STATE OF OREGON

COVER PAGE

HOUSING AND COMMUNITY SERVICES

PERMANENT SUPPORTIVE HOUSING TECHNICAL ASSISTANCE PROVIDER

Request for Proposal (RFP)

#914-5032-19

Date of Issue: May 1, 2019

Closing Date and Time: May 15, 2019, 3:00 PM PST

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4.5.2019

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(Attachments are posted as separate documents in ORPIN and the OHCS’ Procurement website)
SECTION 1: GENERAL INFORMATION

1.1 INTRODUCTION

The State of Oregon, acting by and through its Housing and Community Services Department (“OHCS”), is issuing this Request for Proposal for a training and technical assistance provider that specializes in Permanent Supportive Housing to conduct training for approximately fifty (50) development or supportive housing professionals.

Permanent Supportive Housing (PSH) is a national best practice and proven model to end chronic homelessness. PSH is identified as a high-level need by communities throughout Oregon and has been identified as a priority in the OHCS 5-year Statewide Housing Plan. In addition, PSH is specifically called out in Governor Brown's 2019-21 recommended budget, making it a housing policy priority for the State of Oregon and OHCS.

Current Programs

Information on OHCS’ programs can be found at: https://www.oregon.gov/ohcs/Pages/agency-programs-directory-list.aspx

Additional details on the Scope of the goods or services or both are included in the Scope of Work/Specifications section (Section 2.3) of this RFP.

Anticipated Award

OHCS anticipates the award of one Contract from this RFP.

Term

The initial term of the Contract is anticipated to be one (1) year with options to renew up to a cumulative maximum of five (5) years.

1.2 SCHEDULE

The table below represents a tentative schedule of events. All times are listed in Pacific Standard Time (PST). All dates listed are subject to change. N/A denotes that event is not applicable to this RFP.
### 1.3 SINGLE POINT OF CONTACT (SPC)

The SPC for this RFP is identified on the Cover Page, along with the SPC’s contact information. Proposer shall direct all communications related to any provision of the RFP only to the SPC, whether about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision.

### SECTION 2: AUTHORITY, OVERVIEW, AND SCOPE

#### 2.1 AUTHORITY AND METHOD

OHCS is issuing this RFP pursuant to its authority under OAR-125-0170(2) including but not limited to ORS 456 and 458, OAR 813 divisions 5 and 6, as well as applicable rules.

OHCS is using the competitive procurement procedures pursuant to OAR 813-006-0025. OHCS may use a combination of the methods for this RFP, including optional procedures: a) Competitive Range; b) Discussions and Revised Proposals; and c) Negotiations.

#### 2.2 OVERVIEW AND PURPOSE

##### 2.2.1 OHCS Overview and Background

Oregon Housing and Community Services is Oregon’s housing finance agency, providing financial and program support to create and preserve opportunities for quality, affordable housing for Oregonians of lower and moderate income.

**Vision:** All Oregonians have the opportunity to pursue prosperity and live free from poverty.

**Mission:** We provide stable and affordable housing and engage leaders, to develop integrated statewide policy that address poverty and provides opportunity for Oregonians.
Purpose

Permanent supportive housing (PSH) combines housing, affordable at extremely low incomes, with wraparound supportive services and is a proven model for housing communities’ most vulnerable people who may not otherwise be able to maintain stable housing. A wide body of evidence supports the success of PSH in providing better outcomes for those experiencing chronic homelessness and reducing costs to public systems including health care, behavioral health, criminal justice, and emergency services, among others. PSH is effective when various supportive networks use a team-based and client-centered approach to meeting the housing, health, and social needs of tenants.

OHCS has heard resounding support for PSH from local governments and partners throughout Oregon and as a result, PSH is a priority of the Oregon 5 year Statewide Housing Plan. OHCS plans to increase its commitment to PSH by working with partners to align resources for, and eliminate barriers to creating PSH opportunities as well as building capacity throughout the state for the successful development and operation of PSH.

The purpose of this RFP is to engage a technical assistance provider to build capacity for developing and operating the complex housing and service partnerships necessary in any successful PSH project in order to successfully serve extremely vulnerable populations. OHCS wants to ensure that those who are providing PSH thoroughly understand the PSH model, best practices, and the importance of fidelity to the model for long-term success.

With the goal of dramatically increasing the PSH available in Oregon, OHCS is looking to invest in a training and technical assistance initiative that has proven to be exceptionally important and successful for other states’ implementation of PSH. OHCS is working to replicate the success of these models as we implement this important data driven tool and work to alleviate and end chronic homelessness in Oregon.

