

**OREGON TOURISM COMMISSION  
PERSONAL/PROFESSIONAL SERVICE CONTRACT  
No. W+K2013CNT01**

This Contract is entered into between the Oregon Tourism Commission, doing business as Travel Oregon, and hereafter for the purpose of this document referred to as OTC and Wieden + Kennedy, Inc.'s Portland office, hereafter for the purpose of this document referred to as the Contractor. In consideration of the promises, covenants and obligations of the parties set forth herein, OTC and Contractor hereby agree as follows:

- 1. Effective Date and Duration.** This Contract shall become effective on July 1, 2013, or the date, on which this Contract has been fully executed by all parties, whichever is later. Unless terminated or extended, this Contract shall expire when OTC accepts Contractor's completed performance or on June 30, 2015, whichever date occurs first. This contract has an optional two year extension. Neither contract expiration nor termination shall extinguish or prejudice OTC's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.
- 2. Statement of Work.** The statement of work (the "Work"), including the delivery schedule for such Work, is contained in Exhibit A, which is attached and incorporated by reference into this Contract. Contractor agrees to perform the Work in accordance with the terms and conditions of this Contract.
- 3. Consideration.** OTC agrees to pay Contractor as set forth in the Statement of Work, Exhibit A, for accomplishing the Work required by this Contract. OTC will pay the Contractor the maximum, not-to-exceed compensation payable to Contractor under this Contract of \$7,145,274.00 which is based on estimates agreed upon between OTC and the Contractor of the amount of time and cost of services to be performed pursuant to the Statement of Work. Upon request by contractor, OTC may pay the Contractor in the Contractor's local currency, in which case OTC shall convert the payment from US Dollars to the Contractor's local currency based on the exchange rate published in the United States edition of the Wall Street Journal on the date of payment or, if not published on the date of payment, on the rate quoted in the United States edition of the Wall Street Journal last published before the date of payment
- 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) and Exhibit B (Required Insurance). Exhibits A – B are attached hereto and incorporated herein by this reference.

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

Contractor shall perform all required Work as an independent contractor. Although OTC reserves the right (i) to determine and modify the delivery schedule for the Work to be performed and (ii) to audit and evaluate the quality of the completed performance, OTC 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 Work. Contractor certifies, represents and warrants that Contractor is an independent contractor of OTC under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of OTC as those terms are used in ORS 30.265.

If Contractor is currently performing work for the State of Oregon or the federal Government, Contractor by signature to this Contract declares and certifies that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

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, OTC will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

**6. Subcontracts and Assignment; Successors and Assigns.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, without OTC's prior written consent. In addition to any other provisions OTC may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 6, 7, 10, 11, 14, 15, 16, 17, 18 and 24 of this Contract as if the subcontractor were the Contractor. OTC's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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.

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

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

**8. Funds Available and Authorized Payments.** Contractor is not entitled to compensation for work performed under this Contract by any other agency. OTC has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract within OTC's biennial budget established.

OTC will pay only for services which have been properly rendered prior to the effective date of termination and are accepted by OTC, which acceptance is not to be unreasonably withheld. OTC shall not be required to pay for any services rendered but not completed as of the date of any termination of this Agreement pursuant to Section 13.b(ii), (iii) or (iv).

**9. Representations and Warranties:**

**Contractor's Representations and Warranties:** Contractor represents and warrants to OTC that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the Work under this Contract shall be performed in a good and competent manner and in accordance with the highest professional standards, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, and (5) Contractor has sufficient rights to all Work Product (as defined in Section 10, below) to provide OTC all rights and licenses in the Work Product necessary to fulfill its obligations to OTC under this Contract.

**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 OTC 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 OTC pursuant to the Work.

**b. Original Works:** Except as otherwise provided in this Section 10, 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, which is included in the final accepted and paid for deliverables, is the exclusive property of OTC, except where Contractor and OTC determine that a license to Work Product is more appropriate. OTC and

Contractor agree that Work Product to be owned by OTC that is subject to copyright is "work made for hire" of which OTC is the author within the meaning of the United States Copyright Act. Work Product which is not included in the final deliverables shall be considered to be "Preliminary Materials" and shall remain the property of Contractor. To the extent Work Product created pursuant to the Work and to be owned by OTC is not "work made for hire," Contractor hereby irrevocably assigns to OTC 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 OTC's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OTC. 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.

Should Contractor and OTC determine that licensing Work Product is more appropriate over OTC taking ownership, Contractor shall provide OTC a royalty-free, non-exclusive license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Work Product (to the extent not Contractor Intellectual Property or Third Part Intellectual Property) in compliance with Section 4 of the Statement of Work (Exhibit A), and to the extent necessary to enable OTC to take full advantage of such Work Product within the scope of this Contract. Contractor shall provide and negotiate the scope and limitations, if any, of such license to OTC prior to OTC taking delivery of the associated Work Product.

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 OTC 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 OTC's behalf as may be required by OTC to utilize the Work Product as intended herein. It is understood, however, that Contractor Intellectual Property may be licensed on behalf of OTC on a limited use basis. In such event, OTC shall be notified in advance, in writing, of the applicable restrictions on use and will be responsible for conforming to such agreed restrictions.

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 OTC's behalf and in the name of the OTC 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 OTC's behalf as may be required by OTC to utilize the Work Product as intended herein.

c. **Contractor Intellectual Property:** In the event that Work Product is Contractor Intellectual Property, Contractor hereby grants to OTC 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 OTC's behalf as may be required by OTC to utilize the Work Product as intended herein. It is understood, however, that Contractor Intellectual Property may be licensed on behalf of OTC on a limited use basis. In such event, OTC shall be notified in advance, in writing, of the applicable restrictions on use and will be responsible for conforming to such agreed restrictions.

d. **Third Party Works:** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the OTC's behalf and in the name of the OTC, 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 OTC's behalf as may be required by OTC to utilize the Work Product as intended herein.

#### 11. **Indemnity:**

a. **General Indemnity:** Contractor shall defend, save, hold harmless, and indemnify the Oregon Tourism Commission, and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the negligent acts or omissions, or the intentional misconduct of Contractor or its officers, employees, or agents under this Contract.

b. **Indemnity for Infringement Claims:** Except with regard to claims specifically covered under Section 11(c) and without limiting the generality of section 11.a, Contractor expressly agrees to defend, indemnify, and hold OTC, 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 attorney 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 OTC by Contractor that may be the subject of protection under any State or Federal intellectual property law or doctrine, or the OTC's use thereof, including use as permitted in any applicable third party license agreements, infringes any 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. **Indemnity by OTC:** To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, ORS 30.265-30.300, OTC agrees to indemnify, defend and hold Contractor harmless from and against any loss, cost, liability or damage (including reasonable attorneys' fees and costs) ("Loss") resulting from any claim, suit or proceeding (threatened or otherwise) ("Claim") made or brought against Contractor based on (i) information or materials provided by OTC or the State of Oregon; (ii) risks which Contractor has brought to OTC's attention in writing and where OTC has notified Contractor in writing they have elected to proceed; or (iii) claims in the nature of trademark where Contractor has informed OTC in writing of the need for a trademark search to determine the availability of a mark.

d. **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; and OTC shall have control of the defense and settlement of any claim that is subject to section 11.c; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim as OTC or the State of Oregon, nor purport to act as legal representative of OTC 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, action or suit 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 government principle is at issue and the State of Oregon desires to assume its own defense.

e. **Limitation of Liability:** Contractor's monetary liability to OTC, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees under sections 11.a and 11.b., including but not limited to intellectual property claims, shall be limited to the same extent the State's monetary liability is limited under ORS 30.270.

12. **Insurance:** Prior to commencing work under this Contract, Contractor shall provide OTC proof of insurance as indicated and required on Exhibit B, attached hereto and by this reference made a part hereof. In performing the Work under this Contract, Contractor shall comply with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.

13. **Termination:**

a. **Parties' Right to Terminate by Mutual Agreement:** This Contract may be terminated at any time by mutual written consent of the parties.

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

(i) OTC fails to receive revenues or funding, or fails to establish expenditure authority, at levels sufficient to pay for Contractor's Work;

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

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

(iv) 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 10 business days after delivery of OTC's notice, or such longer period of cure as OTC may specify in such notice.

c. Contractor may terminate contract upon 30 days' notice to OTC if OTC fails to pay Contractor pursuant to the terms of this Contract and OTC 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.

**14. Remedies:** In the event of termination pursuant to Sections 13.a, 13.b(i) or 13.b(ii), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by OTC, less previous amounts paid and any claim(s) which OTC has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to OTC upon demand. In the event of termination pursuant to Section 13.b (iii) or 13.b (iv), OTC 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 13.b(iii) or 13.b(iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 13.a., as set forth above.

**15. Contractor's Tender upon Termination:** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless OTC expressly directs otherwise in such notice of termination. Upon termination of this Contract and payment of all amounts due hereunder, Contractor shall deliver to OTC all files, documents, information, works-in-progress and other property that either are or would be deliverables, had the Contract been completed or which would be reasonably necessary for Contractor to perform the work under this Contract. Upon OTC's request, Contractor shall surrender to anyone OTC designates, all files, documents, research or objects or other tangible things needed to complete the Work.

**16. 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 and all other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that OTC, the Oregon Secretary of State's Office, the federal government and, upon reasonable prior notice, their duly authorized representatives shall have access to all such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract in any way to perform examinations and audits and make excerpts and transcripts. 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 the 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.

**17. Compliance with Applicable Law:** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work 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.

**18. 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.

**19. Force Majeure:** Neither OTC nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of OTC 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.

**20. Survival:** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 8, 9, 10, 11, 12, 13, 14, 16, 18, 20, 26, 27 and 29.

**21. Time is of the Essence:** Contractor agrees that time is of the essence under this contract; however, Contractor shall not be responsible for delays caused by OTC or by events of force majeure.

**22. 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 personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or OTC at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or 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 OTC, such facsimile transmission must be confirmed by telephone notice to OTC's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**23. 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.



24. **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. Any counterpart may be delivered to the Parties in the manner provided in Section 22 (Notice) or by email in portable document format (pdf) and is effective when received by both Parties. Each copy of the Contract so executed shall constitute an original.
25. **Disclosure of Social Security Number:** Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385, OAR 125-20-410(3) and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.
26. **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 OTC (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. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM.
27. **No Personal Liability of Public Officers:** The Oregon Tourism Commission is the sole public party to this Contract, and Contractor understands and agrees that no individual state officer, employee or agent shall have any liability, in either their official or personal capacities, under or with respect to this Contract.
28. **Nonexclusive Contract:** This Contract is not an exclusive contract in the sense that Contractor has any expectation that Contractor is the only party that OTC must contract with for the performance of the same or similar work. OTC reserves the right, which may be exercised in OTC's sole and absolute discretion, to contract for or order such services or related work from any other party or parties. OTC makes no warranty or representation whatever that Contractor will receive any minimum or maximum amount or value of work or be assigned to administer any minimum or maximum number of assigned claims under this Contract. Contractor hereby expressly WAIVES AND RELINQUISHES ANY CLAIM WHATSOEVER against OTC related to or arising out of the quantity of work assigned to Contractor under this Contract.
29. **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. 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 OTC to enforce any provision of this Contract shall not constitute a waiver by OTC of that or any other provision.

**30. 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 returns.

Name (tax filing): **Wieden + Kennedy, Inc.**

Address: **224 NW 13<sup>th</sup> Ave.**

**Portland, OR 97209**

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

Citizenship, if applicable: Non-resident alien Yes No

Business Designation (check one):

Corporation  Partnership  Limited Partnership  Limited Liability Company

Limited Liability Partnership  Sole Proprietorship  Other \_\_\_\_\_

Federal Tax-ID#: **93-0832855**

(contractor must complete, sign and return W-9 form)

OTC 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 (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.

CONTRACTOR

By: \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

OREGON TOURISM COMMISSION

By: \_\_\_\_\_

Title: Director of Operations

Date \_\_\_\_\_

*[Signature]*  
Jeff Hampton

6/30/2013

## EXHIBIT A

### Contractor:

Wieden + Kennedy, Inc.  
224 NW 13<sup>th</sup> Ave  
Portland, OR 97209

### Statement of Work:

- A. **RETAINER SERVICES.** Contractor shall concept and produce advertising, conduct market research pertinent to creative development, and provide media evaluation and purchasing functions for OTC's global tourism brand campaign for the state of Oregon. Work will involve securing subcontractors to provide services related to special activities and projects.
1. Retainer services shall include development, design, implementation and evaluation of OTC's fall and spring advertising campaigns as well as other campaigns as requested by OTC, and other miscellaneous projects and services such as conference materials, including white papers, presentations, brand/logo development, direct mail campaigns and ads for trade magazines.
  2. OTC will initiate a campaign by supplying objectives and budget parameters to Contractor. Contractor will develop the campaign based on those objectives and budget parameters. Contractor will present advertising campaign plans to OTC that include specific start and end dates. Upon approval of the plans by OTC, contractor shall design and implement the campaigns as follows:
    - a. Evaluate media opportunities, and recommend media plans as determined by Contractor to be the most effective in obtaining the objectives desired by OTC, with the understanding that adoption of any proposed method, plan or suggestion be left to the exclusive judgment of OTC.
    - b. Negotiate media buys on behalf of OTC and secure the best possible rates. Make negotiated rates available to OTC partners.
    - c. Develop and execute cooperative advertising opportunities OTC partners can use to leverage against the OTC media plan.
    - d. Prepare and write advertising copy required by OTC and handle the illustration of such copy that meets OTC approval.
    - e. Place advertising in the form required by media, within the closing dates of media designated by OTC.

- f. Check all media scheduled to carry OTC advertising, for the purpose of ascertaining whether such advertising is carried out based on the plan approved by OTC and whether a faithful reproduction and a satisfactory result have been obtained.
        - g. Upon request, submit to OTC digital copies of authorized advertisements proving that advertising has been satisfactorily performed as contemplated and as represented.
        - h. Develop and distribute asset kits for media partners
        - i. Contractor agrees to serve as brand steward for OTC and will:
          - i. Maintain and update a brand style guide that can be used by Contractor and partners across all mediums
          - ii. Maintain and provide, at the request of OTC, a comprehensive and detailed repository of all images and illustrations used on behalf of OTC.
3. OTC acknowledges that in placing its advertising with various media, Contractor may contract with such media and production vendors on the basis of "Sequential Liability" pursuant to which Contractor will be solely liable for payment to the extent that proceeds have cleared from OTC as Advertiser to Contractor for advertising produced, published or broadcast in accordance with the contract. As Advertiser, OTC will remain solely liable for sums owing but not cleared to Contractor relating to such advertising.
4. OTC hereby authorizes and agrees that Contractor may contract with media and production vendors on OTC's behalf on the basis of Sequential Liability, and that OTC will be solely liable to media and production vendors with respect to payments for such space or time to the extent that such payments to Contractor have not cleared.
5. OTC will pay Contractor a monthly fee for Retainer services described in this Section A in the amount of \$ [REDACTED]. This monthly fee shall be the only payment for the Retainer services which include, but are not limited to, support staff, account services, planning, business affairs, interactive, creative development and production, branding, media department and other in-house services (except for in-house production services).
  - a. OTC and Contractor anticipate that total Contractor service hours for Retainer services will total approximately [REDACTED] full time equivalent (FTE) or [REDACTED] hours per year. If total Contractor service hours/FTE expended on Retainer services, OTC will either (a) renegotiate the monthly fee with Contractor and amend this Contract as appropriate or (b) pay Contractor at a rate to be negotiated for all service hours in excess of [REDACTED] hours during the first year of this Contract and at a rate to be negotiated for all service hours in excess of [REDACTED] during the second year of this contract.

