

**STATE OF OREGON
CONTRACT FOR THE
PURCHASE OF SERVICES
("Contract")**

This Contract is between the State of Oregon ("State") acting by and through its Department of Administrative Services, State Purchasing Office ("DAS SPO") for the benefit of Oregon Forest Resources Institute ("OFRI" or "Agency"), and Cappelli Miles [Spring], LTD. dba Cappelli Miles; ("Contractor").

RECITALS

- A. The Oregon Forest Resources Institute was created by the Oregon Legislature in 1991 to improve public understanding of forest practices and products and to encourage sound forest management;
- B. DAS SPO issued RFP # 102-1796-11 seeking offers from responsive and responsible Proposers for account management, and development, production and placement of advertising at OFRI's request;
- C. Contractor submitted a Proposal in response to the RFP offering to provide the services and deliverables described in this Contract (the "Services") pursuant to the terms and conditions set forth herein; and
- D. DAS SPO desires to enter into a Contract with Contractor for the Services.

NOW, THEREFORE, in consideration of the foregoing recitals and subject to the covenants, terms and conditions set forth below, Contractor agrees to perform, and Agency agrees to pay for, the Services.

1) DEFINITIONS.

- a) "Agency" means the State of Oregon, acting by and through, the Oregon Forest Resources Institute.
- b) "Agency's Contract Administrator" means the person designated by the Agency to work directly with Contractor's Representative concerning performance, contractual, and other issues.
- c) "Contract" means the entire agreement between the Contractor and DAS SPO comprised of this Contract document, including any Exhibits and Amendments.

- d) "Contract Administrator" means the person designated by DAS SPO to work with the Agency and the Contractor's Representative concerning performance, contractual, and other issues.
 - e) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from Services.
 - f) "Contractor's Representative" means the person authorized by the Contractor to work with the Agency and the Contract Administrator concerning performance, contractual, and other issues.
 - g) "DAS SPO" means the Department of Administrative Services, State Procurement Office.
 - h) "Match Report" means a detailed report comparing invoiced television advertising with actual television advertising.
 - i) "OFRI" means the Oregon Forest Resources Institute.
 - j) "Open Source Elements" means any Work Product subject to any open source initiative certified license, including Work Product based upon any open source initiative certified licensed work.
 - k) "Services" means services and deliverables performed and provided under the Contract.
 - l) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.
 - m) "Work Product" means all Services Contractor delivers or is required to deliver to Agency pursuant to this Contract.
- 2) **TERM OF THE CONTRACT**
- a) The initial term of the Contract is five (5) years, beginning on the date on which this Contract has been signed by all the parties and all governmental approvals necessary for execution have been obtained ("Effective Date"), unless terminated sooner in accordance with the termination provisions of this Contract. The Contract may be extended for two (2) additional five (5) year

periods ("Extension Terms") by agreement of the parties as set forth below. The total term of the Contract must not exceed fifteen (15) years.

- b) DAS SPO shall notify Contractor in writing at least thirty (30) days prior to the expiration of the then current term if DAS SPO intends to extend the Contract. (the "Renewal Notice"). If Contractor consents to an extension, it shall sign and return the Renewal Notice to DAS SPO within the time period specified therein. If the Contractor does not consent, the Contract shall expire according to its terms, unless earlier terminated.
- c) Notwithstanding the foregoing, DAS SPO reserves the right in its sole discretion to extend the Contract for a maximum of one (1) calendar month beyond any term. DAS SPO shall notify Contractor in writing of the one-month extension prior to the expiration of the then current term. Consecutive one-month extensions under this Section are not allowed.

3) STATEMENT OF SERVICES, ACCEPTANCE CRITERIA AND PROCESS, REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Agency anticipates the work Contractor will perform per fiscal year will include development and production of up to two 30-second television advertisements, and additional work that Agency requires to recommend, plan, receive OFRI approval and buy broadcast, Internet, outdoor and any other form of advertising consistent with OFRI's forestry education mission and prepare requisite paperwork on OFRI's behalf.