2.3 Scope of Work

The scope of service expected of the technical assistance provider under this RFP will include but not be limited to the following:

- Create a Permanent Supportive Housing (PSH) workshop training providing not less than eighty (80) hours of training which includes training and individualized technical assistance in:
  - Project vision and concept development
  - Services in supportive housing
  - Building community support
  - Building design
  - Budgeting and property management
  - Tenant Leadership
  - Housing First and PSH
• Workshop training must have capacity to train 5-8 supportive housing development and operations teams with up to 50 total participants.

• Workshop training must serve supportive housing development and operations teams and projects from both rural and urban areas of Oregon. Curriculum must be flexible to provide guidance for different types of target populations and various capacities of supportive service providers.

• Services will include regular progress reporting to OHCS, project review and training materials, staffing for training with up to ten (10) sessions over a limited period of time (to be negotiated), follow-up technical assistance of all projects, travel, speaker costs, and any training incidentals to provide for a good learning environment.

• Services should include gathering participant feedback at the closure of training to include information in the following areas:
  o Overall Participant satisfaction
  o Project and team readiness to develop housing using the PSH model
  o Understanding of resource options and availability
  o The Housing First model and Property Management variances with PSH
  o Fair Housing and PSH
  o Other (to be decided upon by successful Proposer and OHCS)

• Workshop training participants should have a fully developed plan at the end of the workshop. Expected deliverables include:
  o Written agreement among members of the supportive development team, outlining the roles and responsibilities of each supportive development team community partner;
  o Community support plan;
  o Detailed program and project concepts including:
    ➢ Conditions of tenancy and plan for supportive services for tenants; and
    ➢ Engagement strategies designed for specific target populations;
  o Tenant selection plan (utilizing a coordinated entry process);
  o Affirmative fair housing market plan;
  o Property and service delivery management plan;
    o Service delivery options
  o Operating policies and protocols between service providers and property manager;
  o Preliminary project proposal and budget;
  o Preliminary feasibility analysis for potential housing site, if identified; and
  o Draft components of application for OHCS PSH funding.

SECTION 3: PROCUREMENT REQUIREMENTS

3.1 MINIMUM QUALIFICATIONS

To be considered for evaluation, Proposal must demonstrate how Proposer meets all requirements of this section:

• Experience in training development teams nationally or in Oregon on Permanent Supportive Housing Technical Assistance Provider
Supportive Housing in both rural and urban settings;

- Ability to provide comprehensive PSH training over a period of six to nine months with training to begin as early as July 2019;
- Subject matter expertise in housing development and operations, service delivery and funding, coordinated entry and homeless services systems;
- Commitment to equity and racial justice.

3.2 **MINIMUM SUBMISSION REQUIREMENTS**

3.2.1 **Proposal Submissions**

To be considered for evaluation, Proposal must contain each of the following elements (further detailed in Proposal Requirements section below):

- Administrative Proposal
- Technical Proposal
- Disclosure Exemption Affidavit (Attachment B)
- Proposer Information and Certification Sheet (Attachment C)
- Proposal Checklist (Attachment D)
- Certified Disadvantaged Business Outreach Plan (Attachment E)
- Responsibility Inquiry (Attachment F)
- Price Proposal
- Key Persons and Resumes
- Sample training curriculum
- Explanation of, or actions taken to demonstrate, organizational commitment to equity and racial justice
- Statement of ability to begin training by July 2019

3.2.2 **Proposal Page Limits**

Proposal is limited to 10 pages (or 5 pages double-sided). Any pages exceeding this limit will not be provided to the evaluation committee or considered in the evaluation. The following items do not count toward the page limit:

- Cover Page
- Table of Contents
- Disclosure Exemption Affidavit (Attachment B)
- Proposer Information and Certification Sheet (Attachment C)
- Proposal Checklist (Attachment D)
- Certified Disadvantaged Business Outreach Plan (Attachment E)
- Responsibility Inquiry (Attachment F)
- Key Persons and Resumes
- Sample training curriculum
Explanation of, or actions taken to demonstrate, organizational commitment to equity and racial justice

3.2.3 Proposal Format and Quantity

Proposal should follow the format and reference the sections listed in the Proposal Content Requirements (Section 3.2.1). Responses to each section and subsection must be labeled to indicate the item being addressed. Proposal must describe in detail how requirements of this RFP will be met and may provide additional related information.

Proposer shall submit one electronic copy of its Proposal to OHCS.Contracts@oregon.gov as an attachment by the Closing Date/Time on the Cover Page. Please reference the RFP #914-5032-19 in the Subject Line of all e-mail communication. In addition, if Proposer believes any of its Proposal is exempt from disclosure under Oregon Public Records Law (ORS 192.311 through 192.478), Proposer shall complete and submit the Disclosure Exemption Affidavit (Attachment B) and a fully redacted electronic version of its Proposal, clearly identified as the redacted version.

3.2.4 Authorized Representative

Failure of the authorized representative to sign the Proposal may subject the Proposal to rejection by OHCS.

3.3 [ROUND 1] PROPOSAL REQUIREMENTS

Proposal should be straightforward and address the requests of the RFP. Proposal must address each of the items listed in this section and all other requirements set forth in this RFP, including those in section 3.1 Minimum Requirements and a detailed budget.

Proposer shall describe the Goods to be provided or the Services to be performed or both, along with a timeline for the Goods and Services put forth in the proposal. Specifically, the Proposer should address how the Goods and Services will meet each of the three (3) objectives explained in section 2.3 (Scope of Work) of this RFP. A Proposal that merely offers to provide the goods or services as stated in this RFP may be considered non-Responsive to this RFP and will not be considered further.

3.3.1 Proposer Information and Certification Sheet

Proposer shall complete and submit the Proposer Information and Certification Sheet (Attachment C).

Failure to demonstrate compliance with Oregon Tax Laws and sign the Proposer Information and Certification Sheet may result in a finding of non-Responsibility.

3.3.2 References

OHCS does not intend to score references but may contact references to verify information provided in Proposals. Proposers must provide three (3) references on the Attachment C for projects relevant to the Services contemplated in this RFP.
References must be able to verify the quality of previous, related Work.

OHCS may check to determine if references provided support Proposer’s ability to comply with the requirements of this RFP. OHCS may use references to obtain additional information, or verify any information needed. OHCS may contact any reference (submitted or not) to verify Proposer’s qualifications.

3.3.3 Price Proposal

Submit a detailed Price Proposal that includes the following items:

- For each activity described in the Scope of Work, the Price Proposal must include identifiable costs, time estimates for completing each activity, and a summary of all proposed costs,
- The Price Proposal must include separate line items for personnel, travel, supplies, other costs, and administrative and overhead charges; and
- For all fully loaded personnel costs, the Price Proposal must include the name and title of all positions for each individual staff person who will perform the Work, and list the salary-wage and fringe rate separately for each such individual.

3.3.4 Key Persons and their Resumes

Specify key persons to be assigned to this project, and include a current resume (not to exceed two pages each) for each individual that demonstrates qualifications and experience for the Work described.

3.3.5 Project Implementation Plan

Briefly describe how Proposer would carry out the major activities of this project in context with the Scope of Work. Provide a comprehensive management plan that the Proposer intends to follow. Illustrate how the plan will serve to coordinate and accomplish the Work.

SECTION 4: SOLICITATION PROCESS

4.1 PUBLIC NOTICE


OHCS shall advertise all Addenda on ORPIN and OHCS’ Procurement website. Prospective Proposer is solely responsible for checking ORPIN or OHCS’ Procurement website to determine whether or not any Addenda have been issued. Addenda are incorporated into the RFP by this reference.

4.2 PRE-PROPOSAL CONFERENCE

A Pre-Proposal conference will not be held for this RFP.

4.3 QUESTIONS / REQUESTS FOR CLARIFICATIONS
All inquiries, whether relating to the RFP process, administration, deadline or method of award, or to the intent or technical aspects of the RFP must:

- Be emailed to the SPC at OHCS.Contracts@oregon.gov;
- Reference the RFP number;
- Identify Proposer’s name and contact information;
- Refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number); and
- Be received by the due date and time for Questions/Requests for Clarification identified in the Schedule.

4.4 SOLICITATION PROTESTS

4.4.1 Protests to RFP

Prospective Proposer may submit a written protest of anything contained in this RFP, including but not limited to, the RFP process, Specifications, Scope of Work, and the Sample Contract. This is prospective Proposer’s only opportunity to protest the provisions of the RFP, except that Proposer may protest Addenda as provided below.

4.4.2 Protests to Addenda

Prospective Proposer may submit a written protest of anything contained in the respective Addendum. Protests to Addenda, if issued, must be submitted by date/time specified in the respective Addendum, or they will not be considered. Protests of matters not added or modified by the respective Addendum will not be considered.

