



Request for Proposals C2011121: Grow Oregon Pilot Program

Proposal due date: October 14, 2011, 4:00 p.m.

1.0. GENERAL INFORMATION

Pursuant to ORS 279B.070 and OAR 137-047-0270, the Oregon Business Development Department (Business Oregon or Department) is seeking to identify a qualified Contractor to assist with the implementation of the pilot Economic Gardening (EG) program. The purpose of this Request for Proposal (RFP) will be to identify a Contractor to facilitate the implementation of a pilot EG program.

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

The personal services contract between Department and Contractor (Contract) is anticipated to start on approximately January 1, 2012, and will run through June 30, 2013. Department has currently budgeted approximately \$300,000 for the estimated Contract period. Department reserves the right to amend the Contract for additional time or money, contingent upon need and the availability of approved funding.

The selected Contractor and Department will negotiate the final Statements of Work, within the scope of the Scope of Work included in this RFP, for inclusion in the final Contract.

1.1. SCOPE OF WORK

1.1.1 Background - Economic Gardening

EG is an innovative small business-centered economic growth strategy. EG was pioneered by Chris Gibbons in 1989 in the City of Littleton, Colorado. EG was introduced as a demonstration program to deal with the erosion of economic conditions following the relocation of the largest employer in the city. EG has emerged as an economic development strategy to facilitate new sustainable economic growth in communities, regions and states.

The three basic elements of EG are:

- a. Providing critical information needed by businesses to survive and thrive;

- b. Developing and cultivating an infrastructure that goes beyond basic physical infrastructure and includes quality of life, a business culture that embraces growth and change, and access to intellectual resources, including qualified and talented employees; and
- c. Developing connections between businesses and the people and organizations that can help take them to the next level — business associations, universities, financial and technical service providers, local business roundtable or local mentoring program, and more.

EG services are provided to second-stage companies that have grown past the startup stage but have not grown to maturity. A typical second-stage company will have enough employees to exceed the comfortable control span of one owner/CEO and benefit from adding professional managers but does not yet have a full-scale professional management team.

A second stage company is defined by the following criteria:

- a. A company having between \$1 million and \$50 million in annual gross receipts;
- b. A company having between 10 and 100 employees; and
- c. A company that has demonstrated growth in 3 of the 5 previous years.

This Oregon pilot program, like most other regional and statewide EG programs, will limit service eligibility to traded sector, second stage companies. For the purpose of this pilot program, per ORS 285A010(17), “traded sector” means industries in which member firms sell their goods and services into markets for which national or international competition exists.

Oregon per capita income continues its long-term slide compared to other states, and Oregon’s private sector has shed thousands of jobs. Oregon needs more living wage jobs and needs to bring in new wealth to the state. Given limited resources, Oregon also needs to achieve these goals through cost-effective tools. EG focuses on assisting second-stage, traded sector companies that demonstrate potential for fast growth. Early EG research indicates that targeted investments in these types of second-stage companies may be an effective economic development strategy to create a positive growth of new jobs and new revenues for the state.

Examples of typical EG services provided to second-stage companies are:

- a. Advanced market research and market strategy;
- b. Market intelligence;
- c. GIS analysis;
- d. Website and search engine optimization;
- e. Social media marketing; and,
- f. CEO peer mentoring & networking.

1.1.2 Description of the Grow Oregon Program

The Grow Oregon Council has found that Oregon possesses a broad business services ecosystem including Business Oregon, the Oregon Small Business Development Center Network and its 19 centers, 13 economic development districts, state, regional and local economic development associations, business accelerators, nonprofit organizations, and others. Greater Portland Inc, the City of Beaverton, the City of Eugene and the City of Grants Pass are employing their own EG pilot programs.

In other states (i.e., Colorado, Ohio, Kansas and Florida), municipal, regional and statewide EG models have proven effective and efficient in the delivery of EG services.

The Grow Oregon EG pilot project will be implemented over 18 months beginning on January 1, 2012 and ending on June 30, 2013. The goal of the pilot is to provide EG services to a maximum number

companies. The number and size of companies served, location of services delivered, and types of EG services provided by the pilot program will depend upon a budget and proposal agreed upon between Business Oregon and the Contractor.