Contractor shall perform the following Services:

- a) By August 1 of each fiscal year (July 1 to June 30), Agency and Contractor will develop a mutually agreed delivery schedule for the Services for that fiscal year.
- b) In the first year of the Contract, Contractor shall conduct an evaluation of the Agency's current advertising strategies, to assess the effectiveness of the strategies' creative style(s), content and media selection in addressing Agency objectives. Contractor shall conduct evaluation(s) thereafter on direction of the Agency.
- c) By September 2011, Contractor shall provide to the Agency a written report on the findings of the evaluation and recommend in writing a strategy for development of new advertisements and media placement for fiscal year 2011-12 (July 1, 2011 – June 30, 2012). Contractor shall review the recommended strategy with Agency and make revisions as needed to obtain Agency approval.

- d) Thereafter in subsequent fiscal years, Contractor shall recommend to Agency in writing an overall strategy for development of new advertisements and media placement. In each case, Contractor shall review the recommended strategy with Agency and make revisions as needed to obtain Agency approval. During some fiscal years, but not every fiscal year, it is anticipated that Agency will require development of new advertisements for television, radio, internet, outdoor or other forms of educational advertising. Agency will request the Services in this subsection (d) on an as-needed basis.
- e) When requested by Agency, Contractor shall develop and review with Agency preliminary educational advertising concepts for television, radio, internet, outdoor or other forms of educational advertising guided by the written strategy for advertising development and by the public values described in OFRI's most recent values and beliefs research and by OFRI's long-term strategic plan.
- f) In fiscal years when development of new advertisements is underway for television or other forms of educational advertising, Contractor shall work with Agency and Agency's research contractor to present selected advertising concepts to focus groups. These focus groups will pre-test the advertisements for effectiveness.
- g) In fiscal years when development of new advertisements is underway for television or other forms of educational advertising, Contractor shall prepare draft advertisements for review, including review for scientific accuracy, revision and approval by Agency staff and advisors, incorporating results of focus group evaluation prepared by the Agency's research contractor.
- h) In fiscal years when development of new advertisements is underway, Contractor shall present draft advertisements at a meeting of Agency's board of directors (the "Board").
- i) Contractor shall revise draft advertisements based on Board input and produce final broadcast educational advertisements or other forms of educational advertising.
- j) Consistent with OFRI's budget, Contractor shall complete work required to recommend, plan, receive Agency approval of, buy broadcast time and placement for other forms of educational advertising, and prepare required paperwork on Agency's behalf for payment. Placement services provided by the

Contractor must be specifically approved by OFRI prior to implementation of each media buy.

- k) Contractor shall purchase advertising and arrange for invoices from broadcast or other forms of educational advertising outlets to be sent directly to Contractor for payment by Contractor, and for verification that the advertisements ran as approved by the Agency. Contractor shall provide Agency with Match Reports by media markets verifying that all advertising invoiced to Agency did occur and that the invoicing is accurate.
 - l) Contractor shall work with Agency and Agency's research contractor to evaluate advertising effectiveness through public opinion surveys conducted annually after the advertising is concluded.
 - m) Contractor shall provide to Agency with broadcast-quality copies of all broadcast advertisements that Contractor produces for Agency.
 - n) Contractor shall provide Agency a detailed report and other data estimating how many people were reached through each media buy.
 - o) Contractor shall develop and place additional forestry education advertisements as requested and approved by Agency.
 - p) Contractor shall serve as OFRI's consultant on all matters relevant to its educational advertising, and on an assigned basis, other communications programs.
- 4) **SPECIAL REQUIREMENTS.**
- a) **KEY PERSONS.** Contractor and DAS SPO agree that each individual specified below is a person whose special qualifications and involvement in Contractor's performance of Services form a part of the basis of this agreement between the parties for this Contract and is an individual through whom Contractor shall provide to Agency the expertise, experience, judgment, and personal attention required to perform Services ("Key Person"). Each of the following is a Key Person at the Effective Date of this Contract:

Key Person: Bruce Cappelli Title: Partner

Key Person: Mark Hass Title: Account Manager

Key Person: Darcey Price	Title: Media Director
Key Person: Bruce Eckols	Title: Senior Art Director
Key Person: Jamie Chabot	Title: Senior Art Director

Neither Contractor nor any Key Person of Contractor shall delegate performance of Services that any Key Person is required to perform under this Contract to others without first obtaining Agency's written consent. Further, Contractor shall not, without first obtaining Agency's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide Agency with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests Agency to approve a re-assignment or transfer of a Key Person, Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual Agency approves as a replacement for a Key Person is deemed a Key Person under this Contract.

b) SUBCONTRACTORS. All subcontractors must be approved in writing by the Agency. For purposes of this section and section 6.r, the following subcontractors of Contractor are approved to perform the specified Services:

@ Large Films, Portland, OR Video and Film production

Contractor shall provide written notice to Agency when any approved subcontractor is no longer performing the specified Services if those Services have not been successfully completed

c) Email is sufficient writing for purposes of this Section 4.