- b. The fee for Retainer services does not include, and, OTC shall separately reimburse Contractor for, the actual cost (without markup) of goods, services, media time and space purchased by Contractor for use in or as part of the advertising campaigns set forth in the table in F.1 of this Exhibit A, upon approval by OTC of invoices submitted by Contractor in accordance with Section F.2.f.ii of this Exhibit A.

**B. NON-RETAINER SERVICES**

1. In addition to developing and implementing the advertising campaigns and delivering the other services described above, OTC may from time to time during the term of this contract request additional advertising and marketing services for OTC as well as industry partners, including but not limited to, Oregon Destination Marketing Organizations. Marketing services may include but not be limited to, campaign work, brand development and media buying, website creative including copywriting, photo selects and other creative development.
2. The costs for these projects will be billed at a rate to be negotiated, plus the actual cost (without markup) of goods, services, media time and space purchased for the project. Upon such request contractor shall submit, in advance, cost estimates of OTC projects costing in excess of \$1,000.00 including costs on all purchases and Contractor time. Upon approval by OTC of these cost estimates, work will proceed. Contractor will invoice OTC separately for these services only if they are not rendered in connection with the advertising campaigns and other miscellaneous projects and services described above.

**C. PROVISIONS APPLICABLE TO RETAINER AND NON-RETAINER SERVICES.** The following additional provisions apply to all of Contractor's work under this Contract including, but not limited to, work on the advertising campaigns described above:

1. Contractor shall be required to attend OTC meetings or retreats upon request by OTC, including but not limited to, Commission meetings and Governor's Tourism Conferences.
2. Contractor will meet with OTC staff bi-weekly upon request by OTC.
3. Contractor shall furnish to OTC meeting reports that detail results of each meeting between Contractor and OTC personnel. Reports shall include decisions made, next steps, who does what, and timelines.
4. Contractor shall make portions of its facilities available to OTC for conduction business related to that which is specified in this contract and shall from time to time recommend to OTC the best means and methods for obtaining maximum returns and results in the promotion and encouragement of economic development in the State of Oregon including collaboration on the development of the biennial strategic marketing plan.

5. Contractor shall field requests for media and sponsorship opportunities and provide OTC with recommendations.
6. Contractor shall provide advertising campaign reports midway through campaign and at end of campaign. Contractor will continually be looking for opportunities to optimize campaign results throughout the duration of the campaign.
7. Contractor shall cooperate fully with OTC in the outline preparation and physical appearance of all creative OTC may desire to prepare.
8. Contractor shall make all branch offices or agencies (if any) of Contractor, wherever located, available to OTC for such advisory service and information as Contractor is required to furnish under this contract.
9. Contractor, when purchasing existing photography, sound track, film or video for use by OTC shall provide cost options when possible, for a one-time fee, for the use of said photography, sound track, film or video regardless of the number of times the material may be used. However, it is understood that Contractor may, with OTC's prior written approval, from time-to-time license limited rights from third parties when the third party is not willing to transfer copyright or when cost prohibitive.
10. Contractor, when arranging for new photography, sound track, film or video for use by OTC shall provide cost options for a one-time fee to be paid for the production and use of photography, sound tracks, film or video. OTC shall have and retain exclusive ownership rights and use of all images during the timeframe and for uses negotiated up front and Contractor shall not permit any person to broadcast, publish or otherwise use or dispose of the creative assets without prior express written permission of OTC. Among the Rights (as defined below) that Contractor shall obtain for OTC with respect to any new photography, sound track, film or video is the right to prohibit any broadcast, publishing, or other use or disposition thereof without the prior express written permission of OTC. However, it is understood that Contractor may, with OTC's prior written approval, from time-to-time license limited rights from third parties when the third party is not willing to transfer copyright or when cost prohibitive.
11. All creative materials which are the result of work done for OTC by the Contractor, and paid for, remain the property of OTC and shall not be disposed of without prior written authorization of OTC. Until OTC authorizes the disposal thereof, Contractor shall store all original creative work and related items pertaining to authorized jobs for a period of one year from completion of the job. Contractor shall deliver to OTC any creative work or related items that Contractor cannot store. The Contractor shall not dispose of creative work or related items without prior authorization of OTC.