1.1.3 Program Budget

The State of Oregon will provide \$300,000 to fund the EG pilot program. Program user fees may also make a small contribution to the program's total budget. The Contractor may also pursue matching funds from foundations, government grants, etc.

The level of services provided by the program will vary depending upon the level of funding that will ultimately be secured for the program. The Contractor will be expected to help design the most effective program possible with the given budget. In addition, the Contractor must have the capacity to scale the project as necessary, given any change in the budget. Direct and indirect administration costs will be capped at 5% to ensure maximum public benefit from the pilot program.

The budget for the program must include adequate funds to perform an independent third-party impact analysis of the services provided between January 1, 2012 and December 31, 2012 by the pilot program in order to report to the 2013 Legislative Assembly. Business Oregon estimates that \$20,000 will be withheld in reserve to cover the anticipated costs of this analysis, and Business Oregon will retain sole responsibility for identifying and contracting for the services through a separate solicitation process in compliance with State of Oregon procurement policy.

1.1.4 Project Duration

Contractor's work must be completed by the end of the pilot program: June 30, 2013. If the pilot project proves to be an effective strategy in providing economic development services in Oregon, the EG program may, in the sole discretion of the Department, be continued beyond the pilot program time period pending future legislative authorization and legislatively appropriated funding.

1.1.5 Project Compliance

Business Oregon will monitor Contractor's performance and compliance with the terms and conditions of the Contract.

1.1.6 Proposer Submissions:

Each Proposer must detail how it would develop and implement a regional or statewide pilot program. A complete proposal will address the following requirements or issues:

Program Development

- a. Prepare timeline for design and implementation of an EG program;
- b. Prepare an EG pilot program budget and service projections from January 1, 2012 to June 30, 2013; and
- c. Identify the resources the Proposer will make available or pursue to leverage state funding to further support the EG pilot program.

Program Implementation

- d. Identify the services to be offered or provided to selected companies. Provide a brief description of each service that is proposed to be delivered and the method of delivery, and describe the related anticipated economic benefits from those services.

- e. Describe the training and development for key staff coordinating the various components of the EG program. Provide resumes for key personnel associated with the administration and implementation of the program along with a description of the anticipated duties and responsibility for each position;
- f. Describe how the services be administered by the Proposer will be coordinated;
- g. Identify and describe the infrastructure needed to be created and maintained to deliver technical services to second-stage companies;
- h. Describe how fee for service could be incorporated into the pilot program; and
- i. Propose how the program could be sustained (i.e., identify potential sources of funding to continue or expand the proposed EG program);

Service Area, Marketing & Deliverables

- j. Identify the geography and demographic (i.e., urban/rural, minority & women owned businesses, emerging small businesses, etc) areas served by the EG pilot;
- k. State the number of businesses projected to be served by the EG pilot;
- l. Describe the basis for determining the number and type of businesses served and the method used to identify those companies (include outreach to underserved communities outlined in ‘j’ above);
- m. Describe the criteria for screening companies for eligibility;
- n. Describe the metrics used for analysis and the method used to validate those metrics by an independent third party (e.g., Jobs created/retained and associated wages; New markets accessed; New customers; Revenue growth; Capital formation; Customer satisfaction, etc);
- o. If EG services are offered in conjunction with other financial and technical services, describe the method used to attribute the overall impact to the metrics due to the EG services; and
- p. Provide a reporting template in Excel format capturing proposed metrics and propose a reporting schedule. Reporting will be required on a quarterly basis to monitor Contract performance.

Collaboration and Leverage

- q. Describe how Proposer would engage higher education institutions in the delivery of services;
- r. Describe Proposer’s current relationships with economic development partners; and,
- s. Identify new economic development relationships that would need to be developed or existing economic development relationships that would need to be strengthened and describe the means to accomplish such goals.

1.1.7 Proposer Qualifications

Proposer submissions will be scored against the criteria in Section 2.1 Scored Criteria below.

1.2 QUESTIONS AND CLARIFICATIONS

Proposers may download the RFP and any addenda or notices from the State of Oregon Procurement Information Network (ORPIN) (<https://orpin.oregon.gov/open.dll/>) or from Department’s web site: <http://www.oregon4biz.com/Contact-us/Contracting-Opportunities/>. If a Proposer does not have electronic access to ORPIN or to the Department web site, Proposer may view a copy of the RFP at the issuing office as designated on the title page of this RFP. 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 to the Procurement Specialist identified in Section 1.4 (mail, fax or email are acceptable). All questions must be received **not later than 4:00 pm, Pacific Time, ten (10) 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. Changes or modifications to this RFP are binding on Department only if in the form of written addenda issued by Department.

Department will advertise addenda only on ORPIN and on Department's web site. Anyone who has received a copy of this RFP from a source other than the Department is responsible for checking with the Procurement Specialist identified in Section 1.4, ORPIN or the Department's web site for the existence of any addenda or other notices relative to this RFP. Proposers are responsible for checking these sources to determine whether or not any addenda have been issued, and then must either download or request an electronic copy. Aside from providing requested electronic copies, Department will not send addenda to any potential Proposers.

Department may require any clarification it needs from a Proposer to understand a proposal.

1.3. PROTESTS

1.3.1 RFP Protest Requirements

Proposers who believe RFP specifications are unnecessarily restrictive or limit competition may submit a protest to the Procurement Specialist. Protests concerning the RFP, including requests for change of particular provisions, specifications, or the Contract terms and conditions, must be submitted in writing to the Procurement Specialist **not later than 4:00 pm, Pacific Time, seven (7) calendar days prior** to the proposal due date specified on the cover page of this RFP. A protest must clearly, specifically and in detail explain the reason(s) for the protest and specify any proposed changes to any provisions, specifications or terms and conditions. Within a reasonable time following receipt, Department will respond to a timely submitted protest in writing to the Proposer who submitted the protest. Department will not consider any solicitation protest submitted after the deadline established in this subsection.

1.3.2 Award Protest Requirements

Every Proposer that submits a proposal will be notified of the Proposer's selection status. Proposers who have been notified that they are not selected may make an appointment to view the selection file at the address below. Any Proposer who claims to have been adversely affected by the selection of a competing Proposer must deliver a written protest (email is an acceptable writing under this subsection) **by 4:00 pm, Pacific Time, three (3) calendar days after receiving notification of its selection status.** A protest must meet all applicable requirements in OAR 137-247-0740. Department will review protests and respond in writing. Department will not consider any protest submitted after the protest submission deadline established in this subsection.

Proposers who have been notified that they are not selected may make an appointment to view the selection file at the address in Section 1.4 below.

1.4. PROPOSAL DUE DATE AND TIME

Proposals must be received by October 14, 2011, on or before 4:00 pm, Pacific 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. Submittals that are late, incomplete, or misdirected will be considered non-responsive, with no exceptions.

Email proposals to: larry.daimler@state.or.us

For clarification questions or protests only:

Oregon Business Development Department
Larry Daimler, Procurement Specialist
775 Summer St., NE, Suite 200
Salem, OR 97301- 1280
Telephone: (503) 986 – 0032

1.5. ONLY ELECTRONIC COPY IS ACCEPTABLE.

Proposals must be submitted via email only. Fax, regular mail, and physical deliveries are *not* acceptable. Business Oregon will send an electronic notice of receipt to the Proposer when electronic transmission of the proposal is received. If Proposer does not receive an electronic receipt, the proposal was not received by the Business Oregon, and Proposer should contact the Procurement Specialist immediately. **The email subject or reference line for all submittals must include the RFP title and RFP number.**

1.6. FORMAT FOR PROPOSAL SUBMISSIONS AND PAGE LENGTH LIMITATION:

Proposals must be organized in accordance with the list of scored criteria in Section 2.1. The proposal must not exceed 25 pages, *excluding* cover sheet (Attachment A), resumes and samples of work products. The Proposer may choose how to allocate pages among any sections within the overall page limit. If a Proposer submits a proposal exceeding this limit, Business Oregon will consider the pages up to that allowable number (25 pages) and discard all subsequent pages.