5) **COMPENSATION.**

a) **METHOD OF PAYMENT FOR SERVICES.**

The maximum, not-to-exceed compensation payable to Contractor under this Contract, including all payments for Services required under this Contract based on the hourly rates in Section 5 (b) and any allowable expenses pursuant to Section 5(c), for the initial 5 year term is \$4,750,000. For each fiscal year (July 1 to June 30), the annual maximum not-to-exceed compensation available, including all payments for Services required under this Contract based on the hourly rates in Section 5 (b) and any allowable expenses pursuant to Section 5(c) is as follows:

Fiscal Year 2011-2012:	\$750,000
Fiscal Year 2012-2013:	\$850,000
Fiscal Year 2013-2014:	\$950,000
Fiscal Year 2014-2015:	\$1,050,000
Fiscal Year 2015-2016:	\$1,150,000

Contractor may request adjustment of rates after the second year of the Contract.

b) **BASIS OF PAYMENT FOR SERVICES.**

Agency shall pay only for completed and accepted work delivered on a timely basis, at the following not-to-exceed hourly rates. Hourly rates for Services are inclusive of any and all Contractor costs for reimbursable expenses. Contractor shall not charge and Agency shall not pay a mark up on allowable reimbursable Contractor expenses.

- Costs per hour for key agency personnel for advertising development and production:
 - Principal \$0 /hr.
 - Creative director \$0 /hr.
 - Account manager \$150 /hr.
 - Copywriter \$150 /hr.
 - Administrative \$0 /hr.

- Costs, per hour, for planning/media buying: \$150 /hr.

c) EXPENSE REIMBURSEMENT

- i) Within the not-to-exceed amount identified in Section 5(a) of this contract: Agency will reimburse Contractor for approved out-of-pocket costs for new advertising production and placement of advertising and other allowable reimbursable media costs, and Agency will reimburse Contractor for travel only when the travel is essential to the discharge of Contractor's responsibilities under this Contract. Contractor shall conduct all travel in the most efficient and cost-effective manner resulting in the best value to the Agency. The travel must comply with all the requirements set forth in this section and must be for official Agency business under this Contract only. Contractor shall provide Agency with receipts for all travel expenses for which Contractor seeks reimbursement. All Contractor representatives shall fly "coach class," unless Contractor personally pays the difference to upgrade the flight class. All Contractor representatives shall rent only economy or compact sized rental vehicles, unless Contractor personally pays the difference to rent another type of vehicle.
- ii) All out-of-state travel must be approved in advance, and in writing, by the Agency. In addition to meals and lodging, out-of-state travel expenses will be reimbursed for airfare and rental vehicles only if Contractor is acting within the course and scope of its duties under this Contract, and in furtherance of the Services.
- iii) Agency will reimburse travel and other expenses of the Contractor in accordance with Agency's Travel Expense and Reimbursement Policy attached as Exhibit A.

d) GENERAL PAYMENT PROVISIONS.

- i) Agency's Payment. Agency shall pay Contractor for Services performed at the rates and prices specified in section 5. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of State other than Agency for Services performed.
- ii) If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such

forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.

iii) Funds Available and Authorized; Payments. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.

e) **INVOICES**

i) Contractor shall send invoices to Agency no more often than monthly for Services completed accepted by Agency in accordance with Section 3. Contractor shall include in each invoice:

ii) A detailed description of Services performed, including the name or names of the individuals who performed Services and prepared the deliverables to which the invoice applies, the dates Services were performed, all deliverables delivered during the period of the invoices, the rate or rates for Services performed, and the total cost of Services;

iii) Itemization and explanation of all expenses for which Contractor claims reimbursement authorized under this Contract and;

iv) The total amount due and the payment address.

v) Contractor shall send all invoices to Agency's Manager of Business Operations at the address specified in section 9 or to any other address as Agency may indicate in writing to Contractor. Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

6) **GENERAL TERMS AND CONDITIONS.**

a) **INTELLECTUAL PROPERTY & OPEN SOURCE; TITLE TO GOODS.**

i) New Works. All intellectual property rights in the Work Product created by Contractor under this Contract shall be the exclusive property of Agency.

All Work Product authored by Contractor under this Contract shall be deemed "works made for hire" to the extent permitted by the United States Copyright Act. To the extent Agency is not the owner of the intellectual property rights in such Work Product, Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in such Work Product. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments reasonably necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to such Work Product created under 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.

- ii) Contractor Intellectual Property. If intellectual property rights in the Work Product are Contractor Intellectual Property, Contractor hereby grants to Agency 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 Agency's behalf.
- iii) Third Party Intellectual Property. To the extent Contractor has the authority, Contractor shall sublicense or pass through to Agency all Third Party Intellectual Property. Contractor represents and warrants that it has provided written disclosure to Agency of all Third Party Intellectual Property that must be independently licensed by Agency to fully enjoy the benefit of the Work Product. If Contractor failed to provide such written disclosure, Contractor shall secure on the Agency's behalf and in the name of the Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.
- iv) Open Source Approval and Notice. Any Open Source Elements in the Work Product must be approved in advance and in writing by Agency. If Agency approves the use of Open Source Elements, Contractor shall:
 - (1) Notify Agency in writing that the Work Product contains Open Source Elements;
 - (2) Identify the specific portion of the Work Product that contain Open Source Elements; and

- (3) Provide a copy of the applicable license for each Open Source Element to Agency.
- v) Title to Goods. Title to Goods passes to Agency in accordance with ORS 72.4010.
- b) OTHER REPRESENTATIONS AND WARRANTIES.
 - i) All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to the Goods delivered under this Contract. Contractor represents and further warrants that:
 - (1) Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;
 - (2) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession;
 - (3) Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and
 - (4) When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.
 - ii) The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give DAS SPO and Agency the greatest warranty protection available.
- c) COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.
 - i) Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.

- ii) DAS SPO's and Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

d) AMENDMENTS.

i) The parties may amend this Contract. All amendments must be in writing and signed by all approving parties before becoming effective. Only DAS SPO has the final authority to execute changes, notices or amendments to the Contract pursuant to OAR 125-246-0170(2)I(L)(v)(I)&(II) and OAR 125-246-0560.

ii) ANTICIPATED AMENDMENTS: Generally, all amendments to this Contract are Unanticipated Amendments unless listed in subsection (d)(ii)(1) below. OAR 125-246-0560 applies to all Contract amendments. DAS SPO anticipates the circumstances in (d)(ii)(1) may require amendment to the Contract.

(1) Anticipated Circumstances Requiring Amendments.

- (a) Amendment(s) to extend the term of the Contract for additional periods;
- (b) Amendment(s) to add Services within the scope of the solicitation in RFP # 102-1796-11, of the kind or type as identified in Section 5, or to the extent permitted by applicable statutes and administrative rules;
- (c) Amendment(s) to delete Services no longer provided by the Contractor;
- (d) Amendment(s) to adjust the price of Services as indicated in the Contract;
- (e) Amendment(s) to adjust the not-to-exceed amount of the Contract based on adjustments to the Services provided.
- (f) Amendment(s) to conform the Services to legislative, administrative rule requirements, operational, and practice changes;
- (g) Amendment(s) to change the Key Persons listed in the Contract;
- (h) Amendment(s) to change the Contract as a result of an assignment approved in accordance with Contract Sections 6.r.i and 6.r.ii.

(2) Amendment Method. Upon identification of any of the circumstances set forth in subsection (d)(ii)(1) requiring an amendment to this Contract by either party, the parties may enter into negotiations regarding the proposed amendment to this Contract.

e) TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

f) FORCE MAJEURE.

Neither DAS SPO, Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. DAS SPO may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

g) INSURANCE.