4.4.3 All Protests must:

- Comply with procedure under OAR 813-005-0025
- Be delivered to the SPC via email;
- Reference the RFP number;
- Identify prospective Proposer’s name and contact information;
- Be sent by an authorized representative;
- State the reason for the protest, including:
  - the grounds that demonstrate how the Procurement Process is contrary to law, Unnecessarily Restrictive, legally flawed, or improperly specifies a brand name; and
  - evidence or documentation that supports the grounds on which the protest is based
- State the proposed changes to the RFP provisions or other relief sought;
- Protests to the RFP must be received by the due date and time identified in the Schedule; and
- Protests to Addenda must be received by the due date identified in the respective Addendum.
4.4.4. Protest Response

OHCS will endeavor to respond to all protests submitted in a timely matter while giving due consideration to the nature of the protests. Protests that do not comply with OAR 813-005-0025 may not be considered.

4.5 PROPOSAL DELIVERY OPTIONS

Proposer is solely responsible for ensuring its Proposal is received by the SPC in accordance with the RFP requirements before Closing. OHCS is not responsible for any delays in mail or by common carriers or by transmission errors or delays, or for any mis-delivery for any reason. A Proposal submitted by any means not authorized below will be rejected.

4.6 PROPOSAL MODIFICATION OR WITHDRAWAL

If a Proposer wishes to make modifications to a submitted Proposal it must submit its modification in one of the authorized methods listed in the Proposal Delivery Options section. To be effective the notice must include the RFP number and be submitted to the SPC prior to Closing.

If a Proposer wishes to withdraw a submitted Proposal, it must submit a written notice signed by an authorized representative of its intent to withdraw to the SPC via email or hard copy prior to closing in accordance with OAR 125-247-0440. To be effective the notice must include the RFP number.

4.7 PROPOSAL DUE

A Proposal (including all required submittal items) must be received by the SPC on or before Closing. All Proposal modifications or withdrawals must be received prior to Closing.

A Proposal received after Closing is considered LATE and will NOT be accepted for evaluation. A late Proposal will be returned to the Proposer or destroyed.

4.8 PUBLIC OPENING

There will not be a public opening for this RFP. Proposals received will not be available for inspection until after the evaluation process has been completed and the Notice of Intent to Award is issued pursuant to OAR 125-247-0630.

4.9 PROPOSAL REJECTION

OHCS may reject a Proposal for any of the following reasons:

- Proposer fails to substantially comply with all prescribed RFP procedures and requirements, including but not limited to the requirement that Proposer’s authorized representative sign the Proposal.
- Proposer has liquidated and delinquent debt owed to the State or any department or agency of the State.
- Proposer fails to meet the responsibility requirements of ORS 279B.110.
- Proposer makes any contact regarding this RFP with State representatives such as State
employees or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.

- Proposer attempts to influence a member of the Evaluation Committee.
- Proposal is conditioned on OHCS’s acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda.

4.10 ROUND 1 EVALUATION PROCESS

4.10.1 Responsiveness and Responsibility determination

4.10.1.1 Responsiveness determination

A Proposal received prior to Closing will be reviewed to determine if it is Responsive to all RFP requirements including compliance with Minimum Qualifications section and Minimum Submission Requirements section. If the Proposal is unclear, the SPC may request clarification from Proposer. However, clarifications may not be used to rehabilitate a non-Responsive proposal. If the SPC finds the Proposal non-Responsive, the Proposal may be rejected, however, OHCS may waive mistakes in accordance with OAR 125-247-0470.

4.10.1.2 Responsibility determination

OHCS will determine if an apparent successful Proposer is Responsible prior to award and execution of the Contract. Proposers shall submit a signed Responsibility Inquiry form (Attachment G) with Proposal.

At any time prior to award, OHCS may reject a Proposer found to be not Responsible.

4.10.2 Evaluation Criteria

Each Proposal meeting all Responsiveness requirements will be independently evaluated by members of an Evaluation Committee. Evaluation Committee members may change and OHCS may have additional or fewer evaluators for optional rounds of competition. Evaluators will assign a score for each evaluation criterion listed below in this section up to the maximum points available in the Point and Score Calculation section.

SPC may request further clarification to assist the Evaluation Committee in gaining additional understanding of Proposal. A response to a clarification request must be to clarify or explain portions of the already submitted Proposal and may not contain new information not included in the original Proposal.

4.10.2.1 Scoring Criteria

Scoring is based on the categories described below, and the Proposer must describe how they meet any other requirements that may be specified in this document. A total of 100 maximum points are possible for Round 1.

1. Experience in and ability to train development teams in Oregon on Permanent Supportive Housing (Total maximum 40 points) – Proposer
must demonstrate this by:

a. Resume of all team members with an explanation of roles, a statement regarding organizational capacity, work plan outline (Total 20 points).

b. Providing positive outcomes from prior trainings with similar scope, outcome assessments and module adjustments based upon these assessments, summary of lessons learned (Total 20 points).