One (1) page is defined as: one side of a single 8-1/2" x 11" page, with 12-point minimum font size for the substantive text. Any page over this size will be counted as two (2) pages. Any page or partial page with substantive text, graphics, charts, etc., will be counted as one (1) page. Proposers may use their discretion for the font size of other materials (e.g., graphics, charts). Do not submit .zip, .exe or .com files.

1.7. 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 authorized 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.

1.8. PUBLIC RECORDS

This RFP, and one copy of every proposal accepted in response to it, will be kept by Department and made a part of its records. All accepted proposals will become part of the public file without obligation to Department. If a proposal contains any information that may be exempt from disclosure under the Oregon Public Records Law, ORS 192.410 through 192.505, 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 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.

1.9 CONTRACT TERMS AND CONDITIONS; NEGOTIATION

By submitting its proposal, the selected Proposer agrees to be bound by terms and conditions determined by the Department, similar to those shown in the Attachments B, including the requirements for insurance indicated in the Attachment B. Proposer further agrees to perform the scope of work and meet the performance standards set forth in the final negotiated Contract. Department reserves the right to negotiate any term or condition of the final Contract in its sole discretion. Any proposal that is received

conditioned on Department’s acceptance of any other terms and conditions or rights to negotiate will be rejected as non-responsive.

INFORMATION ONLY - PROPOSAL SUBMISSION CHECKLIST FOR USE BY PROPOSERS	
<input type="checkbox"/>	Due Date Met
<input type="checkbox"/>	Proposal Addressed Correctly
<input type="checkbox"/>	Proposal in Acceptable Electronic File Type(s)
<input type="checkbox"/>	Proposal Format and Page Limit Requirements Met
<input type="checkbox"/>	Signed Cover Sheet Included
<input type="checkbox"/>	Proposal Does Not Include Conditional Language About Terms and Conditions or Right to Negotiate
<input type="checkbox"/>	Public Records Disclosure Exemption Statement Included (If Applicable)

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

2.0. EVALUATION PROCESS

Proposals received on time will be forwarded to an evaluation committee that will score each proposal according to the scored criteria set forth in Section 2.1. The outcome of the evaluation process may, at Business Oregon's sole discretion, result in: (a) notice to a Proposer(s) of selection for tentative contract negotiation and possible award; (b) further steps to gather more information for evaluation, which often means a notice of placement on an interview list; (c) notice to a Proposer(s) of non-selection; or (d) notification to Proposer(s) that the RFP is cancelled and may be resolicited or that Business Oregon intends to take no further action with respect to the RFP.

Selection for contract negotiation will be based on the Proposer’s ranked score in response to the criteria listed in Section 2.1 below, although Business Oregon reserves the right to cancel the solicitation or reject any proposal it determines not to be in the public interest in accordance with ORS 279B.100. If negotiations are not successful, Business Oregon may terminate negotiations with a Proposer and begin negotiating with another Proposer.

2.1 SCORED CRITERIA

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

- | | |
|--|-------------------|
| 1. Depth, breadth, quality & diversity of previous work | 20 Points |
| 2. Quality of proposal, demonstrated sustainability, diversity, deliverables | 30 Points |
| 3. Ability to meet the timeline as outlined | 20 Points |
| 4. Leverage of Oregon resources (financial, collaborative, and other) | 20 Points |
| 5. <u>Demonstrated local and regional support and collaboration</u> | <u>10 Points</u> |
| Total Points | 100 Points |

**RFP C2011121 ATTACHMENT A - COVER SHEET
STATEMENT OF PROPOSAL TO BUSINESS OREGON**

_____ (Legal Name of Firm) accepts the requirements of this RFP and the use of Business Oregon's Standard and Special Terms and Conditions.

