



Request for Proposals:  
Printing, Graphics, and Miscellaneous Production  
Services

**Proposal Due Date: 24 June 2019, at 3:00 p.m. Pacific Standard Time**

**1.0. GENERAL INFORMATION**

Pursuant to ORS 279B.060 and OAR 137-047-0260, the Oregon Business Development Department (“Business Oregon”) seeks a variety of graphic and production services for Business Oregon and its boards and commissions. The two main units that will be utilizing these services are the Arts Commission/Cultural Trust and the Marketing & Communications team, each of which will require a separate account.

Business Oregon anticipates awarding an Agreement for Services (“Agreement”) through this Request for Proposals (“RFP”), with the specific services provided pursuant to Work Order Contracts (“WOC”) issued under the Agreement. Business Oregon reserves the right to select more than one provider. The Agreement(s) is/are expected to commence in July 2019 for a seven-year term. Business Oregon has spent approximately \$54,000 each year on average over the last three years for the services described in this RFP. Contingent on Business Oregon’s need and the availability of funding, the Agreement may be amended to the extent allowed by law to extend its term, increase the compensation, or add services within the general scope of this RFP, without conducting further solicitation activities.

**1.1. BACKGROUND and NEED**

Business Oregon is the state's economic development agency. The mission of Business Oregon is to invest in Oregon’s businesses, communities, and people to promote a globally competitive diverse and

inclusive economy. Business Oregon also houses the Oregon Arts Commission and the Oregon Cultural Trust in recognition of the expanding role the Arts play in the broader social, economic and educational arenas of Oregon communities. Information about the Arts Commission’s program activities can be accessed at <https://www.oregonartscommission.org/programs>. Information about the Cultural Trust’s program activities can be accessed at <https://www.culturaltrust.org/>.

Business Oregon seeks the services of a contractor for the full array of graphic design and production services, as more fully described in Section 1.2 below, which Business Oregon will contract for through WOCs within the scope of this RFP. The successful proposer (hereafter called the “Contractor”) must be able to directly provide the core services, hereafter called “Pre-Press Services.” Pre-Press Services means graphic art creation, layout, type setting, and design. Necessary related services (“Related Services”) include: services of writers, photographers, videographers, printing, and specialty production. For the Related Services, Contractor may either produce items directly, or serve as a broker, subcontracting work out to a pre-approved list of firms. When subcontracting, Contractor is still responsible for quality and satisfaction of work by Business Oregon. If the Contractor subcontracts for Related Services, then: i) Contractor will need to get preapproval by Business Oregon for all of its subcontractors, and ii) Contractor will be required to select the subcontractor(s) through a competitive bid process using the preapproved subcontractor list and in a manner that complies with the Public Printing Law, ORS 282.020(3) and 282.210 to 282.990, and the Attorney General’s Model Public Contract Rules. Contractor must provide bids from subcontractors to Business Oregon for approval. Business Oregon will work with the Contractor to find Certification Office for Business Inclusion and Diversity-certified firms to add to its preapproved subcontractor list.

## **1.2. SCOPE OF WORK**

Proposer must be able to provide the following services at a minimum. Actual services and deliverables will be selected on an as-requested basis depending on particular needs at different times, and will be detailed and authorized through WOCs issued under the Agreement that contains a Statement of Work negotiated with the Contractor, to be completed within time constraints established by the Marketing & Communications Team and Arts Commission/Cultural Trust Team of Business Oregon, respectively. Work may include, but not be limited to the following Services:

### **Pre-Press Services**

- a. *Digital Design and Layout.* Business Oregon will typically provide camera-ready digital artwork, but will occasionally require layout and design services from Contractor. Contractor should also be able to address technical issues with digital files, such as separation adjustment, conversion and color correction. These services must produce products that are in-line with:
  - Business Oregon’s style guide (only for WOC issued by the Marketing team)
  - Arts Commission and Cultural Trust’s style guides (only for WOC issued by Arts Commission and Cultural Trust, respectively)
  - ADA Title II requirements by meeting WCAG 2.0 Level A and Level AA standards. Links to each style guide (ADA requirements are in the Business Oregon style guide) can be found here: <https://www.oregon4biz.com/Contracting/>
- b. *Creation of graphic art.*
- c. *Type setting services.*
- d. *Design services.*

### **Related Services**

- a. *Content writing/editing services.*
- b. *Photography and videography services.*

- c. *Print Production.* Booklets, brochures, postcards, one-page handouts, etc. Digital, offset and large-format printing will be required. Binding, trimming, die-cutting, and other standard print-related capabilities are expected.
- d. *Mailing Services.* Printing, sorting, postage, delivery to post office.
- e. *Signage.* Vinyl banners, trade show signage, foam core signs, etc. Grommeting, stitching, mounting hardware and other standard signage-related capabilities are expected.
- f. *Specialty Production.* Creation of specialized mechanical and/or electronic promotional items/materials. *E.g.* banners that roll up/out of top-mounted hardware and/or rotates by mechanical means.
- g. *Promotional Items.* Promotional giveaways such as pens, USB drives, magnets, etc. imprinted with Business Oregon logo or other information.
- h. *Pickup/Delivery Services.* Pickup and delivery with no additional cost to Business Oregon, for both its Salem and Portland offices. For cost, Contractor will also pack and ship to other destinations as directed by Business Oregon.

This is not an exclusive list. Business Oregon reserves the right to contract for other services and goods reasonably related to visual graphics and printing.

To ensure compatibility, product quality, and Business Oregon’s ability to use finished electronic files for other purposes, the Contractor must use software compatible with Business Oregon’s software. At the time of this RFP, Business Oregon uses Adobe Creative Cloud design software and Microsoft Office 2016. Further, to facilitate bid requests and communication of project updates, the Contractor must also have and maintain one email account and have access to the internet throughout the term of any awarded AFS, and subsequent WOCs. Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

### 1.3 QUESTIONS AND CLARIFICATIONS

All inquiries, whether relating to the RFP process, administration, deadline or award, or to the intent or technical aspects of the Services must be submitted in writing (email preferred; mail or fax are acceptable) to:

Derek Dizney, Contract and Procurement Officer  
 Oregon Business Development Department  
 775 Summer St., NE, Suite 200  
 Salem, OR 97301- 1280  
 Telephone: (503) 986 – 0322  
 Email: [Derek.Dizney@oregon.gov](mailto:Derek.Dizney@oregon.gov)

All questions must be received **not later than seven calendar days prior** to Proposal Due Date specified on the title page of this RFP.

Substantive questions and answers will be issued as official addenda to this RFP. Business Oregon reserves the right to not respond to questions it determines are already addressed in the RFP. Changes or modifications to this RFP shall be binding on Business Oregon only if in the form of written addenda issued by Business Oregon.

Business Oregon will advertise addenda only on the State of Oregon Procurement Information Network (ORPIN) (<https://orpin.oregon.gov/open.dll/>) and on Business Oregon’s internet address: <https://www.oregon4biz.com/Contracting/>. Anyone who has received a copy of this RFP from a source other than Business Oregon is responsible for checking with designated procurement staff, ORPIN or the Business Oregon’s internet address for the existence of any addenda. Proposers are responsible for

checking these sources to determine whether or not an addendum has been issued, and then must either download or request an electronic copy. Aside from requested copies, Business Oregon is not responsible for sending addenda to any potential Proposers.

Business Oregon may require any clarification it needs to understand a proposal.

## **1.4 PROTESTS AND REQUESTS**

### **1.4.1 RFP PROTESTS AND CHANGE REQUESTS**

Proposers who believe RFP specifications are unnecessarily restrictive or limit competition, or who wish to suggest scope of work elements or revised scoring criteria more likely to assist Business Oregon in selecting the best Proposer, are encouraged to submit a solicitation “protest”. All protests concerning the RFP, including requests for change of particular provisions, specifications, or the Agreement terms and conditions, must be submitted in writing to the procurement staff person identified in section 1.3 **not later than seven calendar days prior to** the Proposal Due Date specified on the cover page of this RFP. A protest must clearly and specifically explain the reason(s) for the protest and specify any proposed changes to the RFP specifications. Business Oregon will respond to protests in writing. Business Oregon will not consider any solicitation protest submitted after the deadline established in this subsection.

### **1.4.2 AWARD PROTEST REQUIREMENTS**

Every Proposer that submits a proposal will be notified of its selection status. Any Proposer who claims to have been adversely affected by the selection of a competing Proposer must deliver a written protest to the procurement staff person identified in section 1.3 within **seven calendar days after receiving notification of its selection status**. A protest must meet all applicable requirements in OAR 137-047-0740. Business Oregon will review protests and respond in writing. Business Oregon will not consider any protest submitted after the protest submission deadline established in this subsection.

## **1.5 DUE DATE**

Proposals must be received by **24 June 2019, on or before 3:00 p.m. Pacific Time** (“Proposal Due Date”). Proposals will be opened at this time. Absolutely no Proposals will be accepted after this date and time. Business Oregon 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; it will be too late to correct any problems.**

## **1.6 ELECTRONIC RESPONSES BY EMAIL ONLY**

**Only electronic proposals sent by email are acceptable.** Proposals sent by fax, regular mail, and physical deliveries will not be accepted. **The email subject or reference line for all submittals must include the RFP title and RFP number.**

Proposals will be received only at the following email address: [Derek.Dizney@oregon.gov](mailto:Derek.Dizney@oregon.gov)

Business Oregon will accept Proposals in electronic files compatible with Microsoft Office or Adobe PDF applications. The signed cover sheet required by section 1.9 must be submitted as a .PDF file. Files in excess of 50 megabytes must be submitted incrementally, i.e. multiple emails (please label accordingly). Proposals must not be submitted as .zip, .exe or .com files. If your proposal exceeds the 50-megabyte limit of Business Oregon’s email system, instead of incremental submission, you may request a link to Business Oregon’s Microsoft One Drive to upload your proposal by contacting the person identified in Section 1.3 no later than two days prior to the Proposal Due Date.

## **1.7 NO LATE OR MISDIRECTED SUBMISSION OF PROPOSALS**

Submittals that are late or misdirected will be considered non-responsive, without exception. Business Oregon is not responsible for errors of any kind involved with electronic submission, nor for notifying Proposers of complete or incomplete receipt of a proposal.

## **1.8. FORMAT FOR PROPOSAL SUBMISSIONS AND PAGE LENGTH LIMITATION:**

Proposals must be organized in accordance with the list of scored criteria in Section 2.2. A proposal must not exceed 10 pages, *excluding* cover sheet (Attachment A). If 10 pages seems insufficiently few to allow a reasonable response to the requested information, please submit a solicitation protest per section 1.4.1. The Proposer may choose how to allocate pages among any sections within the overall page limit.

If a Proposer submits a proposal exceeding these limits, Business Oregon will consider the pages up to that allowable number and discard all subsequent pages.

