

**OREGON DEPARTMENT OF ENERGY  
INFORMAL SOLICITATION RFP # 09-10  
ORPIN #330-1011-08**

**Renewable Energy Project Feasibility Studies**

**Issued: October 2, 2008      Deadline: October 24, 2008**

**Introduction and Background**

The Oregon Department of Energy (ODOE), in coordination with the Oregon Economic and Community Development Department, is directed by Governor's Executive Order No. 06-02 to "establish and administer a renewable energy feasibility revolving loan fund to assist community renewable energy projects develop the information needed to assess the technical feasibility of developing renewable energy projects".

The Community Renewable Energy Feasibility (CREF) fund has been established to support feasibility studies for community renewable energy projects and to encourage widespread development and utilization of Oregon's many renewable energy resources. The objective is to reduce Oregon's dependence on fossil-based energy sources and to promote sustainable economic development for communities throughout the state. By offering support to promising renewable energy projects early in the feasibility assessment stage, the CREF program will promote sound financial and engineering analysis for project development.

A feasibility study for the purposes of the CREF program is an analytical tool that assists in determining the viability of a "community renewable energy project." The study should entail a comprehensive analysis that provides the necessary information to determine if a development project is technically and economically viable. It should evaluate all aspects of the project that together determine if the expectations of the project are likely to be met.

The CREF fund will provide up to 75% of the cost of a study for projects selected under this RFP, with a maximum award of \$50,000 per project. Successful proposers must provide a 25% match, of which half may be "in-kind" contributions. The CREF fund will utilize available funds on a revolving basis, such that funding awarded for studies of projects that are developed will be repaid by the developer and reallocated to future studies. CREF awards will not have to be repaid if the project is not determined to be feasible.

**Eligibility**

***Eligible Applicants***

CREF program funds may be made available to any entity in Oregon that seeks funding for a feasibility study for a renewable energy project that will benefit Oregon energy consumers and communities.

Eligibility is not limited by utility service territory. Entities eligible for CREF program awards may include but are not limited to:

- Privately-owned, for-profit entities
- Non-profit corporations
- Schools
- Special districts, e.g., as listed in ORS Chapter 198
- State agencies including agencies of higher education
- Councils of government
- Regional entities such as Metro
- Tribes

Municipal entities are eligible to apply for CREF funds; however, applicants may be directed to the Renewable Energy Feasibility (REF) program administered by the OECDD. The REF program provides a similar funding structure to CREF but is targeted to renewable energy feasibility studies performed for municipally owned projects.

### ***Eligible Projects***

Studies must be for a renewable energy construction project for the purpose of generating electricity, heat and/or fuel. Projects that would qualify as a “Renewable Resource Project” under Oregon’s Business Energy Tax Credit (BETC) or State Energy Loan Program (SELP) may be considered for CREF funds. For electricity production, studies are limited to development projects with minimum capacity of 25kW and a maximum of 10MW. For heat and/or fuel generation projects, eligibility will not be limited by project size. However the selection process for each round of funding will favor development of multiple small scale projects over individual larger scale projects.

It is unlikely that pilot demonstration and/or research and development projects will qualify for funding under the CREF program.

The purpose of this program is to promote development of community renewable energy projects by offering an incentive during the feasibility phase to support sound financial and engineering analysis of projects that have a high likelihood of being built. This criterion will favor projects that incorporate technologies with a demonstrated maturity in the marketplace and proven commercial viability.

Further, the developer must be willing and committed to developing the construction project if it is deemed feasible through the course of the study and terms of the award.

### **Scope of Work**

Proposers who are awarded a contract (Recipient) under this RFP will be responsible for performing or retaining a consultant to perform the feasibility study described in the proposal.

Recipients will have a limited right of first refusal to use the results of any CREF-funded study; however, once the time for such first refusal right expires, in the event a Recipient does not proceed with development of the project, ODOE may make the results of any feasibility study funded by the CREF Program available to any person or entity with an interest in developing the project. Work products held by a Recipient that are created using funds from the CREF Program shall be subject to the Oregon Public Records Law and other public information laws. Contracts may include provisions to protect intellectual property rights, on a case-by-case basis and consistent with applicable law.

The Recipient must provide 25% of the cost of the study, half of which may be in-kind contributions from the Recipient. Qualifying in-kind contributions include payments to others for goods or services required to complete the study. Recipient or project overhead or indirect expenses are not eligible in-kind contributions. Proposers are encouraged to request a determination in writing from the CREF Program Coordinator (see page 5) prior to submitting a proposal.