<input type="checkbox"/> Corporation <input type="checkbox"/> Professional Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Ltd. Liability Company <input type="checkbox"/> Ltd. Liability Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other _____ Firm's Federal Tax ID _____ Mailing Address _____ _____
--

Type name of authorized representative _____ Email address _____ Telephone _____ Fax _____ Type name of person(s) authorized to sign Contract _____
--

<p>[Unless other provisions are made for collecting references] Provide at least three references (please verify contact information):</p> Name of Firm _____ Project Title _____ Their Contact Person _____ Telephone _____ Fax _____ email _____ Name of Firm _____ Project Title _____ Their Contact Person _____ Telephone _____ Fax _____ email _____ Name of Firm _____ Project Title _____ Their Contact Person _____ Telephone _____ Fax _____ email _____
--

Affirmative Action Program: Business Oregon is an equal employment opportunity employer and values diversity in its work force. It also requires its recipients and contractors to have an operating policy as an equal employment opportunity employer. Contractors shall implement affirmative action programs to ensure equal employment opportunity. _____ (Name of Firm) certifies that it has a formal statement of nondiscrimination in employment policy *and* has an affirmative action program, if over 50 employees. Firms of *50 people or less* do not need a formal program, but must have a policy.
 Does your firm have over 50 employees? Yes no

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that to the best of undersigned's knowledge the Contractor has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise under ORS 200.055 or is a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225, and that the Contractor is not in violation of any discrimination laws.

Signature of Authorized Representative certifying all statements as true:

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

Attachment B– Standard Terms and Conditions

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

a. Contractor shall perform all required Services as an independent contractor. Although Department reserves the right (i) to determine the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Department cannot and will not control the means or manner of Contractor’s performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

b. If Contractor is currently performing services for the State of Oregon or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor’s Services to be performed under this Contract create no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor’s employing agency (state or federal) would prohibit Contractor’s Services under this Contract. Contractor is not an “officer,” “employee,” or “agent” of Department, as those terms are used in ORS 30.265.

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

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

a. Contractor shall not enter into any subcontracts for any of the Services required by this Contract, or assign or transfer any of its interest in this Contract, without Department’s prior written consent. In addition to any other provisions Department may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 1, 2, 3, 5, 6, 7, 10, 11, 12, 14, 15, and 21 of this Contract as if the subcontractor were the Contractor. Department’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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

3. **No Third Party Beneficiaries.** Department and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give or provides, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

4. **Funds Available and Authorized; Payments**

a. Contractor shall not be compensated for Services performed under this Contract by any other agency or department of the State of Oregon. Department has sufficient funds currently available for expenditure to finance the costs of this Contract within any biennial appropriation or limitation applicable to the Department. Contractor understands and agrees that Department’s payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on Department or the Fund, as required, receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow Department, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

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

5. **Representations and Warranties.**

a. **Contractor’s Representations and Warranties.** Contractor represents and warrants to Department that (1) Contractor has the power and authority to enter into and perform this Contract, (2)

this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor shall perform the Services under this Contract in accordance with the highest applicable professional or industry standards, and (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

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

6. Ownership of Work Product.

a. Definitions. As used in this Section 6, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) “Contractor Intellectual Property” means any intellectual property owned by Contractor and developed independently from the Services.

(ii) “Third Party Intellectual Property” means any intellectual property owned by parties other than Department or Contractor.

(iii) “Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all Services that Contractor delivers or is required to deliver to Department pursuant to this Contract.

b. Original Works. All intellectual property rights in the Work Product created by Contractor pursuant to this Contract, including derivative works and compilations, shall be the exclusive property of Department. All Work Product authored by Contractor under this Contract shall be deemed “work made for hire” to the extent permitted by the United States Copyright Act. To the extent the Department is not the owner of the intellectual property rights in such Work Product, Contractor hereby irrevocably assigns to Department any and all of its rights, title, and interest in such Work Product. Upon Department’s reasonable request, Contractor shall execute such further documents and instruments reasonably necessary to fully vest such rights in Department. Contractor forever waives any and all rights relating to original Work Product created pursuant to this Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that intellectual property rights in the Work Product are Contractor Intellectual Property, Contractor hereby grants to Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Department’s behalf.