Contractor shall obtain the insurance required in Section 7 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

h) INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

- i) Contractor shall perform all Services as an independent Contractor. Although Agency and DAS SPO have the right (a) to determine and modify the delivery schedule for Services to be performed and (b) to evaluate the quality of the completed performance, Agency 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 any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" as those terms are used in ORS 30.265 of State or Agency.
- ii) If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or

regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

iii) Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

i) INDEMNIFICATION.

i) GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii) INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 6.i.i, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL

PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

- iii) STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.
- j) ASSIGNMENT OF ANTITRUST RIGHTS.
 - i) CONTRACTOR IRREVOCABLY ASSIGNS TO STATE ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO CONTRACTOR FOR THE PURPOSE OF CARRYING OUT CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.
 - ii) CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO STATE, AS THIRD

PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

k) EVENTS OF BREACH.

i) Breach by Contractor. Contractor breaches this Contract if:

- (1) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (2) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after DAS SPO delivers notice of breach to Contractor or a longer period as DAS SPO may specify in the notice; or
- (3) Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after DAS SPO delivers notice of breach to Contractor or a longer period as DAS SPO may specify in the notice.

ii) Breach by Agency. Agency breaches this Contract if:

- (1) Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and DAS SPO fails to cure Agency's failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to DAS SPO or a longer period as Contractor may specify in the notice; or
- (2) Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and DAS SPO fails to

cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to DAS SPO or a longer period as Contractor may specify in the notice.

l) REMEDIES.

i) State's Remedies. If Contractor is in breach under Section 6.k.i, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at DAS SPO's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

- (1) Termination of this Contract under Section 6.m.ii.;
- (2) Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- (3) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
- (4) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

ii) State's Remedies Cumulative. These remedies, are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under Section 6.k.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 6.m.ii.1.

iii) Contractor's Remedies. If DAS SPO terminates this Contract for convenience under Section 6.M.ii.1, or if Agency is in breach under Section 6.k.ii and whether or not Contractor elects to exercise its right to terminate this Contract under Section 6.m.iii, Contractor's sole remedy is one of the following, as applicable:

- (1) For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.
- (2) For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.
- (3) If previous amounts paid to Contractor for Services and Goods exceed the amount due to Contractor under this Section 6.1.iii, Contractor shall pay the excess amount to Agency immediately upon written demand.

iv) ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to Section 6.i, neither DAS SPO, Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

m) TERMINATION.

- i) MUTUAL CONSENT. This Contract may be terminated at any time by mutual written consent of the parties.
- ii) Termination by DAS SPO:
 - (1) DAS SPO may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by DAS SPO to Contractor.
 - (2) DAS SPO may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as DAS SPO may establish in the notice, upon the occurrence of any of the following events:
 - (A) Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

(B) Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or

(C) Contractor is in breach under Section 6.k.i.

(3) Contractor shall stop performance under this Contract as directed by DAS SPO in any written notice of termination delivered to Contractor under this Section 6.m.ii.

iii) Termination by Contractor: Contractor may terminate this Contract immediately upon written notice to DAS SPO, or at a later date as Contractor may establish in the notice, if DAS SPO is in breach pursuant to Section 6.k.ii.

n) ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending is later. Contractor shall maintain all financial Records in accordance with Generally Accepted Accounting Principles (GAAP). During this Record-retention period, Contractor shall permit State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

o) NOTICES.

Except as otherwise provided in this Contract, all notices required under this Contract shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the DAS SPO contact person identified in section 9. Contractor's Authorized Representative is the contact person identified in section 8. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices

delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative. Contractor shall send to Agency's Manager of Business Operation identified in section 9 copies of all notices that Contractor sends to DAS SPO.

p) GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the Goods sold under this Contract.

q) VENUE; CONSENT TO JURISDICTION.

(i) Designation of Forum. 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. 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.

(ii) Federal Forum. Notwithstanding Section q(i) 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 immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

r) SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

i) SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. In addition to any other provisions either DAS SPO or Agency may require, Contractor shall include in any permitted subcontract provisions to ensure that DAS SPO and Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor with respect to Sections 3, 6(a), 6(b), 6(e), 6(i), 6(j), 6(n), 6(p) and 6(r). Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- ii) Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.
- iii) The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.
- iv) Email is sufficient writing for purposes of this subsection 6(r).

s) THIRD PARTY BENEFICIARIES.

State and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

t) SEVERABILITY.

If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

u) 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 this Contract so executed shall constitute an original.

v) INTEGRATION AND MERGER.

This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

w) AMENDMENTS; WAIVER.

