

OREGON

ECONOMIC & COMMUNITY DEVELOPMENT DEPARTMENT

Request for Proposals: Web Site Redesign

Proposal due date: July 6, 2009, 3:00 P.M. Pacific Time

1.0 SOLICITATION INFORMATION AND REQUIREMENTS

1.1. GENERAL INFORMATION

Pursuant to ORS 279B.070 and OAR 137-047-0270, the Oregon Economic and Community Development Department (Department) is seeking proposals for one information technology services Contractor to provide web site redesign and site template development and implementation.

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 contract period is expected to commence approximately July 24, 2009, and will terminate on October 31, 2009. The total amount available to Proposer for this period is estimated at \$90,000 for a one time charge. Department reserves the right to amend the Contract for additional time or money, contingent upon need and the availability of approved funding.

The selected Proposer and Department will negotiate the final Statement of Work and payment terms, within the scope of the Statement of Work included in this RFP, for inclusion in the final personal services contract (“Contract”).

1.1.2 DESCRIPTION OF NEEDED SERVICES

The department seeks to hire a Proposer to redesign the department’s Web site. The department recently underwent an organizational restructure and legislative activity is potentially changing the department's name. The department desires to redesign and organize its web presence around these new changes.

Work under the Contract will include preparing site template files based on a chosen design, designing and programming interactive applications and services and integrating these items along with department-provided content.

The schedule is the main driver for this project. The department expects to launch a new web presence October 1, 2009.

1.1.3 PROPOSED STATEMENT OF WORK

Department and the successful Proposer may negotiate a Statement of Work for the Contract.

Department reserves the right to amend or modify the awarded Contract in accordance with OAR 137-247-0262. The general circumstances that might require an Amendment to be issued under the Contract include, without limitation, amendments to the scope of services, the delivery and payment schedule, and the amount department pays for the services described in this RFP. A general description of certain or known changes to the requirements of the Contract that may be anticipated or planned for include: programmatic changes, additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Contract or previous amendments to the Contract, implementation of additional phases of the Work, end user recommendations, or as necessitated by changes in the laws or rules which, in part or in combination, govern the provision of services provided under this Contract. Except for these Anticipated Amendments, any and all later

amendments shall be deemed unanticipated. All amendments must be in writing and signed by all approving parties before becoming effective.

At a minimum, the following deliverables are expected; Proposers should indicate for each section how they would meet these deliverables within the stated budget.

1) Web site design:

Proposers may submit up to three (3) site design options. Each proposed option may be no more than three (3) levels deep. Each proposed design must conform to department-supplied branding and style guidelines (available as a [downloadable PDF](#)) and include the provided navigation labels and desired style parameters (available as a [downloadable PDF](#)). The department requires that the new site deploys some of the latest technologies, such as flash and AIR/FLEX applications, in order to effectively interact with site customers. Proposers will need to ensure that the site, or sites, is/are ADA compliant and receives a "passing" score when it is run through W3C's validator (<http://validator.w3.org>).

The department currently has several sites and intends, through this redesign, to have one site residing at one service provider. Business Oregon and Infrastructure Finance Authority are the two primary distinct business activities. Proposers must develop a method in which visitors can easily distinguish the two primary business activities (such as using a different color scheme.)

2) Web hosting and language requirements:

The selected Proposer will provide the development and test environment which must match the following specifications for the department's hosting services and design and programming languages:

a. Server and environment:

Debian platform, multiple Gigabit and fiberoptic connections on diverse backbones, Cisco routers using BGP4 protocol; 1,000 GB web space; 10,000 GB transfer

MySQL version 5.0.45; Perl version 5.8.8; PHP version 4.4.8; several Perl and PEAR modules are available

b. Software requirements:

The site must be set up primarily as ".htm" (XHTML transitional) but other pages will be in their prescribed format based on technology and language (e.g., PHP and JavaScript, CSS, AJAX)

The site must be developed and implemented using any combination of the Adobe Suite (CS4) products including: Dreamweaver, Illustrator, Flash, Photoshop, Fireworks, Flex, Acrobat, AIR. Components developed in other softwares (e.g., FreeHand, Paintshop Pro, etc) are not acceptable.

