



**State of Oregon  
Office of the State Treasurer  
350 WINTER STREET NE, SUITE 100  
SALEM, OREGON 97301-3896**

**REQUEST FOR PROPOSAL (RFP) #1084**

**FOR**

**Treasury Cash Management Consultant**

**Date of Issue: March 23, 2016**

**Closing Date/Time: April 6, 2016 4:00 PM PST**

**Single Point of Contact (SPC): Connie Lelack**

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## **1.0 GENERAL INFORMATION**

### **1.1 Introduction**

The State of Oregon, acting by and through the Office of the State Treasurer (“Treasury”), is issuing this Request for Proposal for a Treasury Cash Management Consultant. All firms submitting proposals are referred to as Proposers in this document; after negotiations, the awarded Proposer will be designated as Consultant.

Agency anticipates the award of one Price Agreement (the “Agreement”) from this RFP. The initial term of the Agreement is anticipated to be awarded for two (2) years with options to renew up to a maximum of 5 years.

Additional details on the Work are included in the Scope of Services section 1.3. The Scope of Services are further described in (Exhibit A), within this RFP. The selected Proposer and Treasury may negotiate the final Scope of Services within the scope of what is advertised here for inclusion in the resulting Agreement. There is no guarantee of work or of compensation resulting from the Agreement. Individual Work Order Contracts (“WOC”) will be assigned as needed for each project based on Treasury’s needs.

### **1.2 Overview**

#### **1.2.1 Treasury Overview and Background**

##### **Cash Management Overview**

Oregon Revised Statute (“ORS”) 293.875 designates the State Treasurer as the sole banking and cash management officer for the State of Oregon. Pursuant to that designation, the Office of the State Treasurer (“Treasury”) has broad authority to review, establish, and modify policies and procedures for the efficient handling of cash and cash equivalents under the control of all state agencies. Treasury acts as the bank for all state agencies. Most state agencies do not have authority to enter into banking contracts on their own. An agency must have specific authority to bank on its own in order to overcome the broad scope of ORS 293.875. For instance, ORS 182.470 expressly authorizes the state’s semi-independent agencies to deposit their moneys in commercial banks instead of the State Treasury. The other side of that authorization is that Treasury does not typically bank funds from such semi-independent state agencies.

If an agency’s funds are held in the State Treasury, the agency will fall under ORS 293.875 and banking and cash management services related to its funds will be governed by, and largely accomplished through, Treasury. Of note:

- Treasury acts as the bank for all state agencies providing depository, check redemption, and electronic payment services (including foreign and domestic wire, Automated Clearing House (“ACH”), and a variety of other services) for state agencies.
- Treasury maintains and reports customer account information via an internally managed Demand Deposit Account (“DDA”) structure and internally developed statement report tool.
- Treasury facilitates cash management transactions via secure technology infrastructure at Treasury (currently in transition to vendor-delivered models) and via vendor relationships depending on the transaction type.
- Treasury works with agencies, vendors, and appropriate legal representatives to protect public funds by helping to ensure compliance with regulatory and industry requirements, as well as Oregon public funds laws.
- Treasury works closely with the Oregon Department of Administrative Services with respect to coordination of accounting (and some budgetary) control aspects inherent to state government.
- Treasury operates the Oregon Short Term Fund (including the Local Government Investment Pool) as a short-term cash investment vehicle for state agencies (and roughly 1,000 local governments).

##### **Depository Relationships**

Oregon is fortunate to have a long tradition of branch banking which allows for coverage of all areas of the state with a relatively small number of banks. These commercial banks provide depository services to Oregon state agencies, allowing the state agency to deposit money to the Treasurer’s account at that bank. Deposits are distinguished for purposes of our internal DDA accounting/reporting via information contained in the Magnetic Ink Character Recognition (“MICR”) line of the deposit slip used by each agency. These banks offer the agencies a variety of services, including night

depositories, coin and currency, and more. Treasury currently has depository relationships with 13 such financial institutions.

### **Primary Banking/Cash (Treasury) Management Services and Warrant Processing**

In addition to depository services, Treasury contracts with vendors to provide check/warrant redemption, lockbox, merchant card acceptance, electronic payment services (including foreign and domestic wire, ACH, and other), and a variety of other services for state agencies. With regard to these additional service areas, a primary Treasury Management Services (“TMS”) vendor provides the bulk of services through a master services agreement.

Of importance, checks and warrants written by state agencies are written on Treasury which has its own American Banking Association (“ABA”) routing number used for clearing state items through the Federal Reserve Banking System. As Treasury’s warrant processor, Treasury’s primary TMS vendor provides processing and settlement services, initially paying the Fed and banks for these items. Treasury then repays the TMS vendor (on a same day basis).

### **Additional Banking Services**

In addition to the services described above, additional banking services that are currently utilized include:

- Wire Transfer Services
- Cash Vault Services
- Lockbox Services
- Drafts/Warrant
- Positive Pay Services
- Information Reporting and Transaction Services
- Returned Check Management
- Data Translation Services
- Courier Services
- Electronic Payment Services
- Electronic Deposit Services
- Electronic Disbursement Services
- Other “indirect” services that support the areas above.

### **1.2.2 Purpose**

Treasury is pursuing a comprehensive reevaluation of its banking and cash management service delivery model and related vendor partnerships. Treasury’s objective is to mitigate operational and other risks, and better support contingency planning and readiness, while continuing to deliver quality services at reasonable costs to our customer agencies. Notably, Treasury is considering a service delivery model that contemplates shared service delivery of primary TMS services by two or more vendors with division and/or alignment of specific service delivery based on industry best practices, efficiencies, scale, and expertise, among others. Treasury has identified the need for a Consultant to provide assistance with this effort. Consultant services will be in accordance with industry best practices and include consultation with regard to proposed service delivery model and shared vendor approach, vendor selection, and other activities as needed with vendor, product, or service transition, including solution selection, implementation, and integration, as well as other transition activities.

The initial Work resulting from the Price Agreement is anticipated to be consultation with regard to proposed service delivery model and shared vendor approach, as well as vendor solicitation design, staging, and selection. Additional Work is anticipated to assist with implementation of proposed service delivery model, vendor transition, and related transition activities.

### **1.3 Scope of Services**

Consultant will provide ongoing services to Treasury as needed or requested by Treasury pursuant to a WOC consistent with the broad Purpose defined above. Specific services will be defined by WOC and may include, but are not limited to:

- a. Providing related consultation services;
- b. Providing related gap analysis;

- c. Providing related project plan(s);
- d. Providing related project management activities or oversight;
- e. Providing resources to various projects throughout the identified project plan(s);
- f. Identifying resources Treasury may need to support projects;
- g. Preparing or assisting with various forms of documentation;
- h. Assisting in identifying risks, issues, and contingency or mitigation plans;
- i. Providing advice on and recommending vendors or solutions;
- j. Providing technology solution recommendations;
- k. Providing or assisting with change management processes and implementation;
- l. Providing assistance as needed in implementation and integration processes;
- m. Scheduling and coordinating meetings with Treasury and stakeholders;
- n. Attending meetings by phone or in-person, onsite at Treasury’s office(s); and
- o. Other services relevant to the Purpose.

**1.4 Schedule**

The table below represents a tentative schedule of events. All times are listed in Pacific Time. All dates listed are subject to change.

Solicitation Deliverable	Date
Issue RFP	March 23, 2016
RFP Questions due by	March 28, 2016 8:00 AM PST
Pre-Proposal Teleconference	March 29, 2016 9:00-10:00 AM PST
Proposal Due Date	April 6, 2016
Proposer Presentations	April 14-19, 2016
Anticipated Notice of Award	April 22, 2016
Anticipated Agreement Execution Date	April 29, 2016

**1.5 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, whether about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision only to the SPC.

**1.6 Procurement Authority and Method**

Treasury is conducting this RFP pursuant to its authority under ORS 279A.025(2)(p) and ORS 293.875.

**2.0 PROPOSAL REQUIREMENTS**

**2.1 MINIMUM REQUIREMENTS**

**2.1.1 Minimum Proposer Requirements**

Proposer must have, and clearly identify with their proposal, knowledge and experience working with provision of treasury, banking, and/or cash management consultant services to large government entities or similar within the last five (5) years. The required References (see Attachment A) must reflect those projects.

**2.1.2 Minimum Key Person Requirements**

Proposer’s Key Personnel must have a minimum of ten (10) years’ experience as treasury, banking, or cash management subject matter experts. Experience with governmental entities is preferred. Resumes must reflect this experience.

## 2.2 MINIMUM SUBMISSION REQUIREMENTS

### 2.2.1 Proposal Submission Requirements

DUE DATE:  
**April 6, 2015 by 4:00 PM PST**

DELIVERY ADDRESS:  
**Oregon State Treasury  
Attn: Connie Lelack  
350 Winter Street NE, Suite 100, Salem, OR 97301**

Proposer may use this section of minimum requirements as a checklist to ensure the proposal is complete:

**Proposal Cover Sheet with References:** (Not counted in the page limitation)

The Proposal must include a completed, signed Proposal Cover Sheet (provided in Attachment A).

**Proposal Body:** (not to exceed ten (10) total pages, excluding Cover Sheet, Cost Proposal, and Resumes)

The Proposal should clearly reflect Proposer's approach to delivery of initial Work, which includes consultation with regard to proposed banking and cash management service delivery model and shared vendor approach, as well as vendor solicitation design, staging, and selection. The Proposal must be generally organized in accordance with and address the Criteria provided in Section 3.0, and submitted in the format and quantities described in Section 2.2.2.

**Cost Proposal:** (Not counted in the page limitation)

The Cost Proposal should include fully loaded hourly rates for all classifications of key personnel for purposes of understanding costs that may be incurred with WOCs to be executed under the Price Agreement.

In addition, the Cost Proposal should include a proposed Not-To-Exceed-Amount for the first intended WOC consistent with the initial Work. Proposed amount should be consistent with proposed approach to the initial Work presented within the Proposal Body.

**Resumes:** (Not counted in the page limitation)

Resumes of key personnel including clear demonstration of relevant or desired experience.

### 2.2.2 Proposal Format and Quantity

Proposals must be delivered in a sealed envelope, which clearly identifies the RFP number, the project name, and the Delivery Address as identified in Section 2.2.1. Mis-deliveries and late submittals will not be accepted or considered. Proposals must be received at the delivery address by the required time. Proposals must be physically received at the Delivery Address no later than the date and time specified above. Postmarks will not be considered. Proposals that are e-mailed or faxed will NOT be considered.

One (1) original signed proposal by an authorized signer in hard copy; five (5) additional hard copies, and one (1) electronic copy must be submitted on a disc, flash drive, or similar device. The proposal must not exceed ten (10) total pages; to be double-sided; 12 pt font; 1" margins, **excluding** Cover Sheet with References, Cost Proposal, and Resumes,

All proposals shall be valid for ninety (90) days from the RFP closing date.

All costs associated with Proposer's submission of the proposal are the sole responsibility of the Proposer and shall not be borne by the State of Oregon. All proposals submitted will become public record.

Treasury will not be held responsible for any error or omissions that occur while downloading the RFP from any source. The official solicitation document is the one held at the Treasury.

Proposals will be reviewed to determine if they comply with the administrative, contractual, and technical requirements of the RFP. Those proposals which are incomplete or which do not meet all requirements of the RFP, may be deemed by Treasury to be "non-responsive" and may be rejected. Proposals considered complete, or "responsive," will be evaluated against the Criteria outlined in Section 3.0 of this RFP. If the proposal is unclear, the Proposer may be asked to provide written clarification to assist Treasury in evaluating the Proposal.

### **2.2.3 Electronic Submission**

Proposals that are e-mailed, faxed, or otherwise transmitted electronically will not be accepted.

### **2.2.4 RFP Questions**

All inquiries relating to the RFP process, administration, deadline or award, or to the substantive technical portions of the RFP, must be directed to the SPC identified on the Cover Page.

All questions regarding the intent of the work or technical aspects of the work must be submitted in writing (mail or e-mail). Questions regarding this RFP will be accepted until **8:00 AM PST on March 28, 2016**, in preparation for the Optional Pre-Proposal Teleconference to be held on March 29, 2016 (see section 2.2.5). When appropriate, revisions, substitutions, or clarifications will be issued as addenda to this RFP. Changes/modifications to the RFP requirements shall **ONLY** be recognized if in the form of written addenda issued by Treasury. Treasury will provide copies of any questions and answers or addenda to all known RFP recipients, evidenced by participation in the Optional Pre-Proposal Teleconference, and will provide any questions and answers or addenda on the [Treasury website: http://www.oregon.gov/treasury/AboutTreasury/Pages/Requests-for-Proposals.aspx](http://www.oregon.gov/treasury/AboutTreasury/Pages/Requests-for-Proposals.aspx).

### **2.2.5 Optional Pre-Proposal Teleconference**

A Pre-Proposal Teleconference will held via teleconference on March 29, 2016 from 9:00 to 10:00 AM PST. Interested parties may participate by calling 1-800-636-3807, enter participant code: 662435

The purpose of the teleconference will be to orally address written questions received no later than March 28, 2016 at 8:00 AM (see section 2.2.4). Attendance at the teleconference is not required for submitting a written proposal per the instructions in this RFP.

### **2.2.6 Presentations**

Treasury intends to hold Proposer Presentations with the top ranked Proposers at the Treasury office located at 350 Winter Street NE Suite 100, Salem, Oregon, 97306. Selected Proposers will be notified and scheduled directly by Treasury.

If Presentations are conducted, they may be evaluated based any on the following criteria or additional criteria provided by Treasury to invited Proposers at the time of invite:

- Understanding of Requested Services
- Project approach to the initial Work (see section 1.2.2)
- Project Management
- Proposer's Capabilities
- Proposer's Relevant Experience and Team Qualifications
- Overview of additional services Proposer may offer

If Presentations are conducted, the following will apply:

- The number of Proposers selected for Presentations is at the sole discretion of Treasury.
- Presentations will require physical attendance at Treasury's office; however, Treasury may elect to conduct interviews via teleconference or video conference in its sole discretion.
- Further details will be provided with notification of time and date of Presentation, if conducted.

## 2.2.7 References

Treasury does not intend to score references but may contact references to verify information provided in Proposals. Proposers must provide three (3) references on the Cover Sheet (Attachment A) for projects relevant to the projects contemplated in this RFP.

## 3.0 CRITERIA; SCORING

Proposals will be evaluated based on the criteria set out below. Maximum scoring for each category is provided, with a total of 100 maximum points possible. If the proposal is unclear, Proposers may be asked to provide written clarification. Proposals must be generally organized in accordance with and address the Criteria provided below:

### 3.1 Technical Proposal

40 points maximum

- [a] Provide a detailed description of your approach to delivery of initial Work, including consultation services with regard to Treasury's proposed banking and cash management service delivery model and shared vendor approach, as well as vendor solicitation design, staging, and selection. Include a detailed description of any proposed services outlined in Section 1.3 above.
- [b] Describe additional potential scope of work items that may not be outlined in Section 1.3, but that are necessary to the delivery of your services.
- [c] Provide a Project Plan that describes the proposed timing and duration for specific elements of the proposed initial Work, including the relevant roles of Proposer's Key Personnel, as well as that assumed by Treasury staff.
- [d] Provide a description of your proposed delineation of roles and responsibilities between the consultant and Treasury. Include reference to leadership with regard to activities, level of effort, any dependencies in relationship to proposed timing and duration of activities, etc.
- [e] Please confirm that Proposer has access to the hardware, software and equipment, or other relevant goods, materials, services, or information necessary to perform work under the resulting Agreement. If not, what may be needed from Treasury?

### 3.2 Experience and Qualifications

40 points maximum

- [a] Describe Proposer's knowledge and experience with provision of treasury, banking, and/or cash management consultant services, particularly with respect to large government entities.
- [b] Identify the Key Personnel that will be assigned to the Work and describe their knowledge and experience with provision of treasury, banking, and/or cash management consultant services, particularly with respect to large government entities.. You may include examples of Key Personnel's work product or published content as appropriate to demonstrate relevant knowledge and experience.
- [c] Describe Proposer's and Key Personnel's experience providing services with regard to transition of banking or cash management services providers.
- [d] Describe your experience in completing similar projects on time and within budget.
- [e] Do you contemplate using a subcontractor to perform work via the Price Agreement? Please provide appropriate firm-level and Key Personnel related resumes and references as appropriate.

### 3.3 Cost Proposal

20 points maximum

Consultant shall provide fully loaded hourly rates for all classifications of key personnel for purposes of understanding costs that may be incurred with WOCs to be executed under the Price Agreement. The hourly rates must be inclusive of all services, travel, standard fees, rates, expenses and other fees (including payroll expenses – hours/rate/title, Admin, Overhead, etc.).

In addition, the Cost Proposal should include a proposed Not-To-Exceed-Amount for the first intended WOC consistent with the initial Work. Proposed amount should be consistent with proposed approach to the initial Work presented within the Proposal Body.

Cost Proposals will be evaluated for reasonableness and competitiveness.

#### **4.0 PROPOSAL EVALUATIONS**

##### **4.1 Evaluation Process**

Proposals submitted will be reviewed to determine that all minimum requirements have been met. Proposals meeting those criteria will be forwarded to an evaluation committee for scoring against the criteria described in Section 3.0. The outcome of the evaluations may, at the Treasury's sole discretion, result in (a) a notice to a Proposer of selection for tentative Agreement negotiation and possible award; or (b) a Presentation notice to selected Proposer(s) describing the Presentation process and date thereof.

##### **4.2 Pass/Fail Criteria**

Each Proposal must comply with the following Pass/Fail criteria. Proposals not meeting ALL Pass/Fail criteria may be rejected, unless such failure is deemed immaterial at the sole discretion of the Treasury.

- Cover Sheet (refer to **Attachment A**), including at least three (3) references.
- One (1) original signed Proposal
- Five (5) copies of the Proposal
- One (1) electronic copy of the Proposal
- Proposal deadline met
- Meets minimum qualifications
- Cost Proposal included
- Resumes included

##### **4.3 Evaluation Criteria**

Each proposal must clearly address minimum proposal requirements and all scored criteria.

##### **4.4 Notice of Award**

Proposers will be notified in writing of Treasury's intent to award.

#### **5.0 GENERAL SOLICITATION TERMS**

5.1 Treasury may require clarification to understand any of the selected Proposer's scored criteria. Any necessary clarifications or modifications will be made before executing the Agreement and may become part of the final Agreement.

5.2 Treasury reserves the sole right and option to amend the Agreement, which results from this RFP. Contract amendments may be for increases in time or, consideration, or for changes within the Statement of Work, and shall occur only upon mutual consent and signature by all parties to the Agreement. All amendments shall be in writing and shall conform to the amendment process.

5.3 After selection of a successful Proposer, Treasury may negotiate the terms and conditions of the Agreement.

5.4 Insurance requirements for this contract are listed in Exhibit B of Attachment B. Consultant shall be required to provide certificates of insurance and any applicable endorsements to Treasury, upon request, prior to execution of the Agreement.

5.5 ORS 60.701 requires that foreign corporations be registered by the State of Oregon, Office of the Secretary of State, before conducting business in the state. A foreign corporation (ORS 60.001) means a corporation-for-profit incorporated under a law other than the law of the State of Oregon. If a firm is selected for the Agreement as a result of this solicitation they must register to do business in Oregon.

5.6 Treasury reserves the right, at its sole discretion: (1) to amend the RFP prior to the closing date (2) to amend the deadline for submitting proposals; (3) to determine whether a proposal does or does not substantially comply with the requirements of this RFP; (4) to waive any minor irregularity, informality, or nonconformance with this RFP; (5) to obtain from and/or provide to other public agencies, upon request, references, regarding the Proposer's contract performance; (6) at any time prior to Agreement execution (including after announcement of the apparent awardee): (a) to reject any proposal that fails to substantially comply with all prescribed RFP procedures and requirements; and (b) to reject all proposals received and cancel this RFP upon a finding by Treasury that there is good cause and that such cancellation would be in the best interests of the State; (7) seek clarification on any or all proposals; and (8) negotiate the final description of work tasks, deliverables, pricing and specific terms and conditions of the sample Contract within the scope of what is advertised here for inclusion in the resulting Agreement.

5.7 This RFP and one copy of each original response received, together with copies of all documents pertaining to the award of an Agreement, shall be kept by Treasury and made a part of a file or record, which shall be open to public inspection. If a proposal contains any information that is considered a trade secret under ORS 192.501 (2), each sheet of such information must be marked with the following legend:

“This Proposal constitutes a trade secret under ORS 192.501 (2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.501 (2). Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determination made pursuant to the Public Records Law.

If a Proposal contains any other information that may be considered exempt from disclosure under the Oregon Public Records Law, ORS 192.430 through 192.505, Proposer must clearly identify that portion of its Proposal that it claims to be exempt, along with a citation to the authority relied upon. Application of the Oregon Public Records Law shall determine whether any information is actually exempt from disclosure. Identifying a Proposal in whole as exempt from disclosure is not acceptable. Failure to identify and claim a portion of the Proposal as exempt from disclosure, and the authority used, shall be deemed a waiver of any future claim of non-disclosure of that information.

5.8 The Consultant will be required to assume responsibility for all services outlined and finalized in the Agreement, whether the Consultant, a representative or subcontractor produces them. Treasury considers the prime Consultant responsible for any and all contractual matters, including performance of work and the stated deliverables.

5.9 In accordance with the 2003 Oregon Sustainability Executive Order and ORS 279A.125, Proposers must use recyclable products to the maximum extent economically feasible in the performance of the Agreement work set forth in this document.

5.10 The cost, statement of work of the project and any terms and conditions as noted above in section 5.6, may be negotiated, within the overall intent described in this RFP, with the selected Proposer. If negotiations are not successful and an Agreement is not executed within 60 days, Treasury may either: (a) terminate negotiations with the top selection and begin negotiations with the next highest ranked Proposer, (b) cancel the solicitation, or (c) continue negotiations with the highest ranked Proposer.