2. Ability to provide quality Permanent Supportive Housing technical assistance and training for developers working in both rural and urban communities (Total maximum 30 points).

a. Review of curriculum (Total 10 points)

b. Overview of the extent to which technical assistance is provided for a variety of service delivery models, resource variation (i.e. LIHTC, HOME, local dollars, VASH, Project Based HCV, etc.), and various proportionality of PSH within the development (Total 10 points)

c. Explanation of how community engagement and outreach approaches might change depending upon community dynamics including the community size, needs, political and community support for project, etc. (Total 10 points)

3. Cost Proposal (Total maximum 30 points): Include in your Proposal a Cost Proposal that explains how Proposer prefers to charge for services including an all-inclusive hourly rate and the additional requirements found in Section 3.3.3.

4.10.3 PREFERENCES

4.10.3.1 Reciprocal Preference

For evaluation purposes per OAR 125-246-0310, OHCS shall add a percent increase to each out-of-state Proposer’s Proposal price that is equal to the percent preference, if any, given to a Resident Proposer in the Proposer’s state.

4.10.3.2 Recycled Materials

In comparing Goods from two or more Proposers, if at least one Proposer offers Goods manufactured with Recycled Materials, and at least one Proposer does not, OHCS will select the Proposer offering Goods manufactured from Recycled Materials if each of the conditions specified in ORS 279A.125 (2) exists following any adjustments made to the price of the Goods according to any applicable reciprocal preference.

4.10.3.3 Tiebreakers

Oregon Supplies: If OHCS receives Proposals identical in price, fitness, availability and quality and chooses to award a Contract, OHCS shall award the Contract in accordance with the procedures outlined in OAR 137-046-0300.
4.11 POINT AND SCORE CALCULATIONS

The SPC will average the scores for each Proposal in a given round of competition (calculated by totaling the points awarded by each Evaluation Committee member and dividing by the number of members).

OHCS will rank all Proposers at the conclusion of the evaluation and scoring and may, in OHCS’s sole discretion, determine an apparent successful Proposer with no additional rounds of competition. If additional rounds are conducted, OHCS will rank advancing Proposers at the conclusion of each subsequent round and may determine an apparent successful Proposer at any time during the solicitation process.

The SPC will combine the average score for each Proposal. After any applicable preference has been applied, SPC will describe the rank order for each Proposer, with the highest score receiving the highest rank, and successive rank order determined by the next highest score.

4.12 ROUND 1 NEXT STEP DETERMINATION

At the conclusion of a round of competition, OHCS may choose to conduct additional round(s) of competition if in the best interest of the State. Additional rounds of competition may consist of, but will not be limited to:

- Interviews
- Additional Submittal Items

4.12.1 Competitive Range Determination

If OHCS, in its sole discretion, determines that one or more additional rounds of competition is necessary, it will select a Competitive Range to indicate the Proposers that will be invited to participate in a subsequent round. The Competitive Range may include all, or at OHCS’s sole discretion, some (based primarily on a natural break in the distribution of scores), of the Proposers from a previous round. OHCS will post a notice in ORPIN and OHCS’ Procurement website of its Competitive Range Determination and provide details about the process and schedule for the subsequent round.

4.13 ROUND 2 PROCUREMENT PROCESS AT DISCRETION OF OHCS

Interviews (Optional) – Total maximum (50) points

If OHCS, at its sole discretion, decides to proceed to Round 2, Interviews, Proposers progressing to Round 2 and will be invited to participate in Proposer interviews. Interviews may be in person at a location determined by OHCS; however, OHCS may elect to conduct interviews via teleconference or video conference. Interviews will be scored (total maximum 50 points) on how well the Proposer’s response clarifies the Proposal and responds to any additional Proposal questions. Additional Proposal questions will be emailed to the Proposers progressing to Round 2 prior to the interview. Further details will be included with Notice of Competitive Range.

4.14 SCORING AND RANKING OF PROPOSERS FOR SUBSEQUENT ROUNDS

If OHCS conducts two (2) or more rounds of competition, the SPC will determine the cumulative
score for Proposers advancing through all rounds of competition by adding the scores from each completed round. The Proposer with the highest cumulative score will receive the highest final ranking.

SECTION 5: AWARD AND NEGOTIATION

5.1 AWARD NOTIFICATION PROCESS

5.1.1 Award Consideration

OHCS, if it awards a Contract, shall award a Contract to the highest ranking Responsible Proposer based upon the scoring methodology and process described in Section 3. OHCS may award less than the full Scope defined in this RFP. OHCS, in its sole discretion, may make additional award for up to 18 months following the close of this solicitation. OHCS may select the next ranked Responsive and Responsible Proposer and, issue an Intent to Award notice. If agreement with that Proposer is not reached, OHCS may offer award to the next ranked Proposer and so on until agreement is reached or until OHCS terminates the process. OHCS may require reconfirmation of the qualifications and staffing of any Proposer.