3) Interactive features

The department requires that all interactive features be integrated into the site or be set up to integrate in the near future. At least one interactive map (depicting business contacts, success stories) must be prepared. Other desired features include videos, web to PDF, RSS feeds, a site search function and top 5 most viewed page/link set up. The state will be using the Google Custom Search Tool, which is free to government agencies. The Proposer should build this specific tie into the site(s). The department expects Proposers to provide ideas and suggestions for other interactive applications and components that make good business sense for the department to deploy.

4) Site launch

Proposer will provide, at a minimum, one technician who will travel to the Salem office for the site launch preparations. Preparations will include ensuring that department's software/template files are properly set up to communicate to the web server and other components integrated into the site. This technician also will be on hand for the actual FTP of the new site files to the web server and to assist department with troubleshooting any problems and providing corrections necessary to make the site work as designed.

5) Milestones

Date

Department is provided web access to Proposer's web server and will review the Proposed new site's structure—home page and the landing page of each menu items.

August 12, 2009

Department reviews interactive components, i.e., seeing AIR/FLEX applications interactively.

August 19, 2009

Department does first review of full web site to include all supplied content and fully-functional applications, RSS feed system, search feature, web to PDF and all other department-approved web site elements.

September 1, 2009

Site launch

September 15, 2009

1.2. QUESTIONS AND CLARIFICATIONS

1.2.1 PROPOSER QUESTIONS

All inquiries regarding this Request for Proposals (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 1.4.3 (mail, fax or email are acceptable). **All questions must be received not later than 10 calendar days prior to proposal deadline.**

Substantive questions and answers will be issued as official addenda to this RFP. When appropriate, revisions, modifications, or clarifications of the RFP including the attached terms and conditions will be issued as official addenda to this RFP. Changes or modifications to this RFP shall be binding on department only if in the form of written addenda issued by the Department

1.2.2 ADDENDA

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 Purchasing & Contract Management [web page](#). 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 Web site.

1.3 PROTESTS

1.3.1 RFP PROTEST REQUIREMENTS

Proposers who believe RFP specifications are unnecessarily restrictive or limit competition must submit a protest to the Procurement Specialist. Protests concerning the RFP, including requests for change of particular provisions, specifications, or Contract terms and conditions, must be submitted in writing to the Procurement Specialist **not later than (10) calendar days prior to the close date of this RFP**. Any protest must include the reason for the protest, supported by documented factual information and any proposed changes to the requirement. Department will review the protest and respond in writing. Department will not consider any solicitation protest submitted after the deadline established in this subsection.

1.3.2 AWARD PROTEST REQUIREMENTS

Every proposer who submits a proposal shall 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 137-047-0470. Department will review the protest and respond in writing. Department shall not consider any protest submitted after the protest period established in this subsection.

1.4. PROPOSAL SUBMISSION REQUIREMENTS

1.4.1 TERMS AND CONDITIONS

By submitting its proposal, the selected proposer agrees to be bound by the terms and conditions of the Oregon Economic and Community Development Department Personal Services Contract, the form of which is set out in Attachment B, as they may have been modified or reserved by department for negotiation. Any Statement of Proposal that is received conditioned on department's acceptance of any other terms and conditions or the right to negotiate terms and conditions will be rejected as non-responsive. Any subsequent negotiated changes may be subject to prior approval by the Department of Justice.

Government 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 government bodies according to the same evaluation criteria described in this RFP. Government 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 government body. Alternatively, Department reserves the right to cancel this solicitation if it is in the public interest, and enter into an ORS Chapter 190 agreement with a government body.

1.4.2 DUE DATE

Proposals must be received by July 6, 2009, on or before 3:00 P.M., Pacific Time at the address in subsection 1.4.3 below to be included in this solicitation. Please do not wait until the last minute to mail or deliver your proposal.