One 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 pages. Any page or partial page with substantive text, graphics, charts, resumes, etc., will be counted as one page. Proposers may use their discretion for the font size of other materials (e.g., graphics, charts).

## **1.9. COVER SHEET**

Every proposal submitted must include a completed Cover Sheet (substantially in the form of 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. The signed cover sheet must be emailed as a .PDF file.

## **1.10 PUBLIC RECORDS**

This RFP, and one copy of every proposal accepted in response to it, will be kept by Business Oregon and made a part of its records. All accepted Proposals will become part of the public file without obligation to Business Oregon. If a proposal contains any information that may be exempt from disclosure under the Oregon Public Records Law, ORS 192.311 through 192.478, the Proposer must clearly designate that portion of its proposal it considers to be exempt, along with a justification and citation to the authority relied upon. Application of the Uniform Trade Secrets Act (UTSA), ORS 646.461 and 646.475, and the Oregon Public Records Law will determine whether any information is actually exempt from disclosure. Identifying an entire proposal as exempt from disclosure is not acceptable and will not be effective to exempt the proposal or any part of it from disclosure. Failure to identify the portion of the proposal claimed as exempt from disclosure, and to specify a justification and the authority relied upon, will be deemed a waiver of any future claim based on disclosure of that information.

## **1.11 TERMS AND CONDITIONS**

By submitting its proposal, the selected Proposer agrees to be bound by the terms and conditions of the Agreement that is attached to this RFP as Attachment B, including requirements for insurance as determined by Business Oregon. **Any proposal that is conditioned on Business Oregon's acceptance of any other terms and conditions or rights to negotiate will be rejected as non-responsive.** However, Business Oregon in its sole discretion reserves the right to negotiate any term or condition of the Agreement.

**PROPOSAL SUBMISSION CHECKLIST FOR USE BY PROPOSERS - INFORMATION ONLY**

- Due Date Met
- Proposal Addressed Correctly
- Proposal in Acceptable Electronic File Type(s)
- Proposal Format and Page Limit Requirements Met
- Signed Cover Sheet Included
- Proposal Does Not Include Conditional Language About Terms and Conditions
- Public Records Disclosure Exemption Statement Included (If Applicable)

**2.0 INFORMATION REQUESTED FROM PROPOSERS; SCORED CRITERIA**

Scoring is based on the categories described below. If not specifically requested here, Proposers must also describe how they meet any other requirements that may be specified in Section 1 above.

a. Proposer’s General Qualifications and Capabilities 40 Points

Demonstrate your team’s qualifications and experience relating to the requested Services. Response should address the following:

- (i) Explain your ability and capacity to directly provide Pre-Press Services described in Section 1.2, and describe the scope of services your team is able to provide. Please include a firm resume describing your team and each member’s experience in the industry.
- (ii) Explain your ability and capacity to directly provide, or subcontract for, the Related Services described in Section 1.2, and describe the scope of services your team, or subcontractors, are able to provide.
- (iii) Explain how you can accommodate any level of work assigned under a WOC, including any possible limitations. Describe if there are issues that may affect ability to respond to Services contemplated by this RFP.
- (iv) Explain your team’s ability to manage short turn-around times for projects requested by Business Oregon through WOCs.
- (v) Explain your customer service commitment, including, but not limited to: your ability to respond to communications (during regular business hours and off-hours), order requests, problem-solving issues/defects with products, and cost or no-cost drop-in meetings/consultations, etc.
- (vi) Provide samples of work performed within the last five years, that match or closely relate to those Services described in Section 1.2. For avoidance of doubt, this should be in an electronic portfolio, and not physically mailed. Please refer to Section 1.6 regarding email size limitations and alternative methods for submission. Please focus on Pre-Press Services specifically, and detail which elements of the sample were provided by your team directly, and which elements were subcontracted for (and identify the subcontractor(s)).

b. Cost Proposal 30 points

Provide detailed cost projections for your services and the hypothetical specific work described below. Costs may be provided by service category on an hourly rate basis and include fixed costs for items that may have published costs, such as various charges for copying, insertion orders, and subcontractors. The below are historic examples of actual orders with dates shown to illustrate turn-around time. These examples are for proposal comparison purposes only, not actual orders that will be placed by Business

Oregon at this time. NOTE: Highest scores for this Section will be awarded to Proposers who can provide the described Services at the lowest prices. Please provide a price quote for each item.

### **Your Services, Generally**

Please provide the costs for each of your services you describe in response to Section 2(a)(i) above, and stating whether they are flat rate or hourly.

### **Print Production**

#### **Digital Print**

Work order submit date: Feb 27, 2019      Work must be completed by: Mar 1, 2019

Print Quantity: 250 digital prints. Specifications: 14" x 8.5" double parallel fold to finished 3.5" x 8.5" on 80# cover; full color both sides.

#### **Traditional Press**

Work order submit date: Mar 15, 2019      Work must be completed by: Mar 29, 2019

Print Quantity: 250. Specifications: 11" x 17", finished size 8.5" x 11", saddle stitched, 36 pages, self-cover 80# white matte, inside 60# white text gloss, 4/4 with bleeds.

