as:

- Industry-specific consumption projections.
- Consumption patterns in the Pacific Northwest compared to the United States.
- Trends in consumer preferences.
- Trends in packaging types.
- Impending federal, state and local legislation.
- China's Blue Sky Policies.
- Supply and demand for recycled content.
- Costs of feedstock materials.
- Impact of tariffs or other trade barriers.

Contractor will then quantify the expected changes in baseline projections for each of the materials selected from Subtask 1.1. Contractor will adjust each targeted material within their forecasting model by increasing or decreasing the forecasted change by material in 2025. Contractor will conduct a sensitivity analysis to assess impacts in conservative versus extreme-change cases. Contractor will use results to project the quantity of targeted materials generated in Oregon and Washington in urban and rural areas and by generator group, depending on data availability in the baseline provided by Oregon DEQ.

#### **Task 2. Recommend Targeted Recyclable Material List**

Contractor will use findings from Task 1 regarding projected quantities of targeted materials generated in Oregon in 2025 to propose recommended materials to be analyzed in Phase 2.

Contractor will start this task by developing a proposed list of evaluation criteria for targeted materials. Criteria for recommended changes will likely include:

- Projected quantities of each material generated in 2025 and emerging recyclable and contaminant materials (from Task 1).
- Anticipated long-term local, regional, and international markets and values (based on our team's expertise and research in Task 1).
- Environmental impact of materials (based on DEQ's pioneering lifecycle research and analysis).

Based on the results of Contractor's evaluation, Contractor will provide initial recommendations to DEQ and Partners regarding the materials to be addressed in Tasks 3-5. Contractor will then work with DEQ to agree on a final list of materials to be addressed in Phase 2.

## **PHASE 2 – COLLECTIONS AND PROCESSING RESEARCH – OPTIONAL**

The Phase 2 task options below are shown for informational purposes only. DEQ will work with Partners to define the work of Phase 2. The research and budget for Phase 2 will be authorized by written amendment to this Contract. Phase 2 is optional at DEQ's discretion. If this Contract is amended to include Phase 2, any minor adjustments to the Services performed by Contractor in Phase 2 may be authorized by a written Change Order Form (Exhibit E – Change Order Form) signed by the Contractor Contract Administrator and the Agency Contract Administrator. A written Change Order may authorize only minor changes to the Services. Changes to deliverables, deliverable dates and the budget must be authorized by written amendment to this Contract.

### **Task 1. Compare Recycling Collection System Options**

Using the material list from Phase 1 Task 2, Contractor could investigate alternative recycling collection systems to collect clean and high-quality recyclable materials. At the beginning of this task, Contractor and DEQ could identify and confirm, with feedback from the Steering Committee, the research plan to identify the system alternatives, key characteristics of those systems, and anticipated data sources. Research is anticipated to focus on a high-level assessment of whether the benefits of changing the system would outweigh the costs. Prior to the beginning of this task, Contractor and DEQ will agree on a research plan that identifies the research focus (system alternatives and key characteristics to research), research methods, anticipated data sources and budget.

Examples of potential system alternatives could include, but are not limited to:

- Conversion to dual stream, with alternating week collection or split containers.
- Commercial recyclables collection routes.
- Separate glass collection (current approach).
- Specialized materials collected at depots.

Examples of key characteristics could include, but are not limited to:

- Capital, operational, and equipment needs.
- Collection cost.
- Compatibility with existing or future processing infrastructure.
- Compatibility with service to different generator types (residential, commercial, and multifamily).
- Compatibility with processing and end markets.
- Consumer acceptance.
- Final disposition of recovered materials — true recycling, creating fuel or energy, etc.

- Necessary funding mechanisms.
- Necessary policy drivers.
- System effectiveness (quantities collected, material quality, contamination).

Anticipated research methods and data sources could include, but are not limited to:

- Review of public data on costs, coupled with available private data, for jurisdictions in the Northwest. Data sources may include composite collection costs and operational data from several Oregon jurisdictions to compare current collection operations to the various system alternatives.
- Interviews with selected collection programs in the Pacific Northwest and beyond.
- Web research and targeted interviews with experts around the country for published reports and other data on material quality and contamination in different collection systems.
- Contractor will review reports and presentations newer than 10 years, with a preference for data from the past 5 years.
- Contractor could attempt to harmonize materials lists when making comparisons of programs that accept different materials for more direct comparisons.