5.1.2 Intent to Award Notice

OHCS will notify all Proposers in writing that OHCS intends to award a Contract to the selected Proposer(s) subject to successful negotiation of any negotiable provisions.

5.2 INTENT TO AWARD PROTEST

5.2.1 Protest Submission

An Affected Proposer shall have 7 calendar days from the date of the Intent to Award notice to file a written protest.

A Proposer is an Affected Proposer only if the Proposer would be eligible for Contract award in the event the protest was successful and is protesting for one or more of the following reasons as specified in ORS 279B.410:

- All higher ranked Proposals are non-Responsive.
- OHCS has failed to conduct an evaluation of Proposals in accordance with the criteria or process described in the RFP.
- OHCS abused its discretion in rejecting the protestor's Proposal as non-Responsive.
- OHCS’s evaluation of Proposal or determination of award otherwise violates ORS Chapter 279B or ORS Chapter 279A.

If OHCS receives only one Proposal, OHCS may dispense with the evaluation process and Intent to Award protest period and proceed with Contract Negotiations and award.

5.2.1.1 Protests must:

- Be delivered to the SPC via email
- Reference the RFP number
- Identify Proposer’s name and contact information
5.2.2 Response to Protest

OHCS will address all timely submitted protests within a reasonable time and will issue a written decision to the respective Proposer. Protests that do not include the required information may not be considered by OHCS.

5.3 APPARENT SUCCESSFUL PROPOSER SUBMISSION REQUIREMENTS

Proposer selected for a Contract award under this RFP will be required to submit additional information and comply with the following:

5.3.1 Insurance

Prior to award, Proposer shall secure and demonstrate to OHCS proof of insurance as required in this RFP or as negotiated. Insurance Requirements are found in Exhibit B of Attachment A.

Failure to demonstrate coverage may result in OHCS terminating Negotiations and commencing Negotiations with the next highest ranking Proposer. Proposer is encouraged to consult its insurance agent about the insurance requirements contained in Insurance Requirements (Exhibit B of Attachment A) prior to Proposal submission.

5.3.2 Taxpayer Identification Number

The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form if either of the following applies:

- When requested by OHCS (normally in an intent to award notice), or
- When the backup withholding status or any other information of Proposer has changed since the last submitted W-9 form, if any.

OHCS will not make any payment until OHCS has a properly completed W-9.

5.3.3 Business Registry

If selected for award, Proposer shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Contract. The selected Proposer shall submit a current Oregon Secretary of state Business Registry number or an explanation if not applicable. Visit http://sos.oregon.gov/business/pages/register.aspx for Oregon Business Registry information.

5.3.4 Responsibility Inquiry

Prior to award, Proposer shall be required to complete and submit Attachment G — Responsibility Inquiry.

5.3.5 Pay Equity Certification
If selected for award and the Contract value exceeds $500,000 and Proposer employs 50 or more full-time workers, Proposer shall submit to OHCS a true and correct copy of an unexpired Pay Equity Compliance Certificate, issued to the Proposer by the Oregon Department of Administrative Services. For instructions on how to obtain the Certificate, visit www.oregon.gov/das/Procurement/Documents/SB491PayEquity.pdf.

ORS 279B.110(2)(f) requires that Proposer provide this prior to execution of the Contract.

### 5.3.5.1 Pay Equity Compliance

As required by ORS 279B.235, 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.

### 5.3.6 Nondiscrimination in Employment

As a condition of receiving the award of a Contract under this RFP, Proposer must certify by their Signature on Attachment C - Proposer Information and Certification Sheet, in accordance with ORS 279A.112, that it has in place a policy and practice of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. The policy and practice must include giving employees a written notice of a policy that both prohibits, and prescribes disciplinary measures for, conduct that constitutes sexual harassment, sexual assault, or unlawful discrimination.

### 5.4 CONTRACT NEGOTIATION

#### 5.4.1 Negotiation

After selection of a successful Proposer, OHCS may enter into Contract negotiations with the successful Proposer. By submitting a Proposal, Proposer agrees to comply with the
requirements of the RFP, including the terms and conditions of the Sample Contract (Attachment A), with the exception of those terms listed below for negotiation.

Proposer shall review the attached Sample Contract and note exceptions.

Proposer must submit those exceptions to OHCS during the Questions / Requests for Clarification period set forth in Section 1.2. Unless OHCS agrees to modify any of the terms and conditions, OHCS intends to enter into a Contract with the successful Proposer substantially in the form set forth in Sample Contract (Attachment A).