1.4.3 PROPOSALS WILL BE RECEIVED ONLY AT THE FOLLOWING ADDRESS:

Oregon Economic and Community Development Department
Larry Daimler, Procurement Specialist
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

Telephone: (503) 986-0032
FAX: (503) 581-5115
Email: larry.daimler@state.or.us

NOTE: A map to our office is provided at <http://info.econ.state.or.us:591/contact/saleoffice.htm>

1.4.4 DVD DISK RESPONSES ONLY

ONLY A DVD DISK IS ACCEPTBLE (six copies). Proposals must be submitted via mail or physically delivered. Fax and email deliveries are *not* acceptable. All submittals must include the RFP Title and RFP #.

Every proposal submitted must include a completed cover sheet (substantially in the form of Attachment A), signed by a duly authorized representative empowered to bind the Proposer. The signed cover sheet must be included on the DVD as a .PDF file.

1.4.5 NO LATE OR INCOMPLETE PROPOSAL SUBMISSIONS

Mis-deliveries, late, and incomplete submittals will be considered non-responsive, with no exceptions. Proposers should not wait until the last minute for delivery.

1.4.6 FORMAT AND COPIES FOR PROPOSAL SUBMISSIONS AND PAGE LENGTH LIMITATION:

The proposal must be organized in accordance with the list of scored criteria in Section 2.2. The proposal must not exceed **10** pages, *excluding* Cover Sheet. If a Proposer submits a proposal exceeding this limit, Department will consider the pages up to that allowable number and discard all subsequent pages. The Proposer may choose how to allocate pages between any sections, within the overall page limit. **The proposal information (including the total cost for each submission, up to the maximum of three submissions) must be submitted as a PDF file. The web design portion of the proposal (up to the maximum of three submissions) must be submitted in web format. Both the PDF file of the proposal information and the web design portion of the proposal must be supplied on a DVD disk. Each proposer must submit six (6) copies of the DVD disk.**

One (1) page is defined as: one side of a single 8-1/2" x 11" page, with 12-point minimum font size for the substantive text. Any page over this size will be counted as two (2) pages. Any page or partial page with substantive text, graphics, charts, resumes, etc., will be counted as one (1) page. Proposers may use their discretion for the font size of other materials (e.g., graphics, charts).

1.4.7 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 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 the various grounds specified in 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 authority relied upon. Application of the Oregon Public Records Law shall determine whether any information is actually exempt from disclosure. *Identifying the proposal in whole as exempt from disclosure is not acceptable.* Failure to identify the specific portion of the proposal claimed as exempt from disclosure, and the authority for such exemption, shall be deemed a waiver of any future claim for disclosure of that information.

1.5 PASS/FAIL CRITERIA

Each proposal must comply with the following Pass/Fail criteria. Proposals not meeting ALL Pass/Fail criteria shall be rejected.

1.5.6 COVER SHEET—PASS or FAIL

Each proposal must include a completed Cover Sheet (Attachment A), signed by a duly authorized representative of the Proposer empowered to bind the Proposer. Any proposal without a completed Cover Sheet will be rejected as non-responsive.

1.5.7 PRICE PROPOSAL—PASS or FAIL

Each proposal must include a total proposed cost for each submission, up the maximum of three allowed, that includes all of the requirements specified in Section 1.1.3. Any proposal not containing this information will be considered non-responsive. The total proposed cost of each submission will be evaluated as part of the scored criteria. See Section 2.2, below.

CHECKLIST FOR PASS/FAIL CRITERIA FOR USE BY PROPOSERS

- ☐ Due Date Met
- ☐ Proposal Addressed Correctly
- ☐ Proposal Format and Length Requirements Met
- ☐ Cover Sheet Included
- ☐ Total Proposed Cost Included
- ☐ Authorized Signature Obtained
- ☐ Proposal Does Not Include Conditional Language About Terms and Conditions
- ☐ Public Records Disclosure Exemption Statement Included (If Applicable)

[This proposal submission checklist is provided only as a courtesy to Proposer. Department makes no representation as to the completeness or accuracy of this proposer checklist. Proposer is solely responsible for reviewing and understanding the RFP and complying with all the requirements of this RFP, whether listed above or not.]

