

State of Oregon



COVER SHEET

Community Renewable Energy Feasibility Fund

REQUEST FOR PROPOSALS (RFP) #ODOE 10-085
ORPIN Opportunity # 330-1027-10

Date of Issue: January 27, 2010

Proposal Due Date: March 1, 2010, 5:00 PM (PST)

Issuing Office:	Oregon Department of Energy
Single Point of Contact Name:	Lorena Wise
Address:	625 Marion Street NE
City, State, Zip:	Salem, OR 97301
Phone (voice):	503-378-6968
Phone (fax):	503-373-7806
E-mail:	lorena.wise@state.or.us

Table of Contents

Section 1: Purpose and General Information

1.1	Introduction	3
1.2	Schedule	4
1.3	Definitions	5
1.4	Scope of Work.....	5
1.5	Single Point of Contact	5

Section 2: Solicitation Process

2.1	Procurement Authority	6
2.2	Procurement Method.....	6
2.3	ORPIN System	6
2.4	Solicitation Addenda	6
2.5	ORPIN Usage.....	6
2.6	ORPIN Registration Information.....	6
2.7	Questions Relating to the RFP, Contract Provisions or Specifications	6

Section 3: Instructions to Applicant

3.1	Proposal Submission – General Requirements.....	7
3.2	Proposal Submission – Part One: Proposal Summary.....	9
3.3	Proposal Submission – Part Two: Proposal Narrative.....	9
3.4	Proposal Submission – Part Three: Letters of Support.....	10
3.5	Public Information, Confidentiality, and Trade Secrets	10
3.6	Reservation of Agency Rights.....	10
3.7	Contract Form and Expectations	10

Section 4: Evaluation and Award

4.1	Evaluation Process	11
4.2	Selection Criteria	12
4.3	Award Notification and Process	12
4.4	Award Outcome and Agency Determination	13
4.5	Award Return and Repayment.....	13

Section 5: Attachments

Attachment 1: Standard Personal Services Contract	
Attachment 2: Standard Intergovernmental Agreