



Request for Proposals:

Graphic Design Services for
Oregon Arts Commission - Oregon Cultural
Trust

Proposal due date: Thursday, June 16, 2011, 3:00 P.M.

1.0 SOLICITATION INFORMATION AND REQUIREMENTS

1.1. GENERAL INFORMATION

Pursuant to ORS 279B.070 and OAR 137-047-0270, the Oregon Arts Commission and the Oregon Cultural Department (“Department”) is seeking one Proposer to provide graphic design services for a variety of specific projects, as the need arises.

All firms submitting proposals in response to this Request for Proposals (“RFP”) are referred to as “Proposers” in this document; after negotiations, the awarded Proposer will be designated as “Contractor”.

The selected Proposer will be invited to enter into an Agreement for Services (AFS; see Attachment B), and at that point will be considered to be the Contractor. Projects will be assigned and described in Work Order Contracts (WOCs; incorporating all terms and conditions of the AFS example of WOC is in Attachment B). The projects will be assigned as needed by Department, and there is no guarantee that any specific amount of work or overall dollar amounts will be assigned through the duration of the Agreement term. The WOC payment is anticipated to be based on an hourly billing rate method but Department reserves the right to negotiate or amend the method of payment for each WOC.

The initial Agreement for Services is expected to commence approximately July 1, 2011, and will terminate on June 30, 2013. The previous budget for services averaged approximately \$45,000 per two year period. Department reserves the right to amend the AFS for an additional two year period contingent upon need and the availability of approved funding.

The selected Proposer and Department will negotiate the initial Agreement for Services, within the scope of the Statement of Work included in this RFP, for inclusion in the initial WOC assignment.

1.2 DESCRIPTION OF NEEDED SERVICES

Background: The Oregon Arts Commission and the Oregon Cultural Trust operate within the Oregon Business Development Department. The Oregon Cultural Trust is a visionary plan geared toward long-term, self-funded financial stability. The Oregon Cultural Trust was created by civic, business, and cultural leaders to preserve and strengthen virtually every aspect of Oregon culture. Its goal is to create a protected endowment of over \$200 million to provide long-term support for culture in Oregon. While the endowment grows, the Oregon Cultural Trust will invest in:

- Grants to county and tribal planning groups for cultural activities and priorities, helping them shape programs that increase access to culture.
- Grants to expand and stabilize cultural organizations throughout the state.
- Funding for cultural agencies to strengthen programs and support new partnerships (our partner agencies are the Oregon Arts Commission, the Oregon Council for the Humanities, the Oregon Heritage Commission, the Oregon Historical Society and the State Historic Preservation Office).

The Oregon Arts Commission provides leadership, funding and arts programs through its grants, special initiatives and services. Nine commissioners, appointed by the Governor, determine arts needs and establish policies for public support of the arts. The Oregon Arts Commission became part of the Business Development Department in 1993, in recognition of the expanding role the arts play in the broader social, economic and educational arenas of Oregon communities. In 2003, the Oregon legislature moved the operations of the Oregon Cultural Trust to the Oregon Arts Commission, streamlining operations and making use of the Oregon Arts Commission’s expertise in grant processing, arts and cultural information and community cultural development. The Oregon Arts Commission is

supported with general funds appropriated by the Oregon legislature and with federal funds from the National Endowment for the Arts as well as funds from the Oregon Cultural Trust.

Sample Scope of previously contracted design work:

- 4-color brochures for the promotion of the Cultural Trust and Oregon's cultural tax credit.
- Donor inserts to be used by cultural groups to promote Oregon's cultural tax credit to their donors.
- Rack marketing cards to promote sales of the cultural license plate.
- Sticker/calendar reminders to promote the Trust overall and remind Oregonians to use the tax credit at year-end.
- Retractable trade show displays to promote the Oregon Cultural Trust.
- Templates for Arts Commission and Cultural Trust Fact Sheets on various topics and programs.
- Programs and invitations for the annual Governor's Arts Awards.
- Posters promoting the Cultural Trust and the Governor's Arts Awards.
- Monographs and annual reports.
- Display advertisements for use in a variety of color and black and white formats, in a variety of standard newspaper, program and magazine sizes.

Preparation, design and production of all materials will be for print distribution as well as download from the Oregon Cultural Trust or Oregon Arts Commission websites: www.oregonartscommission.org and www.culturaltrust.org.

All appropriate permissions should be secured for the use of any photographic images and other copyrighted work.

1.3 PROPOSER QUESTIONS

All inquiries regarding this RFP, whether relating to process, administration, deadline or award, or to the content or technical aspects of the RFP, must be submitted in writing to the Procurement Specialist identified in Section 1.7.3 (Mail, fax or email are acceptable). **All questions must be received not later than 10 days prior to proposal deadline.**

Substantive questions and answers will be posted on ORPIN and the Department's Internet address (see 1.5 below). When appropriate, revisions, modifications, or clarifications of the RFP or terms and conditions of the AFS and the WOC, will be issued as official addenda to this RFP (refer to section 1.5). Changes or modifications to this RFP shall be binding on Department only if in the form of written addenda issued by the Department.

1.4 DEPARTMENT QUESTIONS

The Department may request additional clarification from Proposers for any portion of their proposals. If a proposal is unclear, the Proposer may be asked to provide clarification. No new information or documentation may be submitted, however, and clarifications may not be used to rehabilitate a non-responsive proposal. Proposers shall remain available during the evaluation period to respond to requests for additional clarification. Proposers shall submit written signed clarification within 48 hours following receipt of a request for clarification. Failure to provide clarification may result in a lower score.

1.5 ADDENDA

The Department shall issue addenda only on the State of Oregon Procurement Information Network (ORPIN) (<http://orpin.oregon.gov/open.dll/welcome>) and on Department's internet address: <http://www.oregon4biz.com/Contact-us/Contracting-Opportunities/>. Anyone who has received a copy of this RFP will only be alerted to the existence of any addenda by checking ORPIN or the Department's internet address. Proposers are responsible for checking these on-line sources or with Department to determine whether any addenda have been issued, and then must either download or request an electronic copy of the addenda. Aside from requested copies, Department is not responsible for sending addenda to any Proposers.

1.6 PROTESTS

Every Proposer who submits a proposal will be notified of its selection status. Proposers who have been notified that they are not selected may make an appointment to view the selection file at the address below. Any Proposer who claims to have been adversely affected by the selection of a competing Proposer(s) must deliver a written protest within **(7) calendar days after receiving notification of its selection status**. Any protest must meet all applicable requirements in OAR 137-047-0740. Department will review the protest and respond in writing. Department shall not consider any protest submitted after the protest period established in this subsection.

1.7 PROPOSAL SUBMISSION REQUIREMENTS

1.7.1 TERMS AND CONDITIONS

By submitting their Proposal, the selected Proposer agrees to be bound by the Oregon Business Development Department Standard Terms and Conditions for Personal Service Contracts as reflected in Attachment B, including a requirement for certificates of Worker's Compensation, as required by ORS 656.017; commercial automobile in the amount of Oregon Financial Responsibility Law (ORS 806.060), and general liability insurance in the amount of \$200,000 as reflected in Exhibit C. Any Proposal that is received conditioned on Department's acceptance of any other terms and conditions or rights to negotiate will be rejected as non-responsive.

Governmental bodies subject to ORS Chapter 190 do not bid or compete on the same basis as private-sector proposers; however, Department will initially review proposals from governmental bodies according to the same evaluation criteria described in this RFP. Governmental bodies submitting proposals must comply with all applicable proposal requirements in this RFP. Department reserves the right to enter into an ORS Chapter 190 agreement with a governmental body. Alternatively, Department reserves the right to cancel this RFP if it is in the public interest and enter into an ORS Chapter 190 agreement with a governmental body.