It may be possible to negotiate some provisions of the final Contract; however, OHCS is not required to make any changes and many provisions cannot be changed. Proposer is cautioned that the State of Oregon believes modifications to the standard provisions constitute increased risk and increased cost to the State. Therefore, OHCS will consider the scope of requested exceptions in the evaluation of Proposal.

Any subsequent negotiated changes are subject to prior approval of the Oregon Department of Justice.

OHCS is willing to negotiate all items, except those listed below:

- Choice of law
- Choice of venue
- Constitutional requirements
- Requirements of applicable federal and State law

In the event that the parties have not reached mutually agreeable terms within 30 calendar days, OHCS may terminate Negotiations and commence Negotiations with the next highest ranking Proposer.

SECTION 6: ADDITIONAL INFORMATION

6.1 CERTIFIED FIRM PARTICIPATION

Pursuant to Oregon Revised Statute (ORS) Chapter 200, OHCS highly encourages the participation of small businesses, certified by the Oregon Certification Office for Business Inclusion and Diversity ("COBID") in all contracting opportunities. This includes certified small businesses in the following categories: disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business. OHCS also encourages joint ventures or subcontracting with certified small business enterprises. For more information, visit: https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz

If the Contract has potential subcontracting opportunities, the successful Proposer may be required to submit a completed Certified Disadvantaged Business Outreach Plan (Attachment E) prior to execution.

6.2 GOVERNING LAWS AND REGULATIONS

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of Marion County for the State of Oregon; provided, however, if a proceeding must be brought in a federal forum, then it
must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or consent to the jurisdiction of any court.

6.3 OWNERSHIP/PERMISSION TO USE MATERIALS

All Proposals are public record and are subject to public inspection after OHCS issues the Notice of the Intent to Award. Application of the Oregon Public Records Law will determine whether any information is actually exempt from disclosure.

All Proposals submitted in response to this RFP become the Property of OHCS. By submitting a Proposal in response to this RFP, Proposer grants the State a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating a Contract, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.311 through 192.478). Proposals, including supporting materials, will not be returned to Proposer unless the Proposal is submitted late.

6.4 CANCELLATION OF RFP; REJECTION OF PROPOSAL; NO DAMAGES.

Pursuant to ORS 279B.100, OHCS may reject any or all Proposals in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the State or OHCS, as determined by OHCS. Neither the State nor OHCS is liable to any Proposer for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.

6.5 COST OF SUBMITTING A PROPOSAL

Proposer shall pay all the costs in submitting its Proposal, including, but not limited to, the costs to prepare and submit the Proposal, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

6.6 STATEWIDE E-WASTE/RECOVERY PROCEDURE

If applicable, Proposer shall include information in its Proposal that demonstrates compliance with the Statewide E-Waste/Recovery Procedure #107-011-050_PR. Visit the DAS website www.oregon.gov/das and use the search bar feature to locate the procedure.

6.7 RECYCLABLE PRODUCTS

Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the Services or Work set forth in this document and the subsequent Contract. (ORS 279B.025)

6.8 CHECKLIST DISCLAIMER

Any checklists that may be contained in this RFP are provided only as a courtesy to prospective Proposer. OHCS makes no representation as to the completeness or accuracy of any Checklist.
Prospective Proposer is solely responsible for reviewing and understanding the RFP and complying with all the requirements of this RFP, whether listed in a checklist or not. Neither the State nor OHCS is liable for any claims, or subject to any defenses, asserted by Proposer based upon, resulting from, or related to, Proposer's failure to comprehend all requirements of this RFP.
This Contract for Services (this “Contract”) is by and between the State of Oregon, acting through its Oregon Housing and Community Services Department, (“Agency”) and ________, a [_______] [doing business as _____] (“Contractor”) and is effective as of the Effective Date.

Contractor’s Contract Administrator for this Contract is:

**Name and Title**

**Address**

**City, State ZIP**

Phone: (xxx) xxx-xxxx

Fax: (xxx) xxx-xxxx

anyname@yahoo.com

Agency’s Contract Administrator for this Contract is:

**Contract Administrator Name, Title**

Agency-Division

**Address**

**City, State ZIP**

Phone: (xxx) xxx-xxxx

Fax: (xxx) xxx-xxxx

anyname@oregon.gov

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

**Contract Term.**

The “Effective Date” of this Contract is the later of (i) _____, or (ii) 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 ____. 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.