5.11 Proposers submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. For Proposers that do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. Negotiations may be conducted with responsible Proposers who submit proposals found to be reasonably likely to be selected for award.



Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email address: \_\_\_\_\_

***Cover Sheet cont.***

**Provide at least three references with telephone numbers (please verify numbers):**

<b><u>REFERENCE No. 1:</u></b> Organization Name: _____ Their Contact Person: _____ Project Title: _____ Description of Project:  Additional information:	Telephone: _____ Fax: _____ Email: _____
<b><u>REFERENCE No. 2:</u></b> Organization Name: _____ Their Contact Person: _____ Project Title: _____ Description of Project:  Additional information:	Telephone: _____ Fax: _____ Email: _____
<b><u>REFERENCE No. 3:</u></b> Organization Name: _____ Their Contact Person: _____ Project Title: _____ Description of Project:  Additional information:	Telephone: _____ Fax: _____ Email: _____

## ATTACHMENT B



### STATE OF OREGON OREGON STATE TREASURY SAMPLE PRICE AGREEMENT

This Price Agreement (the "Agreement") No. \_\_\_\_\_ is between the State of Oregon, acting by and through the Office of the Oregon State Treasurer, hereafter called "Treasury," and \_\_\_\_\_, a \_\_\_\_\_, hereafter called "Consultant."

For good and sufficient consideration, including the terms and conditions herein, the parties agree as follows:

**1. Effective Date and Duration.** This Agreement shall become effective on the date this Agreement has been signed by every party hereto and, when required, approved by the Department of Justice. Unless terminated or extended, this Agreement shall expire on \_\_\_\_\_, or the expiration or termination of all Work Order Contracts ("WOC") assigned under this Agreement, whichever date occurs last. The term of this Agreement or a WOC may be extended for additional periods by execution of a written amendment extending the foregoing termination date. Termination or Expiration shall not extinguish or prejudice Treasury's right to enforce this Agreement with respect to any breach of a Consultant warranty or any default or defect in Consultant performance that has not been cured. WOCs may not be issued or extended after the expiration or termination of this Agreement.

**2. Scope of Work.** The services that may be required under a WOC are more specifically described in the Menu of Services set forth in Exhibit A, attached and incorporated into this Agreement by this reference (the "Services" or "Work"). Consultant agrees to perform the Services required under each WOC in accordance with the terms and conditions for WOCs as set forth in this Agreement. In the event of any conflict between the terms of a WOC and the terms of this Agreement, this Agreement and its order of precedence control.

#### **3. Consideration.**

**a.** The compensation payable to Consultant under this Agreement and its respective WOCs, which includes any allowable expenses will be based upon the rates provided in Exhibit A Part IV of this Agreement. The maximum, not-to-exceed compensation payable to Consultant under this Agreement and its respective WOCs for providing the goods and Services required will be further described in each WOC assigned, if any. There is no guarantee that any specific amount of work or overall dollar amounts will be assigned via WOCs under this Agreement. Treasury agrees to pay Consultant for Services completed under each assigned WOC as provided in the respective WOC.

**b.** Interim payments to Consultant shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A.

**c.** Treasury will pay only for completed Work that is accepted by Treasury.

**d.** Consultant shall submit monthly invoices to Treasury's Agreement Administrator for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Agreement requires Treasury to pay and for which Consultant claims reimbursement. Each invoice also shall include the total amount invoiced to date by Consultant prior to the current invoice. Consultant 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. Consultant shall send invoices to Treasury's Agreement Administrator.

**4. Agreement Documents.** This Agreement consists of the following documents which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (Scope of Services), Exhibit B (Insurance Requirements), and Exhibit C (form of Work Order Contract) which are incorporated herein by this reference.

#### **5. Independent Consultant; Responsibility for Taxes and Withholding.**

**a.** Consultant shall perform all Work as an independent contractor. The Treasury reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the Treasury may not and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Work.

**b.** If Consultant is currently performing work for the State of Oregon or the federal government, Consultant by signature to this Agreement, represents and warrants that: Consultant's Work to be performed under this Agreement creates no potential or actual

conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Consultant currently performs work would prohibit Consultant's Work under this Agreement.

**c.** Consultant understands and agrees that it is not an "officer", "employee", or "agent" of the Treasury, as those terms are used in ORS 30.265.

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

#### **6. Subcontracts and Assignment; Successors and Assigns.**

**a.** Consultant shall not enter into any subcontracts for any of the Work required by this Agreement, or assign or transfer any of its interest in this Agreement, without Treasury's prior written consent. In addition to any other provisions Treasury may require, Consultant shall include in any permitted subcontract under this Agreement a requirement that the subcontractor be bound by Sections 5, 6, 7, 9, 10, 11, 15, 16, 19, and 25 of this Agreement as if the subcontractor were the Consultant. Treasury's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under this Agreement.

**b.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

**c.** Consultant shall not assign, delegate or transfer any of its rights or obligations under this Agreement without Treasury's prior written consent.

**7. No Third Party Beneficiaries.** Treasury and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, 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 Agreement.

**8. Funds Available and Authorized; Payments.** Consultant shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon. Treasury certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the Treasury's current biennial appropriation or limitation. Consultant understands and agrees that Treasury's payment of amounts under this Agreement is contingent on Treasury receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow Treasury, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

#### **9. Representations and Warranties.**

**a.** Consultant's Representations and Warranties. Consultant represents and warrants to Treasury that (1) Consultant has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms and will not violate: (i) any provision of the charter documents of Consultant, (ii) any state law or judgment, decree, order, regulation or rule of any court, or governmental authority applicable to Consultant, or (iii) any agreement to which Consultant is bound which violation would result in a material adverse effect on the business and financial condition of Consultant, (3) the Work under this Agreement shall be performed in a good and workmanlike manner and in accordance with professional standards, (4) the personnel of Consultant that are responsible for discharging Consultant's duties and obligations under this Agreement are individuals experienced in the performance of the Work contemplated under this Agreement and shall, at all times during the term of this Agreement, be qualified, professionally competent, and shall have completed, obtained and performed all registrations, filings, approvals, authorizations, consents, examinations or licensing required by any governmental authority to perform the Work, (5) there are no (i) actions, (ii) proceedings or (iii) investigations by any state or federal regulatory authority pending, or to Consultant's knowledge threatened, against Consultant (A) that could have a material adverse effect on the business and financial condition of Consultant or its ability to perform the Work or (B) that claim or allege fraud or misrepresentation by Consultant or its officers, directors or partners, including its Key Personnel, nor has Consultant, or any of its officers, directors or partners, including its Key Personnel, been found liable under or guilty of any claims of fraud or misrepresentation, and (6) any software products delivered under this Agreement that process dates or date-related data shall recognize, store, and transmit date data in a format that explicitly and unambiguously specifies the correct century.

**b.** Warranties Cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

#### **10. Ownership of Work Product.**

**a. Definitions.** As used in this Section 10, and elsewhere in this Agreement, the following terms have the meanings set forth below:

(i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Treasury or Consultant.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Consultant is required to deliver to Treasury pursuant to the Work.

**b. Original Works.** All Work Product created by Consultant pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of

Treasury. Treasury and Consultant agree that such original works of authorship are “work made for hire” of which Treasury is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not “work made for hire,” Consultant hereby irrevocably assigns to Treasury any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Treasury’s reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Treasury. Consultant forever waives any and all rights relating to original Work Product created pursuant to the Work, 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.