Recipient will be required to provide a detailed accounting of expenditures for all funds committed under the contract, including the amount awarded by ODOE for the study, and the required matching funds.

### **Project Budget and Duration**

The maximum amount for a single award under this RFP is \$50,000. The Department of Energy anticipates that most awards will be in the \$10,000 to \$30,000 range. The Department of Energy, in consultation with the evaluation committee for this RFP, will determine the amount of each award.

The duration of each contract executed under this RFP is contingent on the type of project described in the proposal, and the anticipated time required to complete the project.

### **Proposal Requirements**

**Proposals must be typewritten, single-sided on standard (8½" x 11") paper. Submit the original plus six (6) copies of the complete proposal (Summary and Narrative). Staple or clip proposals; do not use plastic covers, 3-ring binders, or other materials that are not readily recyclable. Proposals that do not meet the requirements of this RFP may be rejected as nonresponsive.**

**Proposals must include the following:**

#### **A. Proposal Summary**

Proposers must use the form provided as Attachment 1 to this RFP. The summary form must be signed by Proposer's authorized representative. All sections of the form must be completed, or the proposal may be rejected.

#### **B. Proposal Narrative**

The Proposal Narrative is limited to 10 pages, excluding the 2-page Summary form. The Proposal Narrative must include the following:

1. Description of the feasibility study, including but not limited to:
  - a. Describe the scope of the study and specific deliverables to be provided by the consultant.
  - b. What questions will be answered to determine whether or not the project is feasible?
  - c. What data will be collected and analyzed to answer these questions?
  - d. What specific activities will be undertaken to accomplish the study?
  - e. What is the timeframe for the study (anticipated start and end dates) and what is the estimated cost of the study?
2. Community and energy improvements. Use this section to describe the community and energy benefits of and need for the project, including:
  - a. How may the project increase the community's energy security and/or reliability?
  - b. What is the potential for job creation and/or retention if the project is built?
  - c. What is the estimated impact of the proposed project on the local economy and infrastructure?
3. Development potential. The CREF program was created to increase development of community renewable energy projects in Oregon. One criterion for selection under this RFP is the likelihood that the project will developed. Include the following information in your proposal:
  - a. Demonstrated maturity of the renewable energy technology to be used in the project.
  - b. Estimated total cost of development, and amounts and sources of financial support for the project.
  - c. Anticipated financial payback period for the project.
  - d. List of stakeholders who are or will be involved in the project, including names and contact information (telephone number, mailing address, email address).
  - e. Project Team: include a list with contact information, resumes, and descriptions of similar projects that were successfully completed.
  - f. Overview of next steps, including timeline, design and implementation approach.
4. Other information. Within the 10-page limit, you may include additional information to be considered by the Evaluation Committee. The additional information will be evaluated in light of the selection criteria listed below.

## **Selection Criteria**

An evaluation committee will review and score all responsive proposals using the following criteria (105 total points possible):

1. Quality of project and likelihood to lead to construction (Sections 2 and 3 - 20 points)
2. Potential energy and/or environmental benefit (Section 2 - 20 points)
3. Thorough consideration of project financing including all public and private funds. (Section 3 - 10 points)
4. Economic development potential, e.g., impacts on jobs and revenue, benefit to community (Section 2 - 10 points)
5. Creation of new or enhanced infrastructure to support business and community development (Section 2 - 10 points)
6. Clearly defined study deliverables and outcomes (Section 1 - 10 points)
7. Viability, maturity and application of proposed technology solution (Section 3, 10 points)
8. Demonstrated capability of project team, based on history of successful developments (Section 3 - 10 points)
9. Diversity of projects. Awards will be made to maximize the overall diversity of renewable energy technologies and geographic regions served by the program ) (5 points)

As part of the evaluation process, the evaluation committee will recommend an amount for each award, taking into account the number of proposals received, the total amount requested by all proposers, and the funds available. If an award is less than the amount requested, the committee and/or ODOE staff may also provide recommendations or otherwise assist a proposer to determine how to conduct the study with the reduced award amount.

## **Conditions and Reservations**

Cost of developing the proposal, attendance at an interview or any other such costs are entirely the responsibility of the proposer, and shall not be reimbursed in any manner by the Oregon Department of Energy.

The Oregon Department of Energy reserves the right to request additional information from any or all proposers in order to make a selection. Such information may include references, interviews, work samples or other materials.

The Oregon Department of Energy reserves the right to issue amendments to this solicitation prior to the closing date. In the event it becomes necessary to amend any part of this solicitation, notice will be provided in the same manner as notice of the original solicitation. If amendments to the solicitation are issued, each proposer must acknowledge receipt of each specific amendment in the cover letter of the proposal. If a proposal does not include acknowledgement of amendments issued, that proposal may be deemed nonresponsive.