## **Task 2. Assess Recycling Sorting and Processing System Options**

Using the findings from Phase 1 Task 2 (materials) and the collection systems identified by DEQ in Phase 2 Task 1, Contractor could research existing and emerging recycling sorting and processing technologies, processes and systems in the United States, Canada, and Europe to identify cost-effective recycling sortation and processing options for recyclable materials. Prior to the beginning of this task, Contractor and DEQ will agree on a research plan that identifies the research focus, research methods, anticipated data sources, and budget.

Examples of potential research areas of focus could include, but are not limited to:

- How to address mixed plastics (or mixed containers) and technologies for sorting, along with paper.
- Best processing models for newspapers, office papers/printing and writing papers, and bleached paperboard packaging.
- Best practices for facilities sorting, processing and recovered paper grades from curbside systems.
- British Columbia's managed system where certain materials are collected at depots, paper is sorted and baled locally, and all other metal and plastic containers are transferred to one container recycling facility for specialized sorting.
- Processing systems to address highly contaminated or mixed streams versus processing systems for streams with a limited accepted materials list.

Anticipated research methods and data sources could include, but are not limited to:

- Interviews with equipment manufacturers regarding equipment capabilities, capacities, capital costs, and operating costs.
- Interviews with operators of existing sorting and processing facilities in the United State or Canada using selected technologies and processes regarding in-field experience with equipment capabilities, capacities, capital costs, and operating costs.

Research and analysis could address:

- Capabilities and functions of the technologies
- Capital and operating costs.
- Final disposition of recovered materials — true recycling, creating fuel or energy, etc.

- Necessary funding mechanisms.
- Necessary policy drivers.

Technologies could be considered as part of an entire system (e.g., the order in which technologies should be deployed within a facility, not just the independent capabilities of the technology). For systems research in the focus areas, Contractor could prepare profiles of typical residential and industrial/commercial/institutional (ICI) systems used in North American and Europe, including whether systems are centrally managed or decentralized.

### **Task 3. Analyze and Identify Potentially Optimal Scenarios**

Using the findings from Phase 1 Tasks 1 & 2 and Phase 2 Tasks 1 & 2, Contractor could identify potential recycling infrastructure scenarios to meet the needs of DEQ and Partners, including options to adapt current collection, sorting and processing capacity, how to be open to newcomers to the system, to be resilient, cost-effective, and technologically appropriate system that meets Oregon's future needs. Prior to the beginning of this task, Contractor and DEQ will agree on a research plan that identifies the focus and methods for analysis, data sources, and budget.

Examples of potential analysis may include, but are not limited to, using Contractor expertise and research from previous Task to:

1. Document and analyze Oregon's existing infrastructure.
2. Identify, evaluate, and recommend future infrastructure scenarios.
3. Identify changes needed to achieve the optimal infrastructure scenarios.

In identifying future infrastructure scenarios, Contractor could draw on their understanding of the complexity of recycling systems (in which all elements from collection through marketing are connected) and of Oregon's approach to sustainable materials management.

### ***Research Plan and Data Sources***

#### ***Subtask 3.1 Document and Analyze Oregon's existing recycling infrastructure***

To maximize participation, Contractor could work with DEQ and facility owners/operators to address concerns regarding confidential business information, including but not limited to providing complete anonymity and data aggregation. DEQ will not request confidential information and Contractor will not provide confidential information.

Contractor may conduct an inventory of existing sorting and processing facilities in the state, assembling the following types of information for each site or other information identified in Task Release Order:

- Facility owner and operator
- Facility type/sorting configuration (single stream, multi stream, etc.)
- Facility infrastructure/equipment (type and age)
- Through-put capacity (material tons per hour) and percent of capacity currently used
- Primary users (haulers/cities)
- Location and geographic area currently served
- Distance to primary markets and estimated transport cost to markets
- Material types processed including specs and grades purchased
- Process residues and effectiveness of sorting mixed materials into clean and marketable streams, including ability to remove contamination

Contractor may obtain this information using existing published sources including DEQ records and our team's working knowledge of these facilities. As needed to fill gaps and as budget allows, Contractor may distribute an online survey of permitted facilities and conduct phone interviews. Information could be housed in a searchable database and analyzed to present summary statistics regarding the information listed above for existing infrastructure statewide and for Metro, other urban areas, and various rural regions of the state. Analysis in this subtask may also compare existing facility capacity and effectiveness in relation to materials currently collected for recycling. Further analysis may be conducted in subtask 3.3 to analyze gaps between existing infrastructure and the recommended optimal scenario.