In the event that Work Product created by Consultant under this Agreement is a derivative work based on Consultant Intellectual Property, or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Treasury 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 Consultant Intellectual Property employed in the Work Product, and to authorize others to do the same on Treasury’s behalf.

In the event that Work Product created by Consultant under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Consultant shall secure on the Treasury’s behalf and in the name of the Treasury 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 Work Product, and to authorize others to do the same on Treasury’s behalf.

**c. Consultant Intellectual Property.** In the event that Work Product is Consultant Intellectual Property Consultant hereby grants to Treasury an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Consultant Intellectual Property, and to authorize others to do the same on Treasury’s behalf.

**d. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Consultant shall secure on the Treasury’s behalf and in the name of the Treasury, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Treasury’s behalf.

## **11. Indemnity.**

**a. GENERAL INDEMNITY.** CONSULTANT SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND TREASURY AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONSULTANT OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.

**b. INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONSULTANT EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD TREASURY, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO TREASURY BY CONSULTANT THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE TREASURY’S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE CONSULTANT WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

**c. CONTROL OF DEFENSE AND SETTLEMENT.** CONSULTANT SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; HOWEVER, NEITHER CONSULTANT NOR ANY ATTORNEY ENGAGED BY CONSULTANT SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONSULTANT SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONSULTANT IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON’S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

**12. Insurance.** Consultant shall provide insurance as indicated on Exhibit B, attached hereto and by this reference made a part hereof.

## **13. Default; Remedies; Termination.**

**a. Default by Consultant.** Consultant shall be in default under this Agreement if:

(i) Consultant 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

(ii) Consultant no longer holds a license or certificate that is required for Consultant to perform its obligations under the Agreement and Consultant has not obtained such license or certificate within fourteen (14) calendar days after Treasury's notice or such longer period as Treasury may specify in such notice; or

(iii) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Treasury's notice, or such longer period as Treasury may specify in such notice; or

(iv) Consultant's representations and covenants regarding compliance with "Tax Laws" as set forth in Section 29 of this Agreement are false or become false because Consultant fails to comply with any Tax Laws during the term of this Agreement.

**b. Treasury's Remedies for Consultant's Default.** In the event Consultant is in default under Section 13.a, Treasury may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

(i) termination of this Agreement under Section 13.e(ii);

(ii) withholding all monies due for Work and Work Products that Consultant has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

(iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

(iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Treasury may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Consultant was not in default under Section 13.a, then Consultant shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 13.e(i).

**c. Default by Treasury.** Treasury shall be in default under this Agreement if:

(i) Treasury fails to pay Consultant any amount pursuant to the terms of this Agreement, and Treasury fails to cure such failure within thirty (30) calendar days after Consultant's notice or such longer period as Consultant may specify in such notice; or

(ii) Treasury commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Consultant's notice or such longer period as Consultant may specify in such notice.

**d. Consultant's Remedies for Treasury's Default.** In the event Treasury terminates the Agreement under Section 13.e(i), or in the event Treasury is in default under Section 13.c and whether or not Consultant elects to exercise its right to terminate the Agreement under Section 13.e(iii), Consultant's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Treasury, less previous amounts paid and any claim(s) that Treasury has against Consultant. In no event shall Treasury be liable to Consultant for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Consultant exceed the amount due to Consultant under this Section 13.d, Consultant shall pay immediately any excess to Treasury upon written demand provided in accordance with Section 20.

**e. Termination.**

(i) **Treasury's Right to Terminate at its Discretion.** At its sole discretion, Treasury may terminate this Agreement:

(A) For its convenience upon thirty (30) days' prior written notice by Treasury to Consultant;

(B) Immediately upon written notice if Treasury fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Treasury's purchase of the Work or Work Products under this Agreement is prohibited or Treasury is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) **Treasury's Right to Terminate for Cause.** In addition to any other rights and remedies Treasury may have under this Agreement, Treasury may terminate this Agreement immediately upon written notice by Treasury to Consultant, or at such later date as Treasury may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 13.e(ii)(B) and 13.e(ii)(C) below, upon the occurrence of any of the following events:

(A) Consultant is in default under Section 13.a(i) because Consultant 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;

(B) Consultant is in default under Section 13.a(ii) because Consultant no longer holds a license or certificate that is required for it to perform services under the Agreement and Consultant has not obtained such license or certificate within fourteen (14) calendar days after Treasury's notice or such longer period as Treasury may specify in such notice; or

(C) Consultant is in default under Section 13.a(iii) because Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Treasury's notice, or such longer period as Treasury may specify in such notice.

**(iii) Consultant's Right to Terminate for Cause.** Consultant may terminate this Agreement with such written notice to Treasury as provided in Sections 13.e(iii)(A) and 13.e(iii)(B) below, or at such later date as Consultant may establish in such notice, upon the occurrence of the following events:

(A) Treasury is in default under Section 13.c(i) because Treasury fails to pay Consultant any amount pursuant to the terms of this Agreement, and Treasury fails to cure such failure within thirty (30) calendar days after Consultant's notice or such longer period as Consultant may specify in such notice; or

(B) Treasury is in default under Section 13.c(ii) because Treasury commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and Treasury fails to cure such failure within thirty (30) calendar days after Consultant's notice or such longer period as Consultant may specify in such notice.

**(iv) Return of Property.** Upon termination of this Agreement for any reason whatsoever, Consultant shall immediately deliver to Treasury all of Treasury's property (including without limitation any Work or Work Products for which Treasury has made payment in whole or in part) that is in the possession or under the control of Consultant in whatever stage of development and form of recordation such Treasury property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Consultant shall immediately cease all activities under this Agreement, unless Treasury expressly directs otherwise in such notice of termination. Upon Treasury's request, Consultant shall surrender to anyone Treasury designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

**f. Consultant's Tender Upon Termination.** Upon receiving a notice of termination of this Agreement, Consultant shall immediately cease all activities under this Agreement, unless Treasury expressly directs otherwise in such notice of termination. Upon termination of this Agreement, Consultant shall deliver to Treasury's Agreement Administrator all documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. Upon request from Treasury's Agreement Administrator, Consultant shall surrender to anyone the Agreement Administrator designates, all documents, research or objects or other tangible things needed to complete the Work.

**14. Records Maintenance; Access.** Consultant shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Consultant shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Consultant's performance. Consultant acknowledges and agrees that Treasury and the Oregon Secretary of State's Office and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Unless instructed otherwise by Treasury's Agreement Administrator, Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Upon written instruction from Treasury's Agreement Administrator, Consultant shall not retain, but will return to Treasury or destroy, any of the foregoing materials specifically designated by the Agreement Administrator for return or destruction.

**15. Compliance with Applicable Law.** Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (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) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**16. Foreign Consultant.** If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant 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 Agreement. Consultant shall demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement.

**17. Force Majeure.** Neither Treasury nor Consultant shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Treasury or Consultant, respectively. Consultant 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 Agreement.