The Oregon Department of Energy reserves the right to cancel or postpone this solicitation at any time, or to award no contracts, or to award multiple contracts.

All proposers will be notified of the outcome of the selection. Preparation of a contract will begin immediately after notification of award.

Contractors are expected to sign the State of Oregon standard personal services contract, as revised to reflect the terms of each award. A copy of the standard contract form is attached to this solicitation (Attachment 2).

The Oregon Department of Energy may not contract with any person who is not established as an independent contractor. Information regarding establishment of independent contractor status is contained in Exhibit C of the sample contract attached to this RFP.

The Oregon Department of Energy reserves the right to extend or otherwise amend any of the terms of any contract that may be awarded as a result of this solicitation. The initial term of any contract resulting from this solicitation will depend on the project. If for any reason the Oregon Department of Energy determines there is a need to extend the time period or change the scope of work, the Oregon Department of Energy reserves the right to increase the amount of the contract to allow for additional work, extend the contract period and make other amendments as may be appropriate and necessary to carry out the responsibilities of the Oregon Department of Energy.

Contractors are required to obtain and provide evidence of the following insurance coverage: Commercial General Liability, Workers' compensation (if applicable), and automobile liability. See Section 12 and Exhibit B in the sample contract (Attachment 2). Contractors are required to provide the Oregon Department of Energy with notice of change or cancellation.

Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

### **Questions**

Questions about this solicitation should be directed to:

	<u>CREF Program Coordinator</u>	<u>Contracts Coordinator</u>
	Rob DelMar	Jan Simmons
Telephone:	503-378-8607	503-378-6968
E-mail:	<a href="mailto:robert.delmar@state.or.us">robert.delmar@state.or.us</a>	<a href="mailto:janis.h.simmons@state.or.us">janis.h.simmons@state.or.us</a>
Address:	Oregon Department of Energy, 625 Marion Street NE, Salem, OR 97301-3737	

### **Deadline**

Proposals must be received at the Salem office of the Oregon Department of Energy by 5:00 PM, Pacific Time, Friday, October 24, 2008. LATE PROPOSALS WILL NOT BE ACCEPTED. Proposals transmitted by facsimile (fax) or electronic data interchange (e-mail) will not be accepted or considered. Proposals must be mailed or delivered to:

CREF Study RFP  
Attn: Jan Simmons, Contracts Coordinator  
Oregon Department of Energy  
625 Marion Street NE  
Salem OR 97301-3737

## Proposal Summary

**Complete and submit this form with your proposal.**

1. Project owner information	
Project owner's name:	
Phone:	E-mail:
Business name:	
Mailing address:	
City/state/zip:	
Contact person for project:	
Phone:	E-mail:
Owner classification: (i.e. private, municipality, tribe etc.)	
Authorized Signature:	
Title:	Date:

2. Project site		
Site address:		
City:	County:	Zip:

3. Financial summary	
Estimated Cost of Study:	\$
Additional State of Oregon funding (source):	\$
Other funding (source):	\$
Applicant Cost Share (must be at least 25% of study cost):	\$
Applicant In-Kind Cost Share (may be up to 50% of applicant cost share):	\$
<b>Requested CREF Award</b> (not more than 75% of study cost):	<b>\$</b>

4. Renewable energy system information		
Renewable Energy Technology	<input type="checkbox"/> Solar Thermal	<input type="checkbox"/> Bio Fuel
	<input type="checkbox"/> Wind	<input type="checkbox"/> Hydro
	<input type="checkbox"/> Photovoltaic	<input type="checkbox"/> Geothermal
	<input type="checkbox"/> Wave	<input type="checkbox"/> Biomass fired Boiler or Electricity Generator
	<input type="checkbox"/> other (specify):	
Projected Capacity of Renewable Energy System (must be between 25kW to 10MW for electricity production projects)		

**5. Abstract.** Provide a brief description of the proposed project (maximum 1 page).

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES CONTRACT**

This Contract is between the State of Oregon, acting by and through its Department of Energy, hereafter called **Agency**, and

(insert contractor name here)  
(insert line 1 - contractor address here)  
(insert line 2 – contractor address here)  
Telephone:  
Fax:  
E-Mail:

hereafter called **Contractor**. Agency's Contract Administrator for this Contract is

(insert name of contract administrator)  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301-3737  
Telephone: (503)  
Fax: (503) 373-7806  
E-Mail: @state.or.us  
www.Oregon.gov/ENERGY

**1. Contract Period.** This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by the Department of Administrative Services and the Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when Agency accepts Contractor's completed performance or on \_\_\_\_\_, whichever date occurs last. Contract termination shall not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Contractor that has not been cured.