12. Contractor shall make recommendations as to the most effective method by which to obtain the objectives desired by OTC with the understanding that adoption of any proposed method, plan or suggestion be left to the exclusive judgment of OTC.

13. Contractor is required to archive or send to OTC for archival, 10 copies of all printed publications produced for OTC. This requirement is to comply with Oregon Revised Statute 357.090.

14. Contractor shall secure OTC the best craftsmanship and materials at the lowest possible rate consistent with good workmanship and the results required.

D. OTC RESPONSIBILITIES APPLICABLE TO RETAINER AND NON-RETAINER SERVICES. Where photographs, copyrighted material, art work or any other property or rights belonging to third parties are acquired by OTC for the Contractor for use in performing services for OTC, OTC will obtain proper releases, licenses, permits or other authorization for such materials.

E. DELIVERY SCHEDULE. Contractor shall complete all work, as directed by OTC, on or before June 30, 2015; however, Contractor shall not be responsible for delays caused by OTC.

F. PAYMENTS.

I. Budget

Estimated 2013-15 Costs

	OTC Media	Production	Retainer	Other Media Campaign	Total
20013/14	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$3,572,637
20014/15	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$3,572,637
Grand Total					\$7,145,274

\* Final budget amounts to be determined by OTC, and subject to change based on actual lodging tax revenues. In addition, OTC may move amounts in one budget category to another category, upon notice to Contractor as provided in Section 22 of the agreement and without need for entering into an amendment to this Agreement.



## 2. Invoices

- a. Contractor shall submit monthly invoices for work performed to the OTC accounting department (250 Church St. SE, Ste. 100, Salem, OR 97301). The invoices shall describe all work performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made upon review and approval of the invoices by OTC.
- b. Contractor may invoice OTC in advance of work performed only for special (usually production related) outside purchases where the outside vendor required deposit monies in advance and those deposit monies are in excess of \$3,000.00. A full accounting of all advance payments balanced against the final vendor invoice will be required before final payment can be made.
- c. Contractor shall not submit invoices for, and OTC will not pay, any amount in excess of the maximum compensation set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs work subject to the amendment. Payment terms are net 30 days.
- d. Contractor shall notify OTC in writing sixty (60) calendar days before this contract expires of the upcoming expiration of the Contract. No payment will be made for any services performed before the beginning date or after the expiration date of this Contract, as it may be amended from time to time in accordance with its terms.
- f. Travel and Other Expenses:
  - i. OTC will reimburse Contractor, within the not to exceed amount identified in section 3 of this Contract, for travel only when the travel is essential to the normal discharge of OTC's responsibilities. Contractor shall conduct all travel in the most efficient and cost-effective manner resulting in the best value to OTC. The travel must comply with OTC's expense policy and must be for official OTC business only. Contractor shall provide OTC with receipts for all travel expenses.
  - ii. OTC will reimburse Contractor, within the not to exceed amount identified in section 3 of this Contract, for the actual cost (without markup) of goods, services, media time and space purchased by Contractor as provided in Section A.5.b and B.2 of this Exhibit A. In addition, OTC will reimburse Contractor for the actual cost (without markup) of long-distance telephone services, and copies necessarily utilized by Contractor in rendering services under this Contract.

**EXHIBIT B  
INSURANCE**

**A. REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit B prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to OTC.

i. **WORKERS COMPENSATION.** 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.

ii. **PROFESSIONAL LIABILITY**

Required by OTC     Not required by OTC.

**Professional Liability.** Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts:

Per occurrence limit for any single claimant:

July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.	