**18. Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 12, 13, 15, 18, 23, and 26.

**19. Time is of the Essence.** Consultant agrees that time is of the essence under this Agreement.

**20. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail or mailing the same, postage prepaid, to Consultant or Treasury at the address, number or e-mail address set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile or electronic mail shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Treasury, such facsimile or electronic transmission must be confirmed by telephone notice to the Agreement Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

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

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

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

**24. Confidentiality.**

**a.** At all times during the term of this Agreement and thereafter, Consultant shall maintain strict confidentiality with respect to any and all information of a confidential, proprietary or secret nature that Consultant, in the course of performance of the Work, has in its possession, including but not limited to information relating to the State of Oregon or local governments' financial, accounting, investment, and information technology matters, and the security measures or mechanisms used to protect such information ("Confidential Information."). All such information is confidential and Consultant shall hold such information using at least the same degree of care as it uses in maintaining the confidentiality of its own information of a similar nature. Unless permitted by the Treasury in writing or required by law, Consultant shall not disclose any Confidential Information, directly or indirectly, to any party, its counsel or any representatives, or use it in any way, except as provided in this Agreement or as required to perform the Work. Any disclosure of Confidential Information contrary to this provision will constitute a material breach of this Agreement and a violation of the standard of care to be exercised by Consultant hereunder.

**b.** The foregoing restrictions shall not apply to Confidential Information that (i) was lawfully in the possession of Consultant without an obligation of confidentiality prior to disclosure of the information by Treasury, (ii) was, or at any time becomes, available in the public domain other than through a violation of this Agreement, (iii) was independently developed by Consultant; or (iv) is disclosed pursuant to an order to do so by a court issued subpoena or similar court order

**25. Non-Disclosure Agreements.** The Agreement Administrator must approve access to any information technology or network of Treasury before any Consultant personnel are granted access to the Treasury's network or any single system therein. The Agreement Administrator may condition approval of access to the network upon execution of a Non-Disclosure Agreement in a form satisfactory to the Agreement Administrator.

**26. Key Personnel.** Consultant acknowledges and agrees that Treasury selected Consultant, and is entering into this Agreement, because of the special qualifications of Consultant's key people. In particular, Treasury through this Agreement is engaging the expertise, experience, judgment, and personal attention of the following Key Persons:

Consultant's Key Person(s) shall not delegate performance of the management powers and responsibilities she is required to provide under this Agreement to another (other) Consultant employee(s) without first obtaining the written consent of the Treasury Agreement Administrator. Further, Consultant shall not re-assign or transfer the Key Person to other duties or positions such that the Key Person is no longer available to provide Treasury with her expertise, experience, judgment, and personal attention, without first obtaining the Treasury Agreement Administrator's prior written consent to such re-assignment or transfer. In the event Consultant requests the approval of a re-assignment or transfer of Key Person, the Treasury Agreement Administrator shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for any Key Person.

**27. Merger Clause; Waiver.** This Agreement 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 Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind all 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, shall be effective only in the specific instance and for the specific purpose given. The failure of Treasury to enforce any provision of this Agreement shall not constitute a waiver by Treasury of that or any other provision.

**28. Oregon False Claims Act.**

**a.** Consultant acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by Consultant pertaining to this Agreement that constitutes a “claim” (as defined by ORS 180.750(1)). By its execution of this Agreement, Consultant 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 Agreement. In addition to other liabilities that may be applicable, Consultant 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 Consultant.

**b.** Without limiting the generality of the foregoing, Consultant represents and warrants that:

- i. Consultant’s representations, certifications, and other undertakings in this Agreement are not False Claims Act Violations; and
- ii. None of Consultant’s performance under this Agreement, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Agreement, will constitute False Claims Act Violations.

**c.** For purposes of this Section 28., a “False Claims Act Violation” means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.

**d.** Consultant shall immediately report in writing, to Treasury, any credible evidence that a principal, employee, agent, subcontractor, subgrantee, or other person has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or any moneys paid under this Agreement.

**e.** Consultant understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or Treasury under any other provision of law, or this Agreement.

**29. Amendments.** Treasury may amend this Agreement to the extent permitted by applicable statutes and administrative rules to, among other revisions, extend its term or modify the compensation, to delete services or to add any services that are within the scope of work, if any, or any combination of the foregoing. The parties may not waive, supplement or amend the terms of the Agreement, in any manner whatsoever, except by written amendment signed by all parties and for which all necessary State of Oregon approvals have been obtained.

**30. Certifications and Signature of Consultant's Authorized Representative.**

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONSULTANT.

**CONSULTANT: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

The undersigned certifies under penalty of perjury both individually and on behalf of Consultant that:

- A. The undersigned is a duly authorized representative of Consultant, has been authorized by Consultant to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Consultant;
- B. By signature on this Agreement for Consultant, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 local taxes administered by the Department of Revenue under ORS 305.620 and all applicable tax laws of any political subdivision of this state.
- C. To the best of the undersigned’s knowledge, Consultant has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
- D. Consultant and Consultant’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 <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>; and
- E. Consultant is bound by and will comply with all requirements, terms and conditions contained in this Agreement.

Consultant (print Legal Entity name): \_\_\_\_\_

DBA (if any) \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

By (print name): \_\_\_\_\_ Title: \_\_\_\_\_

Consultant Address: \_\_\_\_\_

Contact Telephone Number: \_\_\_\_\_ FID #: \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_

**31. Signature of State's Authorized Representative.**

State of Oregon acting by and through  
**Office of the Oregon State Treasurer**  
**350 Winter Street NE Suite 100**  
**Salem, OR 97301**

Authorized Signature: \_\_\_\_\_  
Darren Bond, Deputy Treasurer, or designee Date

Treasury Agreement Administrator:  
Telephone Number:  
E-Mail Address: @ost.state.or.us

**DEPARTMENT OF JUSTICE**

Approved by: \_\_\_\_\_, Senior Assistant Attorney General via email on \_\_\_\_

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## **EXHIBIT A SCOPE OF SERVICES**

### **Part I. Background Information.**

#### **Cash Management Overview**

Oregon Revised Statute (“ORS”) 293.875 designates the State Treasurer as the sole banking and cash management officer for the State of Oregon. Pursuant to that designation, the Office of the State Treasurer (“Treasury”) has broad authority to review, establish, and modify policies and procedures for the efficient handling of cash and cash equivalents under the control of all state agencies. Treasury acts as the bank for all state agencies. Most state agencies do not have authority to enter into banking contracts on their own. An agency must have specific authority to bank on its own in order to overcome the broad scope of ORS 293.875. For instance, ORS 182.470 expressly authorizes the state’s semi-independent agencies to deposit their moneys in commercial banks instead of the State Treasury. The flip side of that authorization is that Treasury does not typically bank funds from such semi-independent state agencies.

If an agency’s funds are held in the State Treasury, the agency will fall under ORS 293.875 and banking and cash management services related to its funds will be governed by, and largely accomplished through, Treasury. Of note:

- Treasury acts as the bank for all state agencies providing depository, check redemption, and electronic payment services (including foreign and domestic wire, Automated Clearing House (“ACH”), and a variety of other services) for state agencies.
- Treasury maintains and reports customer account information via an internally managed Demand Deposit Account (“DDA”) structure and internally developed statement report tool.
- Treasury facilitates cash management transactions via secure technology infrastructure at Treasury (currently in transition to vendor-delivered models) and via vendor relationships depending on the transaction type.
- Treasury works with agencies, vendors, and appropriate legal representatives to protect public funds by helping to ensure compliance with regulatory and industry requirements, as well as Oregon public funds laws.
- Treasury works closely with the Oregon Department of Administrative Services with respect to coordination of accounting (and some budgetary) control aspects inherent to state government.
- Treasury operates the Oregon Short Term Fund (including the Local Government Investment Pool) as a short-term cash investment vehicle for state agencies (and roughly 1,000 local governments).