1.7.2 DUE DATE AND TIME

Proposals must be received by June 16, 2011, on or before 3:00 PM, Pacific Time. The Department relies on the State of Oregon email system clock to determine the correct time and is not responsible for any delays or difficulties experienced in the transmission of any proposal. **Please do not wait until the last minute to email your proposal.**

1.7.3 PROPOSALS WILL BE RECEIVED ONLY AT THE FOLLOWING EMAIL ADDRESS:

larry.Daimler@state.or.us

For clarification questions only, Proposers may contact:

Oregon Business Development Department

Larry Daimler, Procurement Specialist

775 Summer St., NE, Suite 200

Salem, OR 97301- 1280

Telephone: (503) 986 – 0032

FAX: (503) 581-5115

larry.Daimler@state.or.us

1.7.4 PROPOSAL SUBMISSION

Submittals that are late, incomplete, or misdirected will be considered non-responsive, with no exceptions. Proposals must be submitted via email only. **Fax submissions or hard copies will not be accepted.** The email subject or reference line for all submittals must include the RFP Title and RFP #.

Proposers are encouraged to send a test email to the email address of the Procurement Specialist identified in paragraph 1.7.3 above prior to transmitting their proposals. Do not submit .zip, .exe or .com files.

1.7.5 PUBLIC RECORDS

This RFP, and one copy of every proposal received in response to it, together with copies of all documents pertaining to the award of a Contract, shall be kept by the Department and made a part of its records. The Department's business practice is to schedule requests for inspection of any solicitation file after Proposers have been notified of their selection status. If a proposal contains any information that may be considered exempt from disclosure under a provision of the Oregon Public Records Law, ORS 192.410 through 192.505, the Proposer must clearly designate the portion of its proposal claimed as exempt, along with a justification and citation to the provision of the Oregon Public Records Law 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 the specific portion of a Proposal claimed as exempt from disclosure, and the authority for such an exemption, shall be deemed a waiver of any future claim for disclosure of that information.

2.0 PROPOSAL EVALUATION & CONTRACTOR SELECTION

2.1 EVALUATION PROCESS

The selection process will be administered in accordance with the authority and procedures in OAR Chapter 123, Division 6. Proposals received on time will be forwarded to an evaluation committee that will score each proposal according to the scored criteria set forth in Section 2.3.

The outcome of the evaluation process may, at Department's sole discretion, result in: (a) notice to a proposer(s) of selection for tentative AFS negotiation and possible award; (b) further steps to gather more information for evaluation, which often means a notice of placement on an interview list; (c) notice to a Proposer of non-selection; or (d) notification to proposers that the RFP is cancelled and may be re-solicited or that Department intends to take no further action with respect to the RFP.

Department reserves the right to amend or cancel this RFP at any time if it is in the best interest of the State of Oregon to do so. Department reserves the right to award in part, or reject any or all proposals in whole or in part, and waive technical defects, irregularities and omissions of any proposal, if, in its judgment, the best interest of the State of Oregon will be served. Department reserves the right to determine the responsiveness of any proposal by reference to the proposal taken as a whole. Department will determine which proposal offers the best means of serving the interest of the State of Oregon. Department reserves the right to negotiate specific AFS terms with any Proposer that may be selected by Department. Further, Department reserves the right to correct any inaccurate awards resulting from clerical errors of Department. The timing and sequence of the events under this RFP will ultimately be determined by Department. Department is not liable for any costs a Proposer incurs while preparing or presenting its proposal or during further evaluation stages. If Department, in its sole discretion, rejects any and all proposals or withdraws this RFP before or after proposals are received, the Proposers will have no recourse against Department for any expenses incurred or damages sustained. All proposals will become part of the public file.

2.2 PROPOSER SUBMISSION

Proposals must include, at a minimum, a completed and signed Attachment A (see below) and responses to the scored criteria listed in Section 2.3 below. Following are Questions and Answers from the previous RFP for Proposer information only:

Question #1: Can a Proposer provide a signature on the cover sheet (Attachment A) as a digital signature in the Name field at the bottom?

Answer: Yes

Question #2. What file format(s) is acceptable for submitting the proposal? Are separate pdf's okay, or would you prefer a single pdf document that contains all the required pieces? Can Word docs be attached separately?

Answer: Yes; the Department can accept pdf's, MSWord, tiff, giff, jpeg's, so it is the Proposer's choice. Proposer may send separate files or combined. It is helpful to receive everything in one email, rather separate email messages, unless file size is limited by Proposer's service provider. The Department can handle PC format zipped files.

Question #3. If a Proposer has a link to an online portfolio, and/or could the Proposer also include some lower-res pdfs to the proposal (the print –res would be too large to send via email.)

Answer: Web links to online portfolios are acceptable and preferable as the option to large file submittals.

Question #4. Should the proposal include any reference to print management? Is the selected Contractor to provide finished printed material, or printer-ready PDFs to be sent to an already determined printer?

Answer: The Department has a separate contract with a print broker that handles that issue. The selected Contractor will provide printer-ready files to be sent to the Department's print broker, who will determine the printer for the work.

Question #5. How will content be provided to the selected Contractor and what level of proofing will be required (Original and one round or multiple rounds of revisions)?

Answer: Content will be provided by staff of the Department by email. It is expected that the selected Contractor will meet with staff of the Department by phone or in person. There are typically several stages of design review prior to the final design.

Question #6. Will the selected Contractor be responsible for obtaining photography and illustrations or will they be provided?

Answer: The Department will provide most of the images to be used in the work. However, if the selected Contractor can contribute to that work, that is acceptable also.

2.3 SCORED CRITERIA

Scoring is based on the categories described below. The points will be awarded based upon services offered by Proposers that best meet the business needs of the Department. **If not specifically requested here, Proposers must also describe how they meet any other requirements that may be specified in Section 1. above.**

- a. Quality of Proposal and submitted examples of work – 50 points. Provide a clear, concise description of how the Proposer will provide the services and products needed by the Department. Include no more than ten (10) selected examples of relative work most closely related to the requested services. No submissions of work done prior to 2002 will be considered.
- b. Experience of the proposer and any identified sub-contractors assigned to the project – 30 points. Provide the names of key members and their responsibilities, and explain the qualifications and relevant individual experience for all persons assigned to work on this project, including subcontractors, if any. Also provide a list of no more than 5 current clients, a description of representative work produced for those clients and a description of the length of those relationships. (The reference section of Attachment A should include these clients and current Contact information.)
- c. Billing Rate – 20 points. Provide an hourly billing rate for all key members involved in design services (do not include project related costs for materials, shipping, etc.). If you have any exceptions to a standard billing rate, please describe. (The Department continues to reserve the right to negotiate the final method of payment, as describe in section 1.1.)

2.4 SELECTION AND AWARD

An AFS award will be recommended by a selection committee comprised of Department's staff.

RFP C2011074 ATTACHMENT A
COVER SHEET
STATEMENT OF PROPOSAL to Oregon Business Development Department

_____ (Legal Name of Firm) accepts the use of Trust's standard terms and conditions.

☐ Corporation ☐ Professional Corporation ☐ Partnership ☐ Limited Partnership ☐ Ltd. Liability Company ☐ Ltd. Liability Partnership ☐ Sole Proprietorship ☐ Other _____ Firm's Federal Tax ID _____ Mailing Address _____ _____
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Type name of authorized representative _____ Email address _____ Telephone _____ Fax _____ Type name of person(s) authorized to sign Contract _____
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[Unless other provisions are made for collecting references] Provide at least three references (please verify contact information): Name of Firm _____ Project Title _____ Their Contact Person _____ Telephone _____ Fax _____ email _____ Name of Firm _____ Project Title _____ Their Contact Person _____ Telephone _____ Fax _____ email _____ Name of Firm _____ Project Title _____ Their Contact Person _____ Telephone _____ Fax _____ email _____
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Affirmative Action Program: Trust is an equal-employment-opportunity employer and values diversity in its work force. It also requires its recipients and contractors to have an operating policy as an equal employment opportunity employer. Contractors shall implement affirmative action programs to ensure equal employment opportunity.