***Subtask 3.2 Identify, evaluate, and recommend three future scenarios for improving and expanding Oregon's collection, sorting and processing infrastructure***

Contractor could start this task by working with DEQ to agree on clear definitions regarding what inputs (material type and area of the state) and outputs (commodity streams and market specifications) the collection, sorting, and processing infrastructure must accept and create. Contractor could also work with DEQ and Partners to describe optimum infrastructure. Contractor may consider both current and anticipated projections regarding material generation in Oregon and Washington as well as market specifications for domestic and off-shore secondary processors, mills, reclaimers, and other end-users.

Based on the input-output requirements selected, Contractor may construct multiple scenarios that represent potential optimum infrastructure to handle Oregon's targeted materials in 2025. Scenarios could incorporate findings from Phase 2 Tasks 1 and 2 regarding collection methods and emerging technologies and consider new and innovative solutions such as the use of regional processing facilities or plastics recovery facilities (PRFs). Examples of potential scenarios may include, but are not limited to options such as:

- Develop a network of small sorting facilities that locally serves all areas of the state.
- Strategically locate a few regional sorting facilities with integrated material recovery equipment systems that maximize recovery, production rates, and cost effectiveness.
- Create a "spoke and hub" system of small facilities across the state that conduct minimal sorting and transfer remaining mixed materials to regional facilities for further processing (similar to British Columbia's system).

Descriptions of the proposed scenarios could include, but are not limited to, planning-level information such as:

- Effectiveness of sorting mixed materials into clean and marketable streams.
- Ability to remove contamination.
- Equipment and personnel needs.
- Types, sizes, numbers, and regional locations of facilities, including primary and secondary sorting and processing.
- Amount of material required for economic feasibility.

After identifying scenarios, Contractor may facilitate a half-day workshop with DEQ and Partners to collaboratively evaluate the scenarios and select a preferred option for gap analysis in subtask 3.3. Workshop preparation may include developing a clear workshop agenda and meeting packet to prepare workshop participants for a highly productive session that results in selection of the preferred scenario for analysis in subtask 3.3.

**Subtask 3.3 Analyze gap between existing infrastructure and preferred scenario**

Finally, Contractor may compare the existing collection, sorting, and processing systems in Oregon with the infrastructure needed to achieve the preferred scenario. In this comparison, Contractor will identify gaps between the current and optimal systems and changes needed to expand capacity with a more resilient, cost-effective, and technologically appropriate system that meets Oregon’s future needs.

**PART III — BUDGET, DELIVERABLES, AND SCHEDULE**

Schedule assumes DEQ and Partners provides comments on draft documents within three weeks of submittal in a consolidated Word document using the track-changes feature and provides guidance on reconciling conflicting feedback.

| Tasks  | Deliverables   | Schedule <sup>1</sup>                   | Budget <sup>2</sup> |
|--|--|---|---------------------|
| <b>Phase 1 – Materials Evaluation Research</b> |  |   |                     |
| Task 1. Project Material Types and Volumes     | <ul style="list-style-type: none"> <li>Draft summary report and presentation and final report</li> </ul> | Due 13 weeks from execution of contract | \$                  |
| Task 2. Recommended Material List              | <ul style="list-style-type: none"> <li>Draft summary report and presentation and final report</li> </ul> | Due 13 weeks from execution of contract | \$                  |
| <b>Total</b>                                   |  |   | <b>\$40,000</b>     |

<sup>1</sup>Deliverable due dates may only be modified by written amendment.

<sup>2</sup>Shifts between task budgets may be authorized with prior written approval of the DEQ Contract Administrator.

**PART IV — ACCEPTANCE CRITERIA AND PROCESS**

**Phase 1 Tasks 1 and 2**

- 1.0 — Receipt and DEQ approval of updated material list with definitions
- 1.1 — Receipt and DEQ approval of final list of materials to conduct Subtask 1.2.
- 1.2 — Receipt and DEQ approval of projected changes in materials selected from Subtask 1.1.

Deliverables must meet the criterial laid out in the approved Statement of Work, amended Statement of Work or Change Order and approved by DEQ.