This Contract may be amended to the extent permitted by applicable statutes and administrative rules and as the amendment scope and process may be further described in section 6(d). No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by DAS SPO and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

x) SURVIVAL.

In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: sections 5(d), 6(a), 6(b), 6(g), 6(i), 6(j), 6(l), 6(n), 6(p), 6(q), 6(s), 6(x), and 7.

7) INSURANCE.

a. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this Section 7 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 Agency.

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 the employers 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 Agency Not required by Agency.

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 as determined by the Agency:

- \$(Agency to enter amount) Per occurrence limit for any single claimant;
- and
- \$(Agency to enter amount) Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:
 From commencement of the Contract term to June 30, 2010: \$1,500,000.
 July 1, 2010 to June 30, 2011: \$1,600,000.
 July 1, 2011 to June 30, 2012: \$1,700,000.
 July 1, 2012 to June 30, 2013: \$1,800,000.
 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 Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:
 From commencement of the Contract term to June 30, 2010: \$3,000,000.
 July 1, 2010 to June 30, 2011: \$3,200,000.
 July 1, 2011 to June 30, 2012: \$3,400,000.
 July 1, 2012 to June 30, 2013: \$3,600,000.
 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 Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

iii. COMMERCIAL GENERAL LIABILITY.

Required by Agency Not required by Agency.

Commercial General Liability. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products liability, and completed operations liability. 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 Agency:

Bodily Injury/Death:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2010: \$1,500,000.
 July 1, 2010 to June 30, 2011: \$1,600,000.
 July 1, 2011 to June 30, 2012: \$1,700,000.
 July 1, 2012 to June 30, 2013: \$1,800,000.
 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 Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2010: \$3,000,000.
 July 1, 2010 to June 30, 2011: \$3,200,000.
 July 1, 2011 to June 30, 2012: \$3,400,000.
 July 1, 2012 to June 30, 2013: \$3,600,000.
 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 Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2011: \$100,100, and

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2011: \$500,600.

From July 1, 2010, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

Required by Agency **Not required by Agency.**

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 Agency:

Bodily Injury/Death:

Per occurrence limit for any single claimant; and

Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2010: \$1,500,000.

July 1, 2010 to June 30, 2011: \$1,600,000.

July 1, 2011 to June 30, 2012: \$1,700,000.

July 1, 2012 to June 30, 2013: \$1,800,000.

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 Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2010: \$3,000,000.

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
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 Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

- Per occurrence limit for any single claimant; and
- Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:
 From commencement of the Contract term to June 30, 2011: \$100,100, and

Per occurrence limit for multiple claimants:
 From commencement of the Contract term to June 30, 2011: \$500,600.

From July 1, 2010, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

v. POLLUTION LIABILITY.

- Required by Agency** **Not required by Agency.**

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract. Combined single limit per occurrence shall not be less than \$ _____. Annual aggregate limit shall not be less than \$ _____.

vi. EXCESS/UMBRELLA INSURANCE.

A combination of primary and excess/umbrella insurance is acceptable. If Contractor is using excess/umbrella insurance to meet the minimum insurance requirement, Contractor's 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 Agency'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 Agency, upon Agency's request, certification of the coverage required under this section 7.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 Agency. 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 Agency.

e. CERTIFICATE(S) OF INSURANCE. Contractor shall provide to Agency 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.

8) CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- a) The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;
- b) The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403-200 to 403.250, ORS Chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.
- c) To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts.
- d) Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the

Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

- e) Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and
- f) Contractor ___ is / ___ is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). See section 5.d.ii.

Contractor (print Contractor's name): RODNEY L. MILES
Authorized Signature: Rodney L. Miles
By (print name): ROD MILES
Title: PRESIDENT
Date: 6/9/11

Contractor's Authorized Representative: _____

Contact Telephone Number: (____) _____

Contact Fax Number: (____) _____

Contact E-Mail Address: _____

9) SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE.