_____ (Name of Firm) certifies that it has a formal statement of nondiscrimination in employment policy *and* has an affirmative action program, if over 50 employees. Firms of *50 people or less* do not need a formal program, but must have a policy.

Does your firm have over 50 employees? ☐ **yes** ☐ **no**

Signature of Authorized Representative certifying all statements as true:

Signature: _____
Name & Title (print): _____
Date: _____

C2010074 ATTACHMENT B – FORM OF CONTRACT

STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES AGREEMENT FOR SERVICES NO. _____

This Agreement for Services is between the State of Oregon, acting by and through its Oregon Arts Commission and the Oregon Cultural Trust, Oregon Business Development Department, hereafter called Department, and _____, hereafter called Contractor. Department Contract Administrator for this Agreement for Services is: Christine D'Arcy. Department may change the Agreement Administrator assignment by sending written notice to Contractor.

The purpose of this Agreement is to identify the form of contract and the general terms and conditions applicable to subsequent contracts entered into between Department and Contractor pursuant to which Contractor will provide services. This Agreement, by itself, is not a binding contract. Department and Contractor intend to enter into binding service contracts through execution of a Work Order substantially in the form attached as Exhibit A that specifies the services to be performed and makes the standard terms and conditions set forth in Exhibit B applicable to the services. Each such Work Order so executed shall create a separate contract between the parties (consisting of the Work Order together with the standard terms and conditions) enforceable in accordance with the terms thereof and independent of all other such Work Order Contracts.

This Agreement for Services will become effective on the date it has been signed by every party. Unless terminated or extended, this Agreement for Services will apply only to Work Order Contracts with an effective date on or before June 30, 2013.

WORK ORDER CONTRACT ASSIGNMENT

Department will issue Requests for Proposals for Work Order Contracts as additional work is identified within the scope of RFP 2010074.

WORK ORDER CONTRACT REQUIREMENTS

If Department offers Contractor a WOC under this Agreement for Services in response to an identified Department need for services, Contractor must notify Department within two business days (or such longer time as Department may specify) after Department's offer of the WOC of Contractor's intent to negotiate with Department for that WOC. If Contractor does not so notify Department, Department may offer that WOC to another contractor or solicit separately for that work, or take other action deemed appropriate.

If Contractor does notify Department, within the timelines identified above, Department and Contractor will negotiate the statement of work, delivery schedule and compensation amounts for services to be performed by Contractor. Each WOC must clearly be within the Scope of Services in the associated RFP 2010071. If negotiations fail to conclude in an agreement, Department may offer that WOC to another contractor, or solicit separately for that work, or take other action deemed appropriate.

The projects will be assigned as needed and there is no guarantee that any specific amount of work or overall dollar amounts will be assigned during the term of the AFS or that Contractor will be offered any WOCs under the AFS. No Services under a WOC or WOC amendment shall begin before Department and Contractor have signed the WOC and other required signatures are obtained on the WOC or WOC amendment.

CONTRACTOR DATA AND CERTIFICATION

Contractor shall provide the additional information set forth below.