**2. Statement of Work.** Contractor shall perform the work (the "Work") as set forth in the Statement of Work, which includes the delivery schedule for such Work, and that is attached hereto as Exhibit A. Contractor shall perform the Work in accordance with the terms and conditions of this Contract.

**3. Consideration**

- a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$\_\_\_\_\_. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- b. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A.
- c. Agency will pay only for completed Work that is accepted by Agency.
- d. Contractor shall submit periodic invoices to the Agency for Work performed. The invoices shall describe all Work performed with reference to the Statement of Work (Exhibit A), specifying the time period covered by the invoice, by whom the work was performed, and the amount requested. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall send invoices to Agency's Contracts Coordinator as follows:

Jan Simmons, Contracts Coordinator  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301-3737

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**4. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Required Insurance), Exhibit C (Independent Contractor Certification Statement), Exhibit D (the RFP, or other procurement document, if any) and Exhibit E (the Proposal, or other binding Contractor solicitation submission, if any). [**AGENCY USER**-it may be appropriate to include additional Exhibits if additional documents are necessary to describe Contractor's obligations, or it may not be necessary to use all of the Exhibits listed here. Consult with DOJ/DAS if you have any questions. ]. Exhibits A-\_\_ are attached hereto and incorporated herein by this reference.

**5. Independent Contractor; Responsibility for Taxes and Withholding**

- a. Contractor shall perform all Work as an independent contractor. The Agency reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- 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 Work 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 Work under this Contract.
- c. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, 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, Agency 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, Successors, and Assignments**

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor performance as if the subcontractor were the Contractor with respect to Sections 5, 6, 7, 9, 10, 11, 14, 15, 16, 18, and 23. Agency'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 Agency's prior written consent.

**7. No Third Party Beneficiaries.** Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

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

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

## 9. Representations and Warranties.

**a. Contractor's Representations and Warranties.** Contractor represents and warrants to Agency 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 Work in a professional manner and in accordance with 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 Work, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date-related data for all dates prior to, through and after January 1, 2000, (6) any software products delivered under this Contract that process date or date-related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century, and (7) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

**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 Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency 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 Agency pursuant to the Work.

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

In the event that Work Product created by 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 Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency'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 Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

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

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

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

### **11. Indemnity.**

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

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

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

**12. Insurance.** Contractor shall maintain insurance as set forth in Exhibit B, which is attached hereto.

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

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

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

- (i) termination of this Contract under Section 13.e(ii);
- (ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 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 Agency.** Agency shall be in default under this Contract if:

- (i) Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency 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) Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

**d. Contractor's Remedies for Agency's Default.** In the event Agency terminates the Contract under Section 13.e(i), or in the event Agency 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 Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event shall Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 13.d, Contractor shall pay immediately any excess to Agency upon written demand provided in accordance with Section 20.

**e. Termination.**

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

- (A) For its convenience upon thirty (30) days' prior written notice by Agency to Contractor;
- (B) Immediately upon written notice if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Work or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Work or Work Products from the planned funding source.

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

- (A) Contractor is in default under Section 13.a(i) because 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;
- (B) Contractor is in default under Section 13.a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after Agency's notice or such longer period as Agency may specify in such notice; or
- (C) Contractor is in default under Section 13.a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Agency's notice, or such longer period as Agency may specify in such notice.

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**(iii) Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract with such written notice to Agency 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) Agency is in default under Section 13.c(i) because Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency 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) Agency is in default under Section 13.c(ii) because Agency 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 Agency 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 Agency all of Agency's property (including without limitation any Work or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work 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 Agency 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. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**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 Work under this Contract in the State of Oregon prior to entering into this Contract.

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**17. Force Majeure.** Neither Agency 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 Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**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, and 24.

**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 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 Agency at the address, number or email address set forth in this Contract, 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 Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery 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.

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

**24. 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 all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract shall not constitute a waiver by Agency of that or any other provision.

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**25. Amendments.** Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. Additionally, for Anticipated Amendments (as defined in OAR 125-246-0560(2)(a)(A)) Agency may amend this Contract (i) to the extent provided in the solicitation document, if any, from which this Contract arose, and (ii) to the extent described in Exhibit A. 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.

**26. Contractor Data and Certification.**

**a. Contractor Tax Identification Information.** Contractor shall provide Contractor's Social Security number or Contractor's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(3). Social Security Numbers provided pursuant to this Section will be used for the administration of state, federal and local tax laws.