### **Mailing Services**

Work order submit date: Oct 22, 2018      Work must be completed by: Nov 14, 2018

- Layout, mail prep, postage, print 13,500 letters (first type of letter)
- Print 13,500 donation remit envelopes
- Print 13,500 color envelopes with paid postage
- Print 8,000 window envelopes with paid postage
- Print 8,000 window envelopes, no paid postage
- Layout mail prep, postage, print 5,777 letters (second type of letter)
- Layout, mail prep, postage, print 500 letters (third type of letter)
- Layout, mail prep, postage, print 1,440 letters (fourth type of letter)
- Compile and mail: letter, 100 donor inserts, and box of 40 bottles to 45 recipients, each
- Print 15,000 bookmarks
- Print 35,000 donor inserts

### **Signage**

#### **1) Trade Show Banner/Signage**

Work order submit date: Jan 3, 2019      Work must be completed by: Jan 14, 2019

Print one vinyl banner with built pull-up stand-alone hardware, full color, 36' w x 92' h, silver casing, electronic art file supplied.

#### **2) Conference Signage/Foam Core**

Work order submit date: Apr 21, 2017      Work must be completed by: Apr 26, 2017

Create two 3' x 4' 2-color posters, mounted on foam core, electronic art file supplied.

**Promotional Items**

**Trade Show Bookmarks**

Work order submit date: Jan 3, 2019      Work must be completed by: Jan 18, 2019

Print 500 bookmarks. Specifications: finished size 2” x 8”, 16pt gloss finish, 4/4 with bleeds.

**Graphic Design & Digital Layout**

**Annual Report**

Work order submit date: Jan 18, 2019      Work must be completed by: Feb 22, 2019

Develop graphic design, layout, and execute all elements of production from Business Oregon-supplied content, copy, and data. Design using Business Oregon brand and style guide elements (colors, type face, etc.). Report maximum length should be 8 finished (8.5" x 11") pages, which includes self-cover. Report elements are:

- 1)      Introductory Letter from Director and/or Chair of Business Oregon
- 2)      Business Oregon Mission, Vision, Values, Strategic Priorities
- 3)      Ten Key Performance Measures, with Explanation and Results
- 4)      Strategic Plan Metrics, with Explanation and Results
- 5)      3-5 Success Stories, <100 words each.
- 6)      Data visualizations
- 7)      Cover Elements: logo, web address (<https://www.oregon4biz.com/>), mailing address, report title (FY 2018 Annual Report)

Report quantity is 500. Specifications: 11" x 17", finished size 8.5" x 11", saddle stitch, 4/4 with bleeds; 8 pages, self-cover 80# matte, inside 60# text gloss. Final Report files are to be provided to Business Oregon for website posting. Business Oregon requires the following approvals and deadlines:

- 1)      Design concept no later than Jan 25, 2019
- 2)      First draft no later than Feb 1, 2019
- 3)      Final draft no later than Feb 8, 2019
- 4)      Delivery to Business Oregon’s Salem Office no later than Feb 22, 2019.

c. Geographic Proximity 10 points

Due to the nature of the Business Oregon’s mission and the projects that it facilitates, Business Oregon requires the Contractor to be geographically close to Business Oregon to facilitate faster project review and approvals, delivery of files, pick-up of materials, and other Services. The following points will be awarded based on the distance between Business Oregon’s Salem office and the Proposer’s local office. For purposes of this evaluation criterion, Business Oregon does not require that the finished products be produced within close geographic proximity to Business Oregon’s Salem office. Rather, a sufficiently staffed office or other acceptable accommodations may be provided to meet this need. The following point allocation will be awarded based on the distance between Business Oregon’s Salem office and the Proposer’s local office listed for these Services.

- 60 miles                      10 points
- 61-100 miles                5 points
- >101 miles                   0 points



**CLOSEST PRODUCTION FACILITY LOCATION INFORMATION:**

Provide the full name and address and telephone number for your closest production facility:

\_\_\_\_\_

d. References

20 Points

Please provide three clients/references that you have completed similar work for. Please provide the information in a format similar to the table format below. Client projects should be similar in type, size, dollar amount, etc. to Business Oregon’s needs. Projects performed within the last five years are preferred (projects may be identical or different than those described in response to Section 2(a)(vi) above). Include all information requested below; email and phone numbers of clients are required.

	<b>Name of entity, point of contact, address</b>	<b>Email and phone</b>	<b>Types of projects and services provided</b>	<b>Date of Work and \$ volume</b>
<i>example</i>	<i>Acme, Inc. Bob Smith, Manager 1234 Main St. Salem, OR 97201</i>	<i>503-288-8888 503-289-9999 Bob.smith@acme.com</i>	<i>Digital printing, press printing, 4 canvas banners, three 10,000-piece mailings</i>	<i>1/1/18-12/31/18 \$150,000 in projects.</i>
1.				
2.				
3.				

**3.0 EVALUATION PROCESS**

The selection process will be administered in accordance with the authority and procedures in ORS 279B.060, and OAR Chapter 123, Division 6 and OAR 137-047-0261. Proposals received on time will be reviewed against any Pass/Fail criteria. Proposals meeting those criteria will be forwarded to an evaluation committee that will independently score each proposal according to the scored criteria set forth in Section 2.

Without limiting the possibilities allowed under OAR 137-047-0261, Business Oregon may, at any time in its sole discretion, (a) provide notice to a Proposer of selection for contract negotiation and possible award; (b) gather more information for evaluation, (c) provide notice to a Proposer(s) of non-selection; or (d) provide notification to Proposer(s) that the RFP is cancelled (and either that the RFP may be re-solicited or that Business Oregon intends to take no further action with respect to the RFP).