Name (tax filing): _____

Address: _____

Email: _____ Telephone/Facsimile: _____

Citizenship, if applicable: Non-resident alien ☐ Yes ☐ No

Business Designation (check one):

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

Above payment information must be provided prior to Agreement for Services approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The Oregon Business Development Department encourages recipients and subrecipients to follow good faith efforts in ORS 200.045. Additional resources are provided by the Governor's Advocate for Minority, Women & Emerging Small Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Department of Consumer and Business Services maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including those in OAR 150-305.385(6)-(B). For purposes of this certificate, 'Oregon tax laws' means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self Employment Tax); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the above Contractor data is true and accurate.

CONTRACTORS: NO SERVICES MUST OCCUR PRIOR TO NECESSARY STATE APPROVALS

CONTRACTOR

By: _____ Title: _____ Date: _____

DEPARTMENT

By: _____ Date: _____

Exhibit A - [Sample] WORK ORDER CONTRACT

Work Order Contract # _____

Agreement for Services # _____

Project Name: _____

This Work Order Contract is between the State of Oregon acting through its Oregon Arts Commission and the Oregon Cultural Trust, Business Development Department, hereafter called Department, and _____, hereafter called Contractor, and is effective as of the date of last signature hereto (the "Effective Date"). Contractor agrees to complete and deliver to Department the Services described in the Statement of Work set forth below, in accordance with the provisions of this Work Order Contract and subject to the Standard Terms and Conditions set forth in Exhibit B to that certain Agreement for Services between Department and Contractor dated as of _____. Department and Contractor agree and acknowledge that on the Effective Date, this Work Order together with the Standard Terms and Conditions will constitute a valid and binding contract between Department and Contractor enforceable in accordance with the terms of the foregoing documents. The term "Contract" as used in the Standard Terms and Conditions means the Work Order together with the Standard Terms and Conditions. Department and Contractor agree and acknowledge that the Contract consisting of this Work Order and the Standard Terms and Conditions is separate from and independent of all other contracts that consist of a Work Order and the Standard Terms and Conditions.

No Services shall occur until this Work Order is signed by all parties and all necessary State of Oregon governmental approvals are obtained.

Statement of Work

[Placeholder/Note to Proposer: The Statement of Work for each project/need for services for which Contractor is awarded a Work Order Contract shall be negotiated by Department and Contractor, within the scope of what was advertised in the associated RFP 2010074, and inserted here in each final Work Order Contract.]

Compensation Provisions [Placeholder]

ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The Oregon Business Development Department encourages recipients and subrecipients to follow good faith efforts in ORS 200.045, available at <http://www.leg.state.or.us/ors/200.html>. Additional resources are provided by the Governor's Advocate for Minority, Women & Emerging Small Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Department of Consumer and Business Services maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number provided for the above-referenced Agreement for Services is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws (including, without limitation, the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax).; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) if required by 40 CFR 1506.5(c), Contractor has no financial or other interest in the outcome of the project.

CONTRACTOR

Name/Title	Date
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LEGAL

Assistant Attorney General (All contracts over \$100,000 unless exempted)	Date
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DEPARTMENT

Name/Title	Date
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EXHIBIT B to Agreement For Services– Standard Terms and Conditions

1. Independent Contractor; Responsibility for Taxes and Withholding

- a. Contractor shall perform all required Services as an independent contractor. Although Department reserves the right (i) to determine the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Department cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.
- b. If Contractor is currently performing services for the State of Oregon or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor's Services to be performed under this Contract create no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's Services under this Contract. Contractor is not an "officer," "employee," or "agent" of Department, as those terms are used in ORS 30.265.
- c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Department will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

2. Subcontracts and Assignment; Successors and Assigns

- a. Contractor shall not enter into any subcontracts for any of the Services required by this Contract, or assign or transfer any of its interest in this Contract, without Department's prior written consent. In addition to any other provisions Department may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 5, 6, 10, 11, 14, 15, and 18 of this Contract as if the subcontractor were the Contractor. Department's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

3. No Third Party Beneficiaries. Department and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give or provides, 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 Contract.