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 reviewed against the Pass/Fail criteria identified in Section 1.5. Proposals meeting those criteria for will be forwarded to an evaluation committee that will independently score each proposal according to the scored criteria set forth in Section 2.2.

The evaluation committee shall score all Proposals using the quantity and quality of information described in this Section. Points assigned by each evaluation committee member shall be added together and divided by the total number of evaluation committee members to compute an average score for the evaluation questions for each proposal.

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(s) within 48 hours following receipt of a request for clarification. Failure to provide clarification may result in a lower score.

The outcome of the evaluation process may, at Department's sole discretion, result in: (a) notice to a proposer(s) of selection for tentative Contract 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.

The payment amount and, at Department's sole discretion, the methodology, will be negotiated with the selected proposer(s). If negotiations are not successful, Department may terminate negotiations with the top ranked proposer and may begin negotiations with the next highest ranked proposer.

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 contract 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 REQUESTED PROPOSAL CONTENTS AND SCORED CRITERIA

2.2.1 Proposers must provide the following:

1) Proposer's Schedule of Work & Qualifications

50 points max.

- a. Provide detailed information about the Proposer's qualifications. Preferential scoring will be applied to companies having recent experience developing similar web projects for an Economic Development Organization and for prior contracting work for the State of Oregon. Up to five points may be deducted for proposals that do not have the preferred experience.
- b. Include at least three (3) and no more than six (6) projects, similar to this project, that have been completed within the last four (4) years.

At least one of the projects has to have been completed by individuals that will be assigned to work on this project.

- c. List each project, its URL and a contact name and email or phone number for reference check.
- d. Provide a personnel schedule, including subcontractors, with a breakdown by assignment/task that outlines your proposal to complete this job within stated milestones (section 1.3). Include each person's resume experience/qualifications applicable to perform the task(s).
- e. React to the scope of work in this RFP. Are there other aspects that you recommend for possible inclusion?

2) Designs

25 points max.

Submit one (1), but no more than three (3) design options incorporating all stated specifications in 1.1.3 Proposed Statement of Work. Each design submitted may be no more than three (3) levels deep.

3) Scripting and Applications

15 points max.

Provide detailed descriptions of each proposed application or interactive component. Include the type of application (i.e., FLEX), what it would provide to the visitor and how it would be maintained on an on-going basis.

4) Pricing

10 points max.

Provide a total proposed cost for each submission.

Total points available:

100 Points max.

2.2.2 Reference Checks

Agency reserves the right to request references in addition to those provided by the Proposer (References), to investigate any references whether or not furnished by the Proposer, and to investigate the past performance of any Proposer. Agency may investigate the qualifications of a Proposer, including but not limited to: successful performance of similar services; compliance with specifications and contractual obligations; its completion or delivery of services on schedule; and its lawful payment of suppliers, subcontractors, and workers. Agency may postpone the award or execution of the Contract after the announcement of the apparent successful Proposer in order to complete its investigation.

COVER SHEET**STATEMENT OF PROPOSAL to Oregon Economic and Community Development Department**

_____ (Legal Name of Firm) accepts all the terms and conditions contained in the
Request for Proposals # _____, and the form of Contract (Attachment B to
the RFP), including as they may have been modified or reserved for negotiation.

☐ Corporation ☐ Professional Corporation ☐ Partnership ☐ Limited Partnership
☐ Ltd. Liability Company ☐ Ltd. Liability Partnership ☐ Sole Proprietorship ☐ Other _____

Firm's Federal Tax ID _____

Mailing Address _____

Type name of authorized representative _____

Email address _____

Telephone _____ Fax _____

Type name of person(s) authorized to sign Contract _____

[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 _____

Affirmative Action Program: Department 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:

1. 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);
2. it has _____ employees; and
3. this proposal has been printed on recycled paper.

Signature of Authorized Representative certifying all statements as true:

Name & Title (print): _____ Date: _____

State of Oregon Personal/Professional Services contract
Number _____

Title: _____

This contract is between the State of Oregon, acting by and through its Oregon Economic and Community Development Department, hereafter called Department, and _____ an Oregon company, hereafter called Contractor.

1. **Effective Date and Duration.** This contract is effective once fully executed, and approved as required by applicable law. Unless terminated or extended, this contract expires when Department accepts Contractor's performance or on September 30, 2009, whichever date occurs first. Expiration or termination does not extinguish or prejudice Department's right to enforce this contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.
2. **Statement of Work.** The Statement of Work (the "Services"), including the delivery schedule for such Services, is contained in Exhibit A, attached.
3. **Compensation**
 - a. The maximum compensation payable to Contractor under this contract, which includes any allowable expenses, is \$ _____, and is more particularly described in Exhibit A – Compensation.
 - b. Any progress payments to Contractor will be made only in accordance with the schedule and requirements in Exhibit A – Compensation.
4. **Contract Documents.** This contract consists of the following documents, incorporated by reference, which are listed in descending order of precedence: this contract less all exhibits, attached Exhibits A and B.
5. **Independent Contractor; Responsibility for Taxes and Withholding**
 - a. Contractor will 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 will not control, and Contractor is responsible for determining, the means and manner of Contractor's performance.
 - 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) 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 is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this contract, and unless Department is aware that 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.
6. **Subcontracts and Assignment; Successors and Assigns**
 - a. Contractor cannot 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 will 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 does not relieve Contractor of any of its duties or obligations under this contract.
 - b. The provisions of this contract are binding upon and will inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

7. 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, or is to be construed to give any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name and expressly described as intended beneficiaries of the terms of this contract.

8. Funds Available and Authorized; Payments

a. No other agency or department of the State of Oregon will compensate Contractor for Services performed under this contract. Department has sufficient funds currently available and authorized for expenditure to finance the costs of this contract within Department's biennial appropriation or limitation. 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 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.

9. 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 is a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the Services under this contract will be performed in accordance with the professional standard of skill and care ordinarily exercised by members of that profession, under similar conditions and circumstances, and (4) Contractor will, 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.

10. 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. Ownership and License. All intellectual property rights in the Work Product created by Contractor pursuant to this contract, including derivative works and compilations, are the exclusive property of Department. All Work Product authored by Contractor under this contract is 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 will 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 will 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 will 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.

11. Indemnity.

a. Claims for Other than Professional Liability. Contractor will (subject to ORS chapter 180) defend, save and hold harmless the State of Oregon, the Oregon Economic and Community Development Commission and its members, the Oregon Economic and Community 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 agreement.

b. Claims for Professional Liability. Contractor will (subject to ORS chapter 180) defend, save and hold harmless the State of Oregon, the Oregon Economic and Community Development Commission and its members, the Oregon Economic and Community 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 and subcontractors, agents or employees in performance of professional services under this agreement.

c. Control of Defense and Settlement. Contractor will 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 will 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 Attorney General, nor will Contractor 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.

12. Insurance. Contractor has provided insurance as indicated on Exhibit B.

13. 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 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 is 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 will promptly pay any excess to Department.

(ii) In the event of termination pursuant to Section 13c(iii) or 13c(iv), Department has 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 will 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 will immediately cease all activities under this contract, unless Department expressly directs otherwise in such notice. Upon termination of this contract, Contractor will 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 will surrender to anyone Department designates, all documents, research or objects or other tangible things needed to complete the Services.

14. Records Maintenance; Access. Contractor will maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles. In addition, Contractor will 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 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 and transcripts. Contractor will 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.

15. Compliance with Applicable Law. Contractor will 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.

16. Business Registration. Contractor has provided to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies to do business in the State of Oregon relative to this contract.

17. Force Majeure. Neither Department nor Contractor will 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 will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

18. Survival. All rights and obligations 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, 21, 25, and 26.

19. Time is of the Essence. Contractor agrees that time is of the essence under this contract.

20. Notice. Except as otherwise expressly provided in this contract, any notices will be given in writing by personal delivery, or mailing, postage prepaid, to:

Department:
Oregon Economic and Community Development Department
775 Summer Street, Suite 200
Salem, OR 97301-1280

Contractor: According to the Contractor Data and Certification below
or to such other addresses or numbers as either party may later designate pursuant to this

Any notice so addressed and mailed is deemed to be given five (5) days after mailing. Any notice by personal delivery is deemed to be given when actually delivered.

20. 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 are not affected, and the rights and obligations of the parties are to be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

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

22. 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.

23. 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.

24. Governing Law; Venue; Consent to Jurisdiction. This contract is governed by and is to be 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 State (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this contract will 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 will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.. In no event will 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. BY EXECUTION OF THIS CONTRACT, CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT.

25. Merger Clause; Waiver. This contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this contract. No waiver, consent, modification or change of terms of this contract binds either party unless in writing and signed by both parties, and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given. The failure of Department to enforce any provision of this contract does not constitute a waiver by Department of that or any other provision.

26. Amendments. Department may amend this contract to the extent provided in the solicitation document, if any, from which this contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment to this contract is effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained.

27. Attorney 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 is entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees cannot exceed the rate charged to the State by its attorneys. The Contractor

will, on demand, pay to the State reasonable expenses incurred by the State in the collection of such payments.

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): _____
Address: _____
Email: _____
Telephone: _____ Facsimile: _____
Citizenship, if applicable: Non-resident alien ☐ Yes ☐ No
Business Designation (check one):
☐ Private for-profit, or non-profit Corporation ☐ Professional Corporation
☐ Partnership ☐ Limited Partnership
☐ Limited Liability Company ☐ Limited Liability Partnership
☐ Sole Proprietorship ☐ Other: _____

Above payment information must be provided prior to contract approval. This information may 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 Economic and Community 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/>.

This contract is effective on the date it is fully executed and approved as required by applicable law. Contractor, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

CONTRACTORS: NO SERVICES MUST OCCUR PRIOR TO NECESSARY STATE APPROVALS

CONTRACTOR

Title Date

OREGON DEPARTMENT OF JUSTICE

Approved as to Legal Sufficiency (All Contracts over \$100,000, unless
exempted) _____
Date

DEPARTMENT

Title Date

STATEMENT OF WORK:

As negotiated.

COMPENSATION

A. **Payment Methodology and Basis for Payment.** Department will pay Contractor a fixed price for all Services, including deliverables, required under the Contract, upon Department's approval of Contractor's invoice submitted to Department in accordance with the terms of the Contract, but only after Department has determined that Contractor has completed, and Department has accepted, all required Services, including deliverables.

B. **Invoices and Payments.** Invoices must include the Department contract number. Contractor shall submit invoices requesting payment to Department's Contract Administrator for approval. Department Contract Administrator is:

Department:
Oregon Economic and Community Development Department
775 Summer Street, Suite 200
Salem, OR 97301-1280

or as may be otherwise designated through written notice. Contractor shall not submit invoices to Department's Contract Administrator any more frequently than once per month. Any overdue payments by Department for an approved invoice are subject to ORS 293.462.

C. **Corrective Work.** Contractor is responsible to complete all Services, including deliverables, as defined in the Statement of Work to the satisfaction of Department. If Department, in its sole discretion, determines that the Services are unacceptable, Contractor is responsible to correct any deficiencies in the Services to Department's satisfaction without further compensation. Department may withhold other payments until any deficiencies have been corrected to Department's satisfaction.

D. **Travel and Expenses.** The fixed price includes any travel or other expenses; therefore, Department shall not separately reimburse Contractor for any expenses incurred under this Contract.

EXHIBIT B – INSURANCE

During the term of this contract, Contractor will 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, will comply with ORS 656.017 and will provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor will 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 will include contractual liability coverage for the indemnity provided under this contract. The policy will 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 will 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 cannot 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 will 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 will 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 will 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 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. will be provided to the State. The Contractor is financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR
PERSONAL SERVICES CONTRACT No. _____

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.)