Business Oregon reserves the right to employ any of the procedures allowed by Oregon Administrative Rule 137-047-0261, such as additional competitive steps or Proposals, modified or additional selection criteria, interviews, competitive simultaneous discussions or negotiations, etc. Information or issues revealed by a Proposer’s questions or proposal, may, at Business Oregon’s sole discretion, trigger such modifications or further steps. If there are further steps beyond the initial proposal and scoring, the scoring results from the first step and any subsequent step will be added together. Proposers excluded from participation in any subsequent evaluation step will be notified and given a right to protest that exclusion.

Selection for negotiation will be based primarily on the highest scoring proposal, although Business Oregon reserves the right, pursuant to ORS 279B.100, to cancel the solicitation or reject any or all proposals if Business Oregon determines that the cancellation or rejection is in its best interest. If negotiations are not successful, Business Oregon may terminate negotiations with the top ranked

Proposer and may begin negotiations with the next highest ranked Proposer. Preferences described in OAR 137-047-0260 (2)(d) will be followed when applicable.

Business Oregon is not liable for any costs a Proposer incurs while preparing or presenting its proposal or during further evaluation stages.

**RFP C2019214 ATTACHMENT A – COVER SHEET**

\_\_\_\_\_ (Legal Name of Proposer) acknowledges receipt of any and all addenda to this RFP, and accepts all the terms and conditions contained in this RFP and the attached sample Agreement for Services (as they may have been modified or reserved for negotiation).

Mailing Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Corporation  Professional  Corporation  Partnership  Limited Partnership  
 Ltd. Liability Company  Ltd. Liability Partnership  Sole Proprietorship  Other \_\_\_\_\_  
Originally registered in which state? \_\_\_\_\_ Resident Bidder per ORS 279A120? Y  N

Project Manager's email address \_\_\_\_\_  
Telephone \_\_\_\_\_ Other \_\_\_\_\_  
Type name of person(s) authorized to sign Contract \_\_\_\_\_

- Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin; or in its awarding of subcontracts in regard to the certification of a business under ORS 200.055.
- Proposer and Proposer's employees, agents, and subcontractors are not included on: the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>, or the government wide exclusions lists in the System for Award Management found at: <https://www.sam.gov/SAM/>
- Proposer certifies that, to the best of its knowledge, there exists no actual conflict between the business or economic interests of Proposer, its employees, or its agents, on the one hand, and the business or economic interests of the State of Oregon ("State"), on the other hand, arising out of, or relating in any way to, the subject matter of the RFP. If Proposer has a potential or reasonably perceived financial or other interest in the outcome of the services described in this RFP, please describe on a separate sheet and a plan for mitigating the conflict. If any changes occur with respect to Proposer's status regarding conflict of interest, Proposer shall promptly notify the State in writing.
- I have knowledge regarding Proposer's payment of taxes and by signing below I hereby certify that, to the best of my knowledge, Proposer is not in violation of any tax laws of the state or a political subdivision of the State, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
- All contents of the proposal (including any other required forms or documentation) and this Attachment A are truthful and accurate and have been prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.
- Proposer understands that any statement or representation it makes, in response to this RFP, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "false claim" under the Oregon False Claims Act, ORS 180.750 to 180.785.

By signature below, the undersigned Authorized Representative on behalf of Proposer certifies to the best of his or her knowledge and belief that the responses provided on this form are complete, accurate, and not misleading.

\_\_\_\_\_  
Authorized Signature Date  
\_\_\_\_\_  
Print Name Title

## **RFP C2019214 ATTACHMENT B – Sample Contract**

### **STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES AGREEMENT FOR SERVICES NO. \_\_\_\_\_ “Printing, Graphics, and Miscellaneous Production Services”**

This Agreement for Services (“AFS” and “Agreement”) is between the State of Oregon, acting by and through its Oregon Business Development Department, hereafter called, “Department” or “OBDD,” and \_\_\_\_\_, hereafter called “Contractor.” Department Contract Administrator for this Agreement is: \_\_\_\_\_. Department may change the Contract 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 perform tasks and activities within the scope of RFP # C2019214. This Agreement, by itself, is not a binding contract. Rather, Department and Contractor intend to enter into binding 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 (Standard Terms and Conditions) applicable to the services (the Work Order and the standard terms and conditions set out in Exhibit B make up a “Work Order Contract” or “WOC”). Each such WOC so executed shall create a separate contract between the parties (consisting of the Work Order together with both the standard and special 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 this Agreement for Services terminated or extended, Work Order Contracts may not be issued under this Agreement for Services after 30 June 2026, which is the termination date of this AFS.

#### **WORK ORDER CONTRACT REQUIREMENTS**

If Department offers Contractor a WOC under this Agreement, 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 notify Department, Department may solicit separately for that work, or take other action it deems 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. If negotiations fail to conclude in an agreement, Department may offer solicit separately for that work, or take other action it deems 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.

## SCOPE OF SERVICES

The Statement of Work contained in each Work Order Contract (“WOC”) must be within the scope of what is described in this Section. All work will be specified on a project-by-project basis by the issuance of a WOC, to be completed within time constraints established by the Communications Team or Arts Commission/Cultural Trust Team of Department, including, but not limited to, the following tasks:

### **Pre-Press Services**

- a. *Digital Design and Layout.* Department will typically provide camera-ready digital artwork, but will occasionally require layout and design services from Contractor. Contractor should also be able to address technical issues with digital files, such as separation adjustment, conversion and color correction. These services must produce products that are in-line with:
  - Department’s style guide (only for WOC issued by the Marketing team)
  - Arts Commission and Cultural Trust’s style guides (only for WOC issued by Arts Commission and Cultural Trust, respectively)
  - ADA Title II requirements by meeting WCAG 2.0 Level A and Level AA standards.
- b. *Creation of graphic art.*
- c. *Type setting services.*
- d. *Design services.*

### **Related Services**

- a. *Content writing/editing services.*
- b. *Photography and videography services.*
- c. *Print Production.* Booklets, brochures, postcards, one-page handouts, etc. Digital, offset and large-format printing will be required. Binding, trimming, die-cutting, and other standard print-related capabilities are expected.
- d. *Mailing Services.* Printing, sorting, postage, delivery to post office.
- e. *Signage.* Vinyl banners, trade show signage, foam core signs, etc. Grommeting, stitching, mounting hardware and other standard signage-related capabilities are expected.
- f. *Specialty Production.* Creation of specialized mechanical and/or electronic promotional items/materials. *E.g.* banners that roll up/out of top-mounted hardware and/or rotates by mechanical means.
- g. *Promotional Items.* Promotional giveaways such as pens, USB drives, magnets, etc. imprinted with Department logo or other information.
- h. *Pickup/Delivery Services.* Pickup and delivery with no additional cost to Department, for both its Salem and Portland offices. For cost, Contractor will also pack and ship to other destinations as directed by Department.

This is not an exclusive list. Department reserves the right to contract for other services and goods reasonably related to visual graphics and printing.

To ensure compatibility, product quality, and Department’s ability to use finished electronic files for other purposes, the Contractor shall use software compatible with the Department’s software. The Department currently uses: Adobe Creative Suite cloud versions and Microsoft Office 2016. Further, to facilitate bid requests and communication of project updates, the Contractor shall have and maintain one email account and have access to the internet throughout the life of this Agreement, and subsequent WOCs.

Contractor may either produce items directly or serve as a broker, subcontracting work out to a pre-approved list of firms. When sub-contracting, Contractor is responsible for quality and satisfaction of work by Department.

Contractor must select any subcontractor for the printing services through a competitive bid process that complies with the Public Printing Law, ORS 282.020(3) and 282.210 to 282.990, the Attorney General’s Model Public Contract Rules.

All sub-contractors must be pre-approved by Department, with new sub-contractors added to the approved list on a case-by-case basis at any time. The approved subcontractors at the effective date of this Agreement are:

	Name of entity, address	Contact Person, Email	Primary Service Provided	Other capabilities/services
<i>example</i>	<i>Johnson Printing 234 Main St. Salem, OR 97201</i>	<i>Abe Smith, Manager Abe.smith@johnson.com</i>	<i>Digital and offset printing.</i>	<i>Large format printing, finishing, mail-house</i>
1.				
2.				
3.				

If no subcontractors are listed here, Contractor is the only firm authorized to perform work as a result of this Agreement.

ORS 282.210 requires that, unless authorized in advance in writing by State, Contractor shall perform all printing and binding work subject to this Contract within the State; and Department will make no payment for printing or binding work subject to this Agreement for Services and any Contract unless such work was done within the State. If Contractor’s production plant location identified in a WOC is outside the State, Department’s signature to the WOC is authorization to Contractor to perform printing and binding work at that named location. Contractor shall not close or relocate its printing operations conducted at the facility named in a WOC without the prior written consent of Department.

**CONTRACTOR DATA AND TAX LAW CERTIFICATION**

**Name (tax filing):** Contractor

**Address:** Address, City, State and Zip

**Email:** Email

**Telephone:** Telephone. **Facsimile:** \_\_\_\_\_

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

**Business Designation (check one):**

<input type="checkbox"/> Private for-profit, or non-profit Corporation	<input type="checkbox"/> Professional Corporation
<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Partnership
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited Liability Partnership
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> 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 Department encourages Contractor in any contracting activity to follow good faith efforts as described in ORS 200.045. Additional resources are provided by the Certification Office for Business Inclusion and Diversity (COBID) Program Manager at <https://www.oregon4biz.com/How-We-Can-Help/COBID/Certified/>. Also, COBID maintains a list of certified firms and can answer questions. Search for certified COBID firms on the web at: <https://oregon4biz.diversitysoftware.com/>.

**Certification:** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: a) the number provided by Contractor to Department is its 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.

Contractor, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by the terms and conditions of this Agreement and any WOC issued under this Agreement.

**CONTRACTORS: NO SERVICES MUST OCCUR PRIOR TO NECESSARY STATE APPROVALS**

**CONTRACTOR**

_____ Approval Signature	_____ Title	_____ Date
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**DEPARTMENT**

_____ Approval Signature	_____ Title	_____ Date
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**Oregon Department of Justice**

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Approved as to Legal Sufficiency (All Contracts over \$150,000, unless exempted)

Date



**Exhibit A to AFS – Form of Work Order**

**Work Order Contract #** \_\_\_\_\_ **Agreement for Services #** \_\_\_\_\_  
Project Name and Location: \_\_\_\_\_

This Work Order Contract is between the State of Oregon acting by and through its 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 the terms and conditions of the Agreement for Services between Department and Contractor dated as of \_\_\_\_\_. Department and Contractor agree and acknowledge that on the Effective Date, this Work Order Contract is 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 Exhibits B and C means “Work Order Contract,” Department and Contractor agree and acknowledge that this Work Order Contract is separate from and independent of all other Work Order Contracts.

No Services shall occur until this Work Order Contract 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 is described in the Agreement for Services and inserted here in each final Work Order Contract. Include production facility location for printing services.]