4. Funds Available and Authorized; Payments

- a. Contractor shall not be compensated for Services performed under this Contract by any other agency or department of the State of Oregon. Department has sufficient funds currently available and authorized in the Strategic Reserve Fund for expenditure to finance the costs of this Contract within any biennial appropriation or limitation applicable to the Department or the Strategic Reaserve Fund. Contractor understands and agrees that Department's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on Department or the Fund, as required, receiving from the

Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow Department, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

- b. Department will only pay for completed Services that are accepted by Department.

5. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to Department that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the Services under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, and (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.
- b. **Warranties cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Ownership of Work Product.

- a. **Definitions.** As used in this Section 10, and elsewhere in this Contract, the following terms have the meanings set forth below:
 - (i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.
 - (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Department or Contractor.
 - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all Services that Contractor delivers or is required to deliver to Department pursuant to this Contract.
- b. **Original Works.** All intellectual property rights in the Work Product created by Contractor pursuant to this Contract, including derivative works and compilations, shall be the exclusive property of Department. All Work Product authored by Contractor under this Contract shall be deemed "work made for hire" to the extent permitted by the United States Copyright Act. To the extent the Department is not the owner of the intellectual property rights in such Work Product, Contractor hereby irrevocably assigns to Department any and all of its rights, title, and interest in such Work Product. Upon Department's reasonable request, Contractor shall execute such further documents and instruments reasonably necessary to fully vest such rights in Department. Contractor forever waives any and all rights relating to original Work Product created pursuant to this Contract, 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 intellectual property rights in the Work Product are Contractor Intellectual Property, Contractor hereby grants to Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Department's behalf.

To the extent Contractor has the authority, Contractor shall sublicense or pass through to the Department all Third Party Intellectual Property. Contractor represents and warrants that it has provided written disclosure to the Department of all Third Party Intellectual Property that

must be independently licensed by the Department to fully enjoy the benefits of the Work Product. If Contractor failed to provide such written disclosure, Contractor shall secure on Department's behalf and in the name of Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Department's behalf.

7. Indemnity.

- a. Claims for Other than Professional Liability.** Contractor shall (subject to ORS chapter 180) defend, save and hold harmless the State of Oregon, the Oregon Business Development Commission and its members, the Oregon Business Development Department, their officers, agents and employees from all claims, suits or actions of whatsoever nature, including intentional acts resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this Contract.
- b. Claims for Professional Liability.** Contractor shall (subject to ORS chapter 180) defend, save and hold harmless the State of Oregon, the Oregon Business Development Commission and its members, the Oregon Business Development Department, their officers, agents and employees, from all claims, suits or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors, agents or employees in performance of professional services under this Contract.
- c. Control of Defense and Settlement.** Contractor shall have control of the defense and settlement of any claim that is subject to sections 11.a or 11.b; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving authority to act as legal counsel for the State of Oregon from the Oregon Attorney General, in a form and manner determined appropriate by the Oregon Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement.

8. Insurance. Contractor shall provide insurance as indicated on Exhibit C, attached hereto and by this reference made a part hereof.

9. Termination

- a. Parties' Right to Terminate For Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. Department's Right To Terminate For Convenience.** Department may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. Department's Right to Terminate For Cause.** Department may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Department may establish in such notice, upon the occurrence of any of the following events:
 - (i) Department or the Strategic Reserve Fund fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Services;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Contract is prohibited or Department is prohibited from paying for such Services from the planned funding source;

- (iii) Contractor no longer holds any license or certificate that is required to perform the Services; or
- (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms.

d. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon 30 days' notice to Department if Department fails to pay Contractor pursuant to the terms of this Contract and Department fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.

e. Remedies

- (i) In the event of termination pursuant to Sections 13a, 13b, 13c(i), 13c(ii) or 13d, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Department, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Department upon demand.
- (ii) In the event of termination pursuant to Section 13c(iii) or 13c(iv), Department shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 13c(iii) or 13c(iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 13b.