To the extent Contractor has the authority, Contractor shall sublicense or pass through to the Department all Third Party Intellectual Property. Contractor represents and warrants that it has provided written disclosure to the Department of all Third Party Intellectual Property that must be independently licensed by the Department to fully enjoy the benefits of the Work Product. If Contractor failed to provide such written disclosure, Contractor shall secure on Department’s behalf and in the name of Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Department’s behalf.

7. Indemnity.

a. Claims for Other than Professional Liability. Contractor shall (subject to ORS chapter 180) defend, save and hold harmless the Oregon Business Development Commission and its members, the State of Oregon and the Oregon Business Development Department and their officers, agents and employees from all claims, suits or actions of whatsoever nature, including intentional acts resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this Contract.

b. Claims for Professional Liability. Contractor shall (subject to ORS chapter 180) defend, save and hold harmless the State of Oregon and the Oregon Business Development Department and their officers, agents and employees, and the Oregon Business Development Commission and its members, from all claims, suits or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors, agents or employees in performance of professional services under this Contract.

c. Control of Defense and Settlement. Contractor shall have control of the defense and settlement of any claim that is subject to sections 7.a or 7.b; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving authority to act as legal counsel for the State of Oregon from the Oregon Attorney General, in a form and manner determined appropriate by the Oregon Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement.

8. Insurance. Contractor shall provide General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. It will include contractual liability coverage for the indemnity provided under this Contract. The policy will be endorsed to name State of Oregon and the Oregon Business Development Department and their officers and employees, and the Oregon Business Development Commission and its members, as Additional Insureds but only with respect to the Contractor's commercial services to be provided under this Contract. If Contractor uses rental vehicles, Contractor must obtain Automobile Liability Insurance with a combined single limit of not less \$200,000 or any minimum amount required by Oregon law, whichever is greater, each occurrence, for Bodily Injury and Property Damage.

9. Termination

a. Parties' Right to Terminate For Convenience. This Contract may be terminated at any time by mutual written consent of the parties.

b. Department's Right To Terminate. Department may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.

c. Department's Right to Terminate for Cause. Department may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Department may establish in such notice, upon the occurrence of any of the following events:

(i) Department fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Services;

(ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Contract is prohibited or Department is prohibited from paying for such Services from the planned funding source;

(iii) Contractor no longer holds any license or certificate that is required to perform the Services; or

(iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms.

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

e. Remedies

(i) In the event of termination pursuant to Sections 9a, 9b, 9c(i), 9c(ii) or 9(d), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the

percentage of Services completed and accepted by Department, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Department upon demand.

(ii) In the event of termination pursuant to Section 9c (iii) or 9c (iv), Department shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 9c (iii) or 9c (iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 9b.

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

10. Records Maintenance; Access. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts, transcripts and copies. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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

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

13. Force Majeure. Neither Department nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, war, or any other cause beyond the reasonable control of Department or Contractor. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

14. Survival. All provisions of this Agreement set forth in the following sections and any other provisions that by their terms are intended to survive shall survive termination of this Agreement: Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 21, 22, and 25.

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

16. Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Department at the address or number set forth below:

Department: Oregon Business Development Department
775 Summer Street NE, Suite 200
Salem, Oregon 97301
Attn: Department Contract Administrator

Contractor: _____

or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 16. Any notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Department, such facsimile transmission must be confirmed by telephone notice to Department's Contract Administrator. Any notice by personal delivery shall be deemed to be given when actually delivered.

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

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

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

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

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

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

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

(c) Notwithstanding Section 21(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form

of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

22. Merger Clause; Waiver. This 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 (or in the case of a waiver or consent, signed by the party against whom such waiver or consent is sought to be enforced) and all necessary 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.

23. 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.

24. 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 shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys.

25. Oregon False Claims Act.

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

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

- (i) Its representations, certifications, and other undertakings in this Contract are not False Claims Act Violations; and
- (ii) None of Contractor's performance under this Contract, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Contract, will constitute False Claims Act Violations.
- (iii) For purposes of this Section 25, a "False Claims Act Violation" means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.

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

d. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or Department under any other provision of law, this Contract, or any agreement formed under this Contract.