**Compensation Provisions [Placeholder]**

**[OPTION 1]**

- a. The Department shall pay the Contractor \$\_\_\_\_\_ per \_\_\_\_ for Services performed and that are accepted by the Department as being in conformance with the requirements of this Work Order Contract.
- b. Subject to the policies and reimbursement rates set forth in the Oregon Accounting Manual as of the date the Contractor incurs mileage for such travel, the Department shall reimburse the Contractor for mileage incurred for that travel but only if the total round trip mileage exceeds X miles. The Oregon Accounting Manual is available at:  
<https://www.oregon.gov/das/Financial/Acctng/Pages/oam.aspx>
- c. The cumulative maximum amount payable to the Contractor for all Services performed, all travel time incurred, and all mileage eligible for reimbursement is \$\_\_\_\_\_ under this Work Order Contract

**[OPTION 2]**

The maximum, not-to-exceed compensation payable to the Contractor under this Work Order Contract, which includes any allowable expenses, is \$\_\_\_\_\_, and shall not exceed \$\_\_\_\_\_ in any event, to be paid at the rate(s) of \_\_\_\_\_.

Contractor, by the signature below of its authorized representative, acknowledges that it has read the Work Order Contract, understands it, and agrees to be bound by its terms and conditions.

The undersigned certifies and swears under penalty of perjury that: I am authorized to act on behalf of Contractor, I have authority and knowledge regarding Contractor's payment of taxes, the taxpayer identification number and other information provided on Contractor's IRS W-9 form is correct, Contractor is not subject to tax withholding, and Contractor is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.657 and local taxes administered by the Department of Revenue under ORS 305.620. Contractor shall continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract.

CONTRACTOR: NO SERVICES MAY OCCUR PRIOR TO NECESSARY STATE APPROVALS
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**CONTRACTOR**

Approval Signature	Title	Date
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**DEPARTMENT**

Approval Signature	Title	Date
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**Oregon Department of Justice**

Approved as to Legal Sufficiency (All Contracts over \$150,000, unless exempted)	Date
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## Exhibit B to AFS – Standard Terms and Conditions

- 1. Effective Date and Duration.** This Contract shall become effective on the Effective Date (as defined in the Work Order). Unless terminated, this Contract shall expire when Department accepts Contractor's completed performance. Expiration shall 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 the Work Order. Contractor agrees to perform the Services in accordance with the terms and conditions of this Contract. Contractor may not render any Services, and Department shall have no obligation to pay for any Services rendered, prior to the Effective Date.
- 3. Consideration.**
  - a.** Department agrees to pay Contractor up to the sum set forth in the Work Order for rendering the Services required by this Contract. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is set forth in the Work Order.
  - b.** Payments to the Contractor shall be made only in accordance with the Work Order following Department's review and approval of products resulting from the Services. Payment for all Services performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum set forth in the Work Order, which includes any allowable expenses. Contractor shall not submit invoices for, and Department will not pay, any amount in excess of the maximum compensation set forth in the Work Order.
- 4. Contract Documents.** In the event of a conflict or inconsistency between the various parts of this Contract, the parts of this Contract shall be given precedence in the following descending order: (1) these standard terms and conditions, other than Exhibit 1 to these standard terms and conditions, (2) Exhibit 1 (Insurance) to these standard terms and conditions, and (3) the Work Order form.
- 5. Independent Contractor; Responsibility for Taxes and Withholding.**
  - a.** Contractor shall perform all Services as an independent contractor. The Department reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services and Work Product, however, the Department may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.
  - b.** If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Services to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Services under this Contract.
  - c.** Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the Department, as those terms are used in ORS 30.265.
  - d.** 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.

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

a. Contractor shall not enter into any subcontracts for any of the Services required by 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 provisions to ensure that Department will receive the benefit of subcontractor performance as if the subcontractor were the Contractor with respect to Sections 5, 6, 7, 9, 10, 11, 14, 15, 16, 18, and 23. 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 inure to the benefit of the parties, their respective successors, and permitted assigns, if any.

c. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Department's prior written consent.

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

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

**9. Representations and Warranties.**

a. **Contractor's General 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) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

b. **Contractor's Tax Compliance Representations and Warranties.** Contractor represents and warrant to Department that Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date of this Contract, faithfully has complied with:

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

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

(iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

(iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**c. Policies Against Sexual Harassment, Assault, and Discrimination.** Contractor certifies that it has a policy and practice of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class that meets the requirements described in ORS 279A.112, and warrants that it will maintain the policy and practice in force during the entire term of this Contract.

**d. 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 intellectual property rights therein that Contractor is required to deliver to Department in connection with the Services.

**b. Original Works.** All Work Product created by Contractor in connection with the Services, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Department. Department and Contractor agree that such original works of authorship are “work made for hire” of which Department is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created in connection with the Services is not “work made for hire,” Contractor hereby irrevocably assigns to Department any and all of its rights, title, and interest in all original Work Product created in connection with the Services, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Department’s reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Department. Contractor forever waives any and all rights relating to original Work Product created in connection with the Services, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

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

In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Department’s behalf and in the name of the Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon,

distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Department's behalf.

**c. Contractor Intellectual Property.** In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, 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.

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

## **11. Indemnity.**

**a.** Contractor will defend (subject to ORS chapter 180), save, hold harmless and indemnify 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, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including attorneys' fees resulting from, arising out of or related to the activities of Contractor or its subcontractors, agents or employees under this Contract.