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

10. Records Maintenance; Access. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts, transcripts and copies. Contractor 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 Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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

Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Department's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.230, 279B.235, and 279B.270, which are incorporated by this reference.

- 12. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.
- 13. Force Majeure.** Neither Department nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Department or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 14. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 8, 9, 10, 11, 13, 14, 15, 18, 21, 25, and 28.
- 15. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.
- 16. Notice.** Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Department at the address or number set forth below:

Department: _____

Contractor: _____

or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 20. Any notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Department, such facsimile transmission must be confirmed by telephone notice to Department's Contract Administrator. Any notice by personal delivery shall be deemed to be given when actually delivered.

- 17. Severability.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining

terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

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

19. Department of Justice Approval. In certain cases, Department of Justice approval is required before any Services may begin under this Contract or an amendment to this Contract.

20. Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

21. Choice of Law; Designation of Forum; Federal Forum.

(a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(c) Notwithstanding Section 25(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

22. Merger Clause; Waiver. This Agreement and the 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, amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties (or in the case of a waiver or consent, signed by the party against whom such waiver or consent is sought to be enforced) and all necessary Department approvals have been obtained. Such waiver, consent, amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Department to enforce any provision of this Agreement shall not constitute a waiver by Department of that or any other provision.

23. Attorney's Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract shall be entitled to recover from the other its reasonable attorney's fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys.

24. Oregon False Claims Act.

a. Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Agreement that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of the Agreement, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor.

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

(i) Its representations, certifications, and other undertakings in this Agreement are not False Claims Act Violations; and

(ii) None of Contractor'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.

(iii) For purposes of this Section 25, a "False Claims Act Violation" means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.

c. Contractor shall immediately report in writing, to Department, 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 moneys paid by Department under this Agreement.

d. Contractor 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 Department under any other provision of law, this Agreement, or any Contract formed under this Agreement.

EXHIBIT C – INSURANCE

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

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

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

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

2. ☐ **Required by Department** ☒ **Not required by Department**

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

3. ☒ **Required by Department** ☐ **Not required by Department**

General Liability insurance with a combined single limit, or the equivalent, of not less than ☒ \$200,000, ☐ \$500,000, ☐ \$1,000,000, or ☐ \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. The policy shall be endorsed to name State of Oregon, the Oregon Economic and Community Development Commission and its members, and the Oregon Economic and Community Development Department, its officers and employees as Additional Insureds but only with respect to the Contractor's commercial services to be provided under this Contract.

4. ☒ **Required by Department** ☐ **Not required by Department**

Automobile Liability Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than ☒ Oregon Financial Responsibility Law (ORS 806.060), ☐ \$200,000, ☐ \$500,000, or ☐ \$1,000,000, each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. The policy shall be endorsed to name the State of Oregon, the Oregon Economic and Community Development Commission and its members, and the Oregon Economic and Community Development Department, its officers and employees as Additional Insureds but only with respect to the Contractor's commercial services to be provided under this Contract.

5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to Department.

6. **Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to Department prior to commencing the Services. The certificate will specify **"The State of Oregon, the Oregon Economic and Community Development Commission and its members, and the Oregon Economic and Community Development Department, its officers and employees"** as Additional Insureds for Automobile and General Liability. It need not reference a specific Contract name or number. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc., shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

A. CONTRACTOR IS INDEPENDENT CONTRACTOR.

Contractor certifies he/she meets the following standards:

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

Contractor Signature _____ Date _____

(Department completes B below when Contractor completes Section A above.)

B. DEPARTMENT APPROVAL.

ORS. 670.600. Independent Contractor standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration is considered to perform the labor or services as an “independent Contractor” if the standards of this section are met. State agency certifies the contracted Services meet the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the Contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

Department Signature _____ Date _____

(Department’s certification is solely for the State’s benefit and internal use.)