#### **Depository Relationships**

Several commercial banks provide depository services to Oregon state agencies, allowing the state agency to deposit money to the Treasurer's account at that bank. Deposits are distinguished for purposes of our internal DDA accounting/reporting via information contained in the Magnetic Ink Character Recognition (“MICR”) line of the deposit slip used by each agency. Oregon is fortunate to have a long tradition of branch banking which allows for coverage of all areas of the state with a relatively small number of banks. These banks offer the agencies a variety of services, including night depositories, coin and currency, and more. Treasury currently has depository relationships with 13 financial institutions.

### **Part II. Menu of Services**

#### **A. OVERVIEW OF SERVICES**

Consultant shall assist Treasury in pursuing a comprehensive reevaluation of its banking and cash management service delivery model and related partnerships. Consultant shall provide guidance regarding the strategic direction of banking and cash management services delivery. Consultant shall provide all services in accordance with industry best practices. Services may include, but are not limited to, consultation, coordination, and assistance in implementation, integration, selection processes, and determination of solutions.

The initial Work Order Contract anticipated to be assigned to Consultant will be to assist Treasury with the strategic direction and validation of concept and solicitation design for Treasury’s proposed business model of migrating from a single banking partner to a shared vendor approach for banking services is congruent to industry standards.

Consultant will provide ongoing services to Treasury as needed or requested by Treasury pursuant to a WOC. Services may include, but are not limited to:

- a. Providing consultation services;
- b. Providing gap analysis;
- c. Providing a project plan(s) and oversight on transitioning providers and/or implementing services;
- d. Identifying resources Treasury may need to support projects yet to be identified;

- e. Providing resources to various projects throughout the identified project plan(s);
- f. Preparing or assisting with various forms of documentation;
- g. Assisting in identifying risks, issues, and contingency or mitigation plans;
- h. Providing advice on and recommending solutions;
- i. Providing assistance as needed in implementation and integration processes;
- j. Scheduling and coordinating meetings with Treasury and stakeholders;
- k. Attending meetings by phone or in person onsite at Treasury's office;
- l. Providing technology solution recommendations; and
- m. Providing or assisting with change management processes and implementations.
- n. other

## **B. TASKS AND DELIVERABLES**

### **1. Project Administration and Coordination**

Consultant shall perform project administration and coordination of tasks related to each milestone and deliverable including but not limited to:

- a. Reporting progress;
- b. Involvement in meetings;
- c. Preparing work plans; and
- d. Other related Services and deliverables related the work.

### **2. Progress Reports**

Consultant shall submit progress reports to Treasury on a monthly basis or more frequently as needed or requested by Treasury. Progress reports must include but need not be limited to:

- a. Project status by milestone and deliverable with percentage of completion;
- b. Schedule changes, if any, with explanation;
- c. Work Products;
- d. Identifying any unanticipated issues that may impact the schedule and in what way; and
- e. Other relevant events or information as applicable.

### **3. Project File**

Upon completion of the Work, Consultant shall provide to Treasury one hard copy and one electronic copy of project file deliverables.

### **4. Project Meetings**

Consultant shall schedule, conduct, and have key project personnel attend meetings, in person or otherwise, with Treasury and stakeholders as needed or requested by Treasury.

Consultant shall prepare an agenda and notify all attendees with the meeting agenda no less than seven (7) days prior to each meeting. Consultant shall record issues discussed and agreements made as minutes of the meeting and provide minutes to Treasury within five (5) business days following the meeting.

Meetings may be scheduled for, but not limited to:

- a. Project kick-off
- b. Site visits
- c. Interviews
- d. Project Development
- e. Project Coordination
- f. Plan reviews
- g. Presentations
- h. Other Ad Hoc meetings

### **5. Project Plan**

Consultant shall submit to Treasury a Project Plan that includes at minimum:

- a. A summary of the chronological steps to be taken to complete the work;
- b. Identification and explanation of the project needs;
- c. Identification of the task that may be required to fulfill the needs of the project, including any subcontractors work.
- d. A proposed statement of work; and
- e. Development and review of the Project(s).

### **6. Data Collection**

Consultant shall prepare for and collect all data necessary to complete the work. Consultant shall coordinate with Treasury to identify sources for obtaining data. Data collection includes but is not limited to:

- a. Reviewing documents and records;
- b. Developing and distributing questionnaires;
- c. Conducting personal interviews; and
- d. Conducting public meetings.

## **7. Draft and Revision Reviews**

Consultant shall submit to Treasury one or more drafts of the reports as needed or requested by Treasury for review and input. The reports should include:

- a. An executive summary of findings and conclusions;
- b. A background statement with a description of the methodology, results, discussions, conclusions, and recommendations; An assumptions section identifying all conditions that may impact the analysis; and
- c. A description of the data sources analyzed and summary of the data.

## **Part III. Special Considerations.**

**A. ACCESS.** Consultant may be required to attend meetings or may need to perform certain Services at Treasury's Salem or Tigard office locations. Subject to Treasury access and security policies and procedures, Treasury will provide Consultant reasonable access during normal business hours of Monday through Friday from 8:00 AM – 5:00 PM PST.

**B. WORK ORDER CONTRACTS.** All goods and Services must be provided within the timeframe of each executed WOC.

Treasury will assign work according to the process described below. Consultant and Treasury will negotiate the Statement of Work, including tasks, deliverables and consideration for inclusion in each WOC. There is no guarantee that any specific level of work or overall dollar amounts will be assigned.

1. Work Order Contract Assignments. Work Order Contracts must be pre-approved by Treasury in writing for each project and final WOCs must be provided by Consultant to Treasury for each project. The projects will be assigned by Treasury as needed.

As requested by Treasury, Consultant shall submit Work Order proposals within the Scope of Services that describe, in detail, the tasks that Consultant shall perform under the WOC, with consultant hours, subcontracted consultant hours, timeline for completion, and costs and deliverables for the task items clearly shown. It must also include a complete cost proposal for the proposed services that identifies the assigned staff by task and hours to reflect the total cost for the proposed work. Treasury, at its discretion, will then prepare a WOC in the form of Exhibit C, based on the Work Order proposal, for signature by Consultant and Treasury. Consultant shall only perform, and Treasury will only pay for, work in accordance with a fully executed WOC.

The Consultant will provide all goods and Services under this Agreement only pursuant to its respective WOC(s). Upon receiving written or verbal notification by the Treasury that a WOC needs to be issued, the Consultant shall conclude any negotiations, and submit final cost estimates within 5 days, unless otherwise allowed by the Treasury. No Work under a WOC or WOC amendment shall begin before Treasury and Consultant have signed the WOC and other required signature are obtained on the WOC or WOC amendment. All goods and Services must be provided within the timeframe specified in the Treasury approved WOC. Consultant shall not assign, sell, transfer, sublet or subcontract its interest in this project, in whole or in part, without prior written consent of the Treasury.

2. Acceptance criteria and process. Treasury will inspect and either accept or reject Work under a WOC after completion of the Services. If Treasury rejects the Work, then Treasury's written notice of rejection shall, at a minimum, itemize the apparent defects and include:

- i. a description of nonconformance between the Work and the requirements and specifications for that WOC, including warranties;
- ii. a description of any other nonconformance of the WOC (including late delivery); and
- iii. a statement indicating whether Consultant may cure the nonconformance and if so, the method in which and time period within which Consultant shall cure.