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

this Contract less all exhibits;

Exhibit D, (Federal Terms and Conditions) [RESERVED];

Exhibit C (OHCS Invoice Template);

Exhibit A (Statement of Work);

Exhibit B (Required Insurance), and

Exhibit E (Independent Contractor Certification)

Exhibit F [AGENCY SPECIFIC EXHIBIT-IF NEEDED] [RESERVED]

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

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.

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.

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.

Compensation.

Not to Exceed Compensation. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is $***,***.**. 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.

Payments. Payments, including interim payments, to Contractor are subject to ORS 293.462, will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A.

Invoices. Contractor shall submit invoices to Agency as set forth in the Statement of Work or, if not set forth therein, to Agency’s Contract Administrator. Contractor may submit invoices in accordance with the payment schedule set forth in the Statement of Work or, if no payment schedule is set forth therein, then no more frequently than once per month for accepted Deliverables and Services.
The invoices must describe all Services performed with particularity, including the dates Contractor performed the Services for which it is requesting payment, and by whom the Services were performed and shall itemize and explain all expenses that this Contract requires Agency to pay and for which Contractor claims reimbursement. [OPTIONAL: Each invoice must also include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation.]

Expenses. Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement Work or elsewhere in this Contract. Any such authorized travel expenses must comply with the Oregon Travel Policy available on the Internet at: http://www.oregon.gov/das/cfo/sars/policies/oam/40.10.00.pdf

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.

Contractor’s Personnel.

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.

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.

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.
Independent Contractor; Responsibility For Taxes And Withholding

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.

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.

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.

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.

Subcontracts, Successors, And Assignments

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.

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.

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.

Representations and Warranties.

Contractor’s General Representations and Warranties. Contractor represents and warrants to Agency that:

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

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

1.1.3. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services;
1.1.4. Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and

1.1.5. 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:

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

1.1.5.2. 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;

1.1.5.3. 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;

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

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

Contractor’s Performance Warranties.

1.1.7. 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;

1.1.8. 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;

1.1.9. 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

1.1.10. 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.

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.
Ownership of Work Product.

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

1.1.11. “Contractor Intellectual Property” means any intellectual property owned by Contractor and developed independently from the Services.


1.1.13. “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).

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.

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.

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.

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.

**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.

**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.

**Confidential Information.**

**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 confidentiality, (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.

**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.

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.

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.

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.

Indemnity by Contractor.

Claims. Contractor shall defend (consistent with ORS chapter 180), 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.

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.

**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.

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

**Limitation of Liabilities.**

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.

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.

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

**Default; Remedies; Termination.**

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

1.1.14. 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

1.1.15. 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

1.1.16. 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

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

**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:
1.1.18. Termination of this Contract under Section 14.6.2; or

1.1.19. 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

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

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

1.1.22. 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.

**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.

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

1.1.23. 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

1.1.24. 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.

**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.

**Termination.**

1.1.25. **Agency’s Right to Terminate at its Discretion.** Agency may terminate this Contract:
1.1.25.1. Upon 30 calendar days' prior written notice by Agency to Contractor;

1.1.25.2. 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

1.1.25.3. 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.

1.1.26. **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.

1.1.27. **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.

**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.

**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.

**Compliance with Law.**

**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)).

Compliance with Oregon Tax Laws.

1.1.28. 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.

1.1.29. 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:

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

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

1.1.29.3. 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.

1.1.30. 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.

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.

Governing Law; Venue and Jurisdiction.

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.

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.

Miscellaneous Provisions.

**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.

**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.

**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.

**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.

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

**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.

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.

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.

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.

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.

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.

1.2. 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.
Certifications. The individual signing on behalf of Contractor hereby:

1.2.1. 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;

1.2.2. 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;

1.2.3. 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.

1.2.4. Certifies that the information provided on the attached Exhibit E, Independent Contractor Certification, is true and correct as of the Effective Date; and

1.2.5. 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/sdlist.pdf.

Pay Equity. As required by [ORS 279B.235 or ORS 279C.520], Contractor shall comply with ORS 652.220 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.
INSURANCE REQUIREMENTS:

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:

4.5.2019
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 occurrence. 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.

POLLUTION LIABILITY:

Pollution Liability Insurance covering Contractor’s or appropriate subcontractor’s liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract is required. Combined single limit per occurrence shall not be less than $__________________. Annual aggregate limit shall not be less than $__________________. An endorsement to the Commercial General Liability or Automobile Liability policy, covering Contractor’s or subcontractor’s liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by the Contractor that arise from the Goods delivered or Services (including transportation risk) performed by Contractor under this Contract is also acceptable.

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL INSURED:

The Commercial General Liability insurance and Automobile liability insurance 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.

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. 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
Independent Contractor Certification

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide 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: __________________________________________ Date: ____________________