Per occurrence limit for multiple claimants:

July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.	

iii. **COMMERCIAL GENERAL LIABILITY.**

Required by OTC     Not required by OTC.

**Commercial General Liability.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverage that is satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the OTC:

**Bodily Injury/Death:**

Per occurrence limit for any single claimant:

July 1, 2013 to June 30, 2014: \$1,900,000.  
July 1, 2014 to June 30, 2015: \$2,000,000.  
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

Per occurrence limit for multiple claimants:

July 1, 2013 to June 30, 2014: \$3,800,000.  
July 1, 2014 to June 30, 2015: \$4,000,000.  
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

**AND**

**Property Damage:**

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2015: \$101,400, and

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2015: \$506,900.

From July 1, 2013, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to ORS 30.273.

**iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.**

Required by OTC  Not required by OTC.

**Automobile Liability.** Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the OTC:

Per occurrence limit for any single claimant:

July 1, 2013 to June 30, 2014: \$1,900,000.  
July 1, 2014 to June 30, 2015: \$2,000,000.  
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

Per occurrence limit for multiple claimants:

July 1, 2013 to June 30, 2014: \$3,800,000.  
July 1, 2014 to June 30, 2015: \$4,000,000.  
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

AND

**Property Damage:**

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2015: \$101,400, and

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2015: \$506,900.

From July 1, 2013, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to ORS 30.273.

**AUTOMOBILE LIABILITY.** Automobile Liability Insurance, including MCS-90 endorsement, with a combined single limit equal to the U.S. Department of Transportation requirements. The policy shall insure against bodily injury, property damage, or environmental damage arising out of the use (including loading, transporting and unloading) by or on behalf of Contractor, its agents and employees of owned, non-owned or hired vehicles.]

**EXCESS/UMBRELLA INSURANCE.**

A combination of primary and excess/umbrella insurance is acceptable. If you are using excess/umbrella insurance to meet the minimum insurance requirement, your certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

**B. ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and OTC's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to OTC, upon OTC's request, certification of the coverage required under this section 4.C.

**D. NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to OTC. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by OTC.

**E. CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to OTC Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**CONTRACT AMENDMENT #1  
TO OREGON TOURISM COMMISSION PERSONAL SERVICE CONTRACT  
W+K2013CNT01**

The Amendment to this Contract is made and entered into as of June 30, 2015, between the Oregon Tourism Commission, hereafter referred to as the OTC and Wieden and Kennedy, Inc., hereafter referred to as the Contractor.

**RECITALS**

OTC and the Contractor entered into a contract on July 1, 2013. That contract expires on June 30, 2015. A copy of that Contract, which is on file in the OTC Operations Department, is incorporated by this reference into this amendment.

OTC and the Contractor jointly wish to extend the contract until June 30, 2017 and increase the maximum, not-to-exceed compensation payable to Contractor under this contract by \$7,701,290.00 bringing the total maximum, not-to-exceed amount of this contract to \$14,846,564.00. Except as expressly amended below, all other terms and conditions of the original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original contract are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

**AGREEMENT**

*Section F. Payments* currently reads:

Estimated 2013-15 Costs

	OTC Media	Production	Retainer	Other Media Campaign	Total
20013/14	\$	[REDACTED]			\$3,572,637
20014/15	\$	[REDACTED]			\$3,572,637
<b>Grand Total</b>					<b>\$7,145,274</b>

*Section F. Payments* will be amended to read as follows:

Estimated 2013-15 and 2015-17 Costs

	OTC Media And Production	Retainer	Other Media Campaign	Total
2013/14	\$	[REDACTED]		\$3,572,637
2014/15	\$	[REDACTED]		\$3,572,637
2015/16	\$	[REDACTED]		\$3,761,437
2016/17	\$	[REDACTED]		\$3,939,853
<b>Grand Total</b>				<b>\$14,846,564</b>

The maximum, not-to-exceed compensation payable to Contractor under this Contract amount is increased by \$7,701,290.00.