State of Oregon acting by and through
the Department of Administrative Services, State Purchasing Office

Authorized Signature:  _____

By (print name): Tim Hay

Title: State Procurement Analyst

Date: 6/15/11

SPO Contact Person :

James C. Moering, CPPB, OPBC, OCAC, JD
State Procurement Analyst
DAS State Procurement Office
1225 Ferry St SE, U140
Salem, OR 97301-4285

Ph. 503-373-1577
Fax. 503-373-1626
James.moering@das.state.or.us

OFRI Agency Signatures:

Signature:  _____

By: Paul F. Barnum
Title: Executive Director

Date: June 13, 2011

Signature:  _____

By: Gregory A. Miller
Title: Board Chair

Date: 6/13/2011

Agency Manager of Business Operation (Type or Print):
Kathy Storm,
Manager of Business Operations

317 SW Sixth Ave. Suite 400
Portland, OR 97204
Contact Telephone Number: 971-673-2953
Fax Number: 971-673-2946
E-mail: storm@ofri.org

Agency Contract Administrator:
Dave Kvamme, Director of Communications

317 SW Sixth Ave. Suite 400
Portland, OR 97204
Contact Telephone Number: 971-673-2948
Fax Number: 971-673-2946
E-Mail Address: kvamme@ofri.org

APPROVED BY THE DEPARTMENT OF JUSTICE:

By: e-mail from Sharman Meiners, AAG Dated: 4/6/11

EXHIBIT A

OREGON FOREST RESOURCES INSTITUTE

Travel Expense and Reimbursement Policy

The purpose of this policy is to provide guidelines for the reimbursement of out-of-pocket expenses incurred by OFRI Board members, officers and employees because of travel on official OFRI business. Reimbursement shall be governed by these rules.

This policy is compiled from OFRI Statute 526.600-526.685, OFRI Administrative Rule 628-01-030, Compensation for OFRI Board Members, Officers and Employees, and the Letter dated August 5, 1993 from Melinda Bruce, Assistant Attorney General. The policy is consistent with Oregon Administrative Rules and the reimbursement policies of Oregon agricultural commodity commissions where appropriate.

TRAVEL EXPENSE GUIDELINES

OFRI Board members, officers and employees may receive reimbursement for their actual and necessary travel expenses and other expenses incurred in performance of their official duties. OFRI Board members, officers and employees are not eligible to receive a per diem allowance. Receipts are required for all in-state and out-of-state meal and lodging travel expenses incurred. Only the minimum number of nights required to conduct authorized business is reimbursable. There will be no reimbursement for the expenses of the spouse of a Board member, officer or employee.

Gratuity

Reimbursement up to 15% of receipt cost for gratuity is allowed. When a gratuity of less than 15% is paid, only the amount paid shall be claimed. Gratuity shall be documented on meal receipt.

Authorization for Out-of-State Travel

Prior approval must be obtained from the OFRI Chairperson, in writing, for travel, which extends more than 150 miles beyond Oregon's border.

Non-Overnight Travel Meal Allowance

Board members, officers and employees away from their official station for two hours or more before the beginning of their regular work shift shall be entitled to reimbursement for breakfast.

Board members, officers and employees away from their official station for two hours or more beyond the end of the regular work shift shall be entitled to reimbursement for dinner.

Personnel assigned to attend a conference or other meeting shall be reimbursed for the cost of a meal when such meal is an agenda item where attendance is required.

Overnight Travel Meal Allowance

Meal allowance on the initial day of travel is provided if Board member, officer or employee leaves their official station or residence on or before the following times:

Breakfast	6:00 a.m.
Lunch	11:00 a.m.
Dinner	5:00 p.m.

Meal allowance on the day of return is provided if Board member, officer or employee returns to their official station or residence, exclusive of eating time, on or after the following times:

Breakfast	9:00 a.m.
Lunch	2:00 p.m.
Dinner	7:00 p.m.

Telephone Calls

On the first day of travel, the Board member, officer or employee may be reimbursed for one personal telephone call. While in travel status, the employee may be reimbursed every other day for one personal telephone call. The phone call should be kept to a minimum length of time. All calls pertaining to OFRI business are reimbursed. Documentation of the phone call on lodging receipt is required. If calls are made by phone card, a copy of the statement, with amounts for reimbursement highlighted, must be submitted for payment.

RECEIPT REQUIREMENTS

Receipts are required for all meal and lodging expenses.

- Lodging receipts require:

- Person's name
- Date of occupancy
- Room number
- Single room rate
- Number of persons occupying room

- Receipts are required for any lawful expenditure exceeding \$10.
- When receipts cannot be obtained or have been lost, the claimant shall make a written statement providing the reason.
- Charge card receipt forms such as VISA are valid for requesting meal reimbursement if the receipt is electronically generated with complete details of the purchase.
- There will be no reimbursement for alcoholic beverages and they should not be included on the reimbursement form.