**PART V – KEY PERSONS AND AUTHORIZED SUBCONTRACTORS**

**A. Contractor Authorized Key Persons**

| Name                 | Title           | Hourly Rate |
|----------------------|-----------------|-------------|
| Amity Lumper         | Co-President    | \$          |
| Dieter Eckels        | Advisor         | \$          |
| Jessica Branom-Zwick | Project Manager | \$          |
| Kirstin Hervin       | Analyst         | \$          |

**B. Authorized Subcontractors**

For purposes of this section, Agency approves the following subcontractors of Contractor to perform the specified Services.

| Name  | Title             | Hourly Rate |
|---|-------------------|-------------|
| Betsy Dorn, RSE USA                           | Consultant        | \$          |
| Bill Moore, Moore and Associates              | Consultant        | \$          |
| Chris Bell, Bell and Associates               | Consultant        | \$          |
| Doug Drennan, Drennen Consulting Services LLC | Consultant        | \$          |
| Nina Butler, More Recycling                   | Consultant        | \$          |
| Stacy Luddy, More Recycling                   | Consultant        | \$          |
| Tim Buwalda, RSE USA                          | Senior Consultant | \$          |

**Exhibit B**

**Required Insurance**

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit B to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and 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. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

**COMMERCIAL GENERAL LIABILITY:**

Required     Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**AUTOMOBILE LIABILITY INSURANCE:**

Required     Not required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

**PROFESSIONAL LIABILITY:**

Required     Not required

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than **\$1,000,000** per claim. Annual aggregate limit shall not be less than **\$2,000,000**. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

**WAIVER OF SUBROGATION:**

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, (iii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

The contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit B.

## Exhibit C

### Special Terms and Conditions

#### 17.10.1 Additional Amendment Terms:

DEQ reserves the right to modify, add to, or delete from the contract statement of work.

- a. Conduct additional research on the feasibility of selected options for changing collection methods as identified by DEQ;
- b. Conduct additional research on the feasibility of selected options for changing Sorting and Processing infrastructure as identified by DEQ;
- c. Conduct other research related to ways to bring Oregon's systems of collection and recycling of materials from residential and commercial programs more in line with the goals of the 2050 Vision for Materials Management in Oregon;
- d. Authorize additional funding because of negotiating additional Work. The rates identified in Exhibit A, Part V will be used to negotiate any additional work;
- e. Extend the Contract term.

**Exhibit D  
Independent Contractor Certification**

**Contractor certifies he/she meets the following standards:**

1. I am registered under ORS chapter 701 if I am providing labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following):**
  - A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
  - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
  - C. Telephone listing used for the business is separate from the personal residence listing.
  - D. Labor or services are performed only pursuant to written contracts.
  - E. Labor or services are performed for two or more different persons within a period of one year.
  - F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature: RL Date: 2/8/2019

**Exhibit E  
Change Order Form**

**DEQ Contract #057-19  
ORPIN #DEQ-1326-19**

**State of Oregon Contract for Services  
Change Order Form**

**Date:** \_\_\_\_\_

**Project Name:** Improving Recycling Systems in Oregon

**Change Order No.** \_\_

This Change Order is issued pursuant to the terms and conditions of Contract 057-19 entered into on \_\_\_\_\_, 2019 between the State of Oregon acting by and through its Department of Environmental Quality (DEQ) and Cascadia Consulting Group, Inc., A Corporation of Washington (Contractor). The following changes are incorporated into the Contract by reference. In performance of work authorized by this Change Order, it is understood and agreed that all terms and conditions of the Contract, as amended, are in full force and effect.

This Change Order is effective on the date it has been signed by the Contractor and DEQ.



**1. Purpose of Change**

**2. Description of Change (include reference to sections of the Contract)**



**Contractor Contract Administrator Approval:**

\_\_\_\_\_  
Amity Lumper, Co-President

\_\_\_\_\_  
Date

**DEQ Contract Administrator Approval:**

\_\_\_\_\_  
Brian Stafki, Materials Recovery Specialist

\_\_\_\_\_  
Date






# 057-19 Cascadia Consulting (FINAL)

Final Audit Report

2019-02-12

|                 |   |
|-----------------|---|
| Created:        | 2019-02-12  |
| By:             | Connie Thorstad (Thorstad.Connie@deq.state.or.us) |
| Status:         | Signed  |
| Transaction ID: | CBJCHBCAABAAzJnR0sY77dGLdUOII76rbtzJjd2BMA7k      |

## "057-19 Cascadia Consulting (FINAL)" History

-  Document created by Connie Thorstad (Thorstad.Connie@deq.state.or.us)  
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