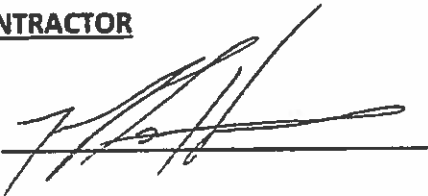
OTC and the Contractor agree that in the event the Contractor's billing reaches the maximum not-to-exceed amount of the contract prior to the anticipated expiration date, the contract will be amended.

**CONTRACTOR**

By: \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



VP, Operations

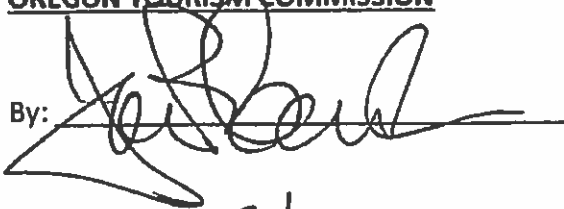
6/9/2015

**OREGON TOURISM COMMISSION**

By: \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



Managing Partner

6.9.15

**CONTRACT AMENDMENT #2  
TO OREGON TOURISM COMMISSION PERSONAL SERVICE CONTRACT  
W+K2013CNT01**

The Amendment to this Contract is made and entered into as of June 30, 2016, between the Oregon Tourism Commission, hereafter referred to as the OTC and Wieden and Kennedy, Inc., hereafter referred to as the Contractor.

**RECITALS**

OTC and the Contractor entered into a contract on July 1, 2013. That contract expired on June 30, 2015. That contract was amended in June of 2015. A copy of that Contract, including all amendments, which is on file in the OTC Operations Department, is incorporated by this reference into this amendment #2.

OTC and the Contractor jointly wish to extend the contract until June 30, 2019 and increase the monthly retainer which has the effect of increasing the maximum, not-to-exceed compensation payable to Contractor under this contract by \$8,021,795.00 bringing the total maximum, not-to-exceed amount of this contract to \$22,868,359.00. Except as expressly amended below, all other terms and conditions of the original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original contract are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

**AGREEMENT**

*Section F. Payments* currently reads:

Estimated 2013-15 and 2015-17 Costs

	OTC Media And Production	Retainer	Other Media Campaign	Total
2013/14	\$ [REDACTED]			\$3,572,637
2014/15	\$ [REDACTED]			\$3,572,637
2015/16	\$ [REDACTED]			\$3,761,437
2016/17	\$ [REDACTED]			\$3,939,853
Grand Total				\$14,846,564

*Section F. Payments* will be amended to read as follows:

Estimated Costs

	OTC Media And Production	Retainer	Other Media Campaign	Total
2013/14	\$ [REDACTED]			\$3,572,637
2014/15	\$ [REDACTED]			\$3,572,637

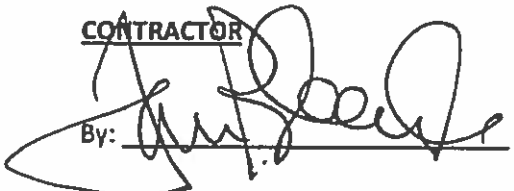


2015/16	████████████████████	\$3,761,437
2016/17	████████████████████	\$3,987,216
2017/18	████████████████████	\$3,987,216
2018/19	████████████████████	\$3,987,216
<b>Grand Total</b>		<b>\$22,868,359</b>

The maximum, not-to-exceed compensation payable to Contractor under this Contract amount is increased by \$8,021,795.00.

OTC and the Contractor agree that in the event the Contractor's billing reaches the maximum not-to-exceed amount of the contract prior to the anticipated expiration date, the contract will automatically be terminated unless amended.

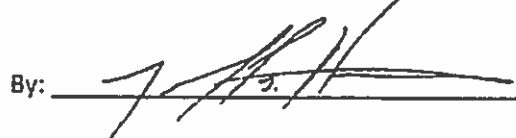
CONTRACTOR

By: 

Title Managing Director

Date 7.21.16

OREGON TOURISM COMMISSION

By: 

Title vp, operations

Date 6/30/2016