Receipts are not required for the following expenses:

- Railroad and bus fare, when fares are available in published tariffs and travel is wholly within the state;
- Ferry fares, bridge and highway tolls;
- Long-distance telephone charges if date, place and party called are shown, unless the call exceeds \$10 in which case receipts or other supporting evidence shall be provided;
- Taxi or hotel bus fares;
- Parking fees of \$10 or less for continuous period of parking;
- Any other lawful expenditure of \$10 or less.

REIMBURSEMENT FOR EXPENSES OF ANOTHER STATE EMPLOYEE

Board members, officers and employees may claim reimbursement for approved travel expenses of another State employee. A receipt with the names of the other employee(s), and the purpose of the expense, shall be attached to the reimbursement claim.

TRANSPORTATION

Authorized persons are responsible for selecting the method of transportation most advantageous to OFRI. Factors to be considered will consist of cost, including personnel time; objective of the trip; public image, and consistency with the State's energy conservation policies.

Travel should be by most direct route.

Car rental is reimbursable when used as a means of continuing travel initiated by common carrier.

Note: Personnel should not purchase any insurance from the rental agency since the State is self-insured.

Use of State vehicle is allowed for official business only.

Air Travel

When purchasing airline tickets, Board members, officers and employees are required to use the contractor who is awarded the State contract for providing travel services.

Individuals who are traveling by airlines must accept the lowest fare as quoted by the State contractor.

All Board members, officers and employees will fly "coach class", unless they personally pay the difference.

Employees are not authorized to use frequent flyer mileage credits earned as the result of OFRI expenditures to upgrade to luxury travel accommodations.

The State has contracted with various airlines to provide low cost fares to many destinations. When traveling to a destination that is included in the contract, employees

are required to fly with the airline contracted to provide service to that city. Frequent flyer mileage credits are not to be awarded by the airlines for these contracted flights.

Use of Private Car on OFRI Business

Board members, officers or employees, in the course of official OFRI business, may use their private vehicle and be reimbursed for mileage and other automobile travel expenses such as parking fees.

The driver must have a valid, current driver's license for the class of vehicle to be driven.

Private car mileage rate is the rate established by the federal Internal Revenue Service.

Mileage reimbursement will be for travel over the most direct and usually traveled route.

Reimbursement for travel to places of entertainment or for other personal pursuits is not authorized.

The total reimbursement allowable for transportation of all passengers is equivalent to reimbursement to one individual for use of a privately owned vehicle.

Personnel authorized to operate a privately owned vehicle are required to carry personal auto liability insurance for the use of a land vehicle.

When operating their own vehicle on OFRI business, Board members, officers and employees should be aware of the following conditions and/or State coverage:

- There is no State coverage for uninsured motorist, personal injury protection that includes medical payments. These coverages are provided through the individual's personal policies;
- Workers' compensation insurance is provided the same as if the individual is using a State vehicle on State business;
- Collision and comprehensive physical damage losses to the individual's vehicle are not covered by the State;
- Liability to other persons, including the individual's passengers, must be covered by the individual's personal auto policy. If loss exceeds the

individuals' policy limits the State will cover the excess liability under the terms of the State's Liability Policy Manual.

NON-STATE EMPLOYEES

OFRI may cover costs of meals for persons other than Board members, officers and employees of OFRI upon substantiation that such meals were in the furtherance of OFRI business. The request for reimbursement must carefully document the business reason for all such expenses.

OFRI may reimburse eligible non-State employees (e.g., a member of an advisory committee appointed by the Chairman or Executive Director, an applicant interviewing for State employment, a volunteer working for OFRI, or a person providing a service to OFRI through a personal services contract relationship) for costs incurred for travel, meals and lodging while conducting OFRI business.

There will be no reimbursement for the expenses of the spouse of an eligible non-State employee.

If OFRI chooses to make travel reimbursement part of the compensation to the personal services contractor, there must be a provision in the personal services contract establishing rates for reimbursement of travel.

Reimbursement for travel, meal and lodging costs incurred by eligible non-State employees should be submitted within 30 days after the month in which expenses are incurred. Expenses should be properly itemized and accompanied by the necessary receipts.