Consultant's failure to deliver the Work in accordance with the requirements of this Agreement and its respective WOC(s) is a material breach of this Agreement.

## **Part IV. Payment Provisions.**

A. The compensation for goods and Services accomplished under this Agreement and its respective WOCs will be assigned in each WOC based on the fully loaded Hourly Rates described below:

- B. Progress payments may be made to Consultant over the period of the Agreement and its respective WOC(s) upon receipt of the Consultant's detailed billing statement. Treasury reserves the right to request, in writing, full itemization and receipts for, but not limited to, any or all labor and/or direct costs billed by the Consultant. Consultant shall provide receipts within five (5) business days of request. Payment shall not be released until all requested receipts have been received from the Consultant. All invoices and other forms of claims for payment must be submitted no more than once per month ATTN: Oregon State Treasury, 350 Winter Street NE Suite 100, Salem, OR 97301-3896 or emailed to [ost.accounting@ost.state.or.us](mailto:ost.accounting@ost.state.or.us). Failure to present claims in proper form within 60 days after the end of the month in which the work is performed shall constitute a waiver on the part of Consultant to present such claim thereafter or to receive payment therefore. Any overdue payments by Treasury for an approved billing statement shall be in accordance with ORS 293.462.
- C. Consultant shall complete all Work as defined in each WOC to the satisfaction of the Treasury. If Consultant expends all time allowed under the Agreement and fees incurred have reached the maximum compensation allowed under Section 2 of the WOC, but the Work and Work Products are not complete or are not satisfactory, Consultant shall complete the Work to OST's satisfaction without further compensation. Treasury may, by written amendment to the Agreement, increase the maximum compensation payable under this Agreement for any substantial, approved increase in the scope, character, schedule or complexity of services as outlined in this Exhibit A. Consultant may petition the Treasury for such an amendment, or the Treasury may initiate the action on its own. Any amendment must receive all necessary State approvals prior to commencement of any such work by the Consultant.
- D. Treasury reserves the right to withhold final payment equal to ten percent (10%) of the total contract amount until all required Work is completed and accepted by the Treasury.
- E. Treasury shall make final payment of any balance due Consultant promptly upon verification of completion and acceptance of the Work by Treasury. Treasury, or its duly authorized agents, may audit Consultant's records prior to payment of the final billing.
- F. If Consultant is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Consultant shall, upon execution of this Agreement, deliver to OST a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Treasury is not required by 26 USC 1441 to withhold part of Consultant's payment. Such forms are currently available at <http://www.irs.gov>. Treasury may withhold payments to Consultant pending Treasury's receipt from Consultant of the applicable, completed and signed form. If Treasury does not receive the applicable, completed and signed form from Consultant, or if the IRS provides notice to Treasury that Consultant's information on the form provided is incorrect, Treasury will withhold as federal income tax 30% of all amounts Treasury owes to Consultant under this Agreement.
- G. Funds Available and Authorized; Payments. Consultant understands and agrees that Treasury's payment of amounts under this Agreement is contingent on Treasury receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Treasury, in the exercise of its reasonable administrative discretion, to make payments under this Agreement.

#### **Part V. Travel and Other Expenses.**

Treasury shall not reimburse Consultant for any travel or other expenses under this Agreement.

**EXHIBIT B  
INSURANCE REQUIREMENTS**

**INSURANCE REQUIREMENTS:**

Consultant shall obtain at Consultant's expense the insurance specified in this Exhibit B prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Consultant 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 Treasury. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Consultant shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Consultant, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Agreement including Employers' Liability Insurance with limits not less than \$500,000 each accident. Consultant shall require and ensure that each of its subcontractors complies with these requirements.

**PROFESSIONAL LIABILITY :**

**Required by Treasury**  **Not required by Treasury.**

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement in an amount not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000. 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 Consultant shall provide Tail Coverage as stated below.

**COMMERCIAL GENERAL LIABILITY:**

**Required by Treasury**  **Not required by Treasury.**

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage. 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 by Treasury**  **Not required by Treasury.**

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$2,000,000 for bodily injury and property damage.

**ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include the State of Oregon, the Oregon State Treasury, its officers, employees and agents as Additional Insureds but only with respect to Consultant's activities to be performed under this Agreement.

**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, Consultant 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 Agreement, for a minimum of 24 months following the later of (i) Consultant's completion and Treasury's acceptance of all Services required under this Agreement, or, (ii) the expiration of all warranty periods provided under this Agreement.

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

Consultant shall provide to Treasury Certificate(s) of Insurance for all required insurance before delivering any goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, the Oregon State Treasury, its officers, employees and agents as a Certificate holder and as Endorsed Additional Insured, specify that Consultant shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance Treasury has the right to request copies of insurance policies relating to the insurance requirements in this Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

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

**INSURANCE REQUIREMENT REVIEW:**

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

**EXHIBIT C  
FORM OF WORK ORDER CONTRACT**

**STATE OF OREGON  
OREGON STATE TREASURY**

**WORK ORDER CONTRACT #  
PRICE AGREEMENT #**

This Work Order Contract No. \_\_\_\_ (the "WOC") is subject to and incorporates the provisions of Price Agreement No. \_\_\_\_ (the "Price Agreement") and is entered into by and between the State of Oregon acting by and through the Office of the Oregon State Treasurer, hereinafter referred to as "Treasury", and \_\_\_\_\_, hereinafter referred to as "Consultant". Capitalized terms used in this WOC shall have the meanings given herein or as provided in the Price Agreement. For purposes of the incorporation of the provisions of the Price Agreement into this WOC, unless the context requires otherwise: (a) references in the Price Agreement to "Agreement" shall be deemed references to this WOC and (b) references in the Price Agreement to "Work" or "Services" shall be deemed references to the work or services required to be performed under this WOC.

**1. Work Order Contract Criteria**

This WOC shall become effective on the date this WOC has been fully executed by every party. Unless extended or terminated earlier in accordance with its terms, this WOC shall terminate when Treasury accepts Consultant's completed performance or on \_\_\_\_\_, whichever occurs first. WOC termination shall not extinguish or prejudice Treasury's right to enforce this WOC with respect to any default by Consultant that has not been cured.

**2. Work Order Contract Amount**

The maximum, not-to-exceed compensation payable to Consultant under this Work Order Contract is \$\_\_\_\_\_,. Payments for goods and Services shall be made in accordance with the terms of the Price Agreement following Treasury's review and approval of detailed invoices submitted by Consultant and Treasury's acceptance of the goods and Services.

**3. Statement of Work**

**4. WOC Amendments**

Treasury may amend this WOC to, among other revisions, extend its term or modify the compensation, to delete services or to add any services that are within the Scope of Services of the Price Agreement, or any combination of the foregoing. The parties may not waive, supplement or amend the terms of this WOC, in any manner whatsoever, except by written amendment signed by all parties and for which all necessary State of Oregon approvals have been obtained.

**5. Termination**

This WOC may be terminated by Treasury immediately upon written notice to Consultant.

**6. Representations**

Consultant certifies that the representations, warranties and certifications contained in the Price Agreement are true and correct as of the effective date of this Work Order Contract and with the same effect as though made at the time of this Work Order Contract.

**CONSULTANT: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

Certification: By signature on this WOC for Consultant, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323, the elderly rental assistance program under ORS 310.630 to 310.706, local taxes administered by the Department of Revenue under ORS 305.620 and all applicable tax laws of any political subdivisions of this state.

**AS AGREED:**

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