Name (tax filing): \_\_\_\_\_

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

Business Designation (check one):

Corporation     Professional Corporation     Partnership     Limited Partnership     Limited Liability Partnership     Limited Liability Company     Sole Proprietorship     Other \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_ or SSN: \_\_\_\_\_

Agency may report the information set forth above to the Internal Revenue Service (IRS) under the name and social security number or taxpayer identification number provided.

**b. Certification.** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue, including the Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan District Self-Employment Tax; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS.

**CONTRACTOR**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**OREGON DEPARTMENT OF ENERGY**

\_\_\_\_\_  
Michael L. Auman, Assistant Director  
Central; Services Division

\_\_\_\_\_  
Date

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**EXHIBIT A  
STATEMENT OF WORK**

**Part I. General Information.** (Insert: introduction, agency objectives, background, applicable documents, and criteria for Contract amendments, e.g., time, not-to-exceed amount. Be specific and complete.)

**Part II. Work; Acceptance Criteria; Deliverables and Delivery Schedule.** (Insert: Work to be done, schedule of Work, deliverables and tasks, performance monitoring requirements, criteria for acceptance by Agency, documents and reporting requirements. The Agency shall develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor. Be specific and complete)

**Part III. Special Considerations.** (Insert: special terms and conditions applicable to this Contract. Be specific and complete.)

**Part IV. Payment Provisions.** (Include when appropriate: progress/payment schedule, payments for particular deliverables, hourly rates, applicable acceptance criteria, retention of payments.

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

Agency shall not reimburse Contractor for any expenses under this Contract.

OR

A. Agency will reimburse Contractor, within the not to exceed amount identified in Part 1 of this Exhibit A, for travel only when the travel is essential to the normal discharge of Agency's responsibilities. Contractor shall conduct all travel in the most efficient and cost-effective manner resulting in the best value to the Agency. The travel must comply with all the requirements set forth in this section and must be for official Agency business only. Contractor shall provide Agency with receipts for all travel expenses except meals. All Contractor representatives will fly "coach class," unless Contractor personally pays the difference. All Contractor representatives will be limited to economy or compact sized rental vehicles, unless Contractor personally pays the difference.

B. All out-of-state travel must be approved in advance, and in writing, by the Agency. In addition to meals and lodging, out-of-state travel expenses will be reimbursed for airfare and rental vehicles only if Contractor is acting within the course and scope of its duties under this Contract, and in furtherance of the Work.

C. Agency will reimburse travel and other expenses of the Contractor at the rates set forth in the Oregon Accounting Manual as of the date Contractor incurred the travel or other expenses. The Oregon Accounting Manual is available at <http://scd.das.state.or.us/oam/scdpolicy/tableofcontent.htm>.

**Part VI. Contract Amendments.**

The Agency reserves the right to amend the Contract in accordance with the rules of OAR 125-246-0560.

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**EXHIBIT B  
INSURANCE REQUIREMENTS**

During the term of this Contract Contractor shall maintain in force at its own expense, each insurance noted below:  
(Agency must check boxes for #2, #3, & #4 as to whether insurance is required or not.)

**1. Workers' Compensation.**

Required by Agency 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. Professional Liability.**

Required by Agency  Not required by Agency

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. General Liability.**

Required by Agency  Not required by Agency.

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. It shall provide that the State of Oregon, the Oregon Department of Energy, and their divisions, officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

**4. Automobile Liability.**

Required by Agency  Not required by Agency.

Automobile Liability insurance with a combined single limit, or the equivalent, of not 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.

**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 Department of Energy.

**6. Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to the Oregon Department of Energy prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. 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.

**Contractor:** \_\_\_\_\_ **Contract No.:** \_\_\_\_\_

**EXHIBIT C  
CERTIFICATION STATEMENT FOR AN INDEPENDENT CONTRACTOR**

**CONTRACTOR SHALL COMPLETE EITHER PART A OR PART B**

**Part A. CONTRACTOR IS A CORPORATION**

The Contractor is a corporation authorized to do business in the State of Oregon.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**Part B. CONTRACTOR IS AN INDEPENDENT CONTRACTOR**

*Used when the Contractor is not a corporation or is a professional corporation and meets the following standards:*

1. I am licensed 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 \_\_\_\_\_

**Part C. AGENCY APPROVAL**

*Agency completes Part C below when Independent Contractor completes Part B above.*

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 shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. State agency certifies the contracted work meets 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 periodic progress payments as outlined in Exhibit A.

Agency Signature \_\_\_\_\_ Date \_\_\_\_\_  
(Agency's certification is solely for the State's benefit and internal use.)