**b.** Without limiting the generality of Section 11.a, Contractor will defend (subject to ORS Chapter 180), save, hold harmless and indemnify 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, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including attorneys' fees, arising out of or related to any claims that Contractor's Services, the Work Product, or any other tangible or intangible items delivered to Department by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or Department's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided that Department shall provide Contractor with prompt written notice of any infringement claim.

**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 shall provide insurance as indicated on Exhibit 1, attached to these standard terms and conditions and incorporated by this reference.

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

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

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

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

(iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, including but not limited to a violation of Section 9.b or a failure to comply with Section 29, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms, and fails to cure such breach, default or failure within the time period set forth in Department's notice and in accordance with a written plan of cure acceptable to Department, if Department requests that Contractor prepare and submit to it a written plan of cure.

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

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

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

(iii) withholding all monies due for other Services and Work Products until any inadequate or defective Services and Work Products have been corrected by Contractor and accepted by Department;

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

(v) exercise of its right of setoff.

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

**c. Default by Department.** Department shall be in default under this Contract if:

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

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

**d. Contractor's Remedies for Department's Default.** In the event Department terminates the Contract under Section 13.e(i), or in the event Department is in default under Section 13.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 13.e(iii), Contractor's sole monetary remedy shall be (a) with respect to Services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable-based Services, a claim for the sum designated for completing the deliverable multiplied by the percentage of the deliverable completed and accepted by Department, less previous amounts paid and any claim(s) that Department has against Contractor. In no event shall Department be liable to Contractor for any expenses related to termination of this

Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 13.d, Contractor shall pay immediately any excess to Department upon written demand provided in accordance with Section 20.

**e. Termination.**

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

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

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

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

**(ii) Department's Right to Terminate for Cause.** In addition to any other rights and remedies Department may have under this Contract, Department may terminate this Contract immediately upon written notice by Department to Contractor, or at such later date as Department may establish in such notice, upon the occurrence of a Contractor default described in Section 13.a.

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

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

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

**(iv) Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Department all of Department's property (including without limitation any deliverables or Work Products for which Department has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Department property is expressed or embodied at that time. 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 Department's request, Contractor shall surrender to anyone Department designates, all documents, research or objects or other tangible things needed to complete the Services and the Work Products.

**14. Records Maintenance; Access.**

Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records 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 financial records and



other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments 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 shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Department's performance under the Contract is conditioned upon Contractor's compliance with the provisions ORS 279B.220, 279B.235, 279B.230, 279B.020, 279B.270, and ORS 652.220, which are incorporated by reference herein.

Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document. Without limiting the generality of the preceding sentence, Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products.

**16. Foreign Contractor.**

If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.

**17. 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.

**18. 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, 7, 8, 9, 10, 11, 12, 13, 14, 18, 23, 24, 25, 26, 27, and 28.

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

**20. Notice; Contact Information.**

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Department at the address, number or email address set forth in this Section 20, or to such other addresses or numbers as either party may indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Department, any notice transmitted by facsimile must be confirmed by telephone notice to Department's Contract Administrator. Any communication or notice given by personal delivery shall be effective when

actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Department may change the Agreement Administrator assignment by sending written notice to Contractor. Department and Contractor contact information is as follows:

For the Communications Team:

\_\_\_\_\_  
Oregon Business Development Department  
775 Summer Street, Suite 200  
Salem, Oregon 97301-1280  
E-mail:  
Phone:

For the Arts Commission/Cultural Trust Team:

\_\_\_\_\_  
Oregon Business Development Department  
775 Summer Street, Suite 200  
Salem, Oregon 97301-1280  
E-mail:  
Phone:

[Contractor Contact Information]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 21. 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.
- 22. 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.
- 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. 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 subsection b. above, 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 subsection c. 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 subsection c. 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.

**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 shall bind 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, shall be effective only in the specific instance and for the specific purpose given. The failure of Department to enforce any provision of this Contract shall 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 shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

**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.

**28. Confidential Information.**

a. In the course of performing Services under this Contract, Contractor acknowledges that it and its employees or agents may be exposed to or acquire information that is confidential to Department or Department's clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed to be confidential information of Department ("Confidential Information"). Any reports or other documents or items which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (i) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (ii) is furnished by Department to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; or (iv) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

b. **Standard of Care.** Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Department hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

c. **Cooperation.** Contractor agrees to comply with all reasonable requests by Department to ensure the confidentiality and nondisclosure of the Confidential Information, including without limitation (i) obtaining nondisclosure agreements, in a form approved by Department, from each of Contractor's employees and agents who are performing Services, and providing copies of such agreements to Department, and (ii) performing criminal background checks on each of Contractor's employees and agents who are performing Services, and providing a copy of the results to Department.

**29. Compliance with Tax Laws.** Contractor shall comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317 and 318.

SAMPLE

## EXHIBIT 1 to Standard Terms and Conditions – INSURANCE

*[NOTE: To be provided by selected Contractor(s)]*

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

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 Agreement for Services.

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 the State of Oregon, the Oregon Business Development Commission and its members, and the Oregon Business 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 Business Development Commission and its members, and the Oregon Business 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 the Oregon Business Development Department (Department).

6. **Certificates of insurance.** As evidence of the insurance coverages required by this Agreement for Services, the Contractor shall furnish acceptable insurance certificates to the Oregon Business Development Department (Department) prior to commencing the Services. The certificate will specify **"The State of Oregon, The Oregon Business Development Commission and its members, and the Oregon Business Development Department, its officers and employees"** as Additional Insureds for Automobile and General Liability. It need not reference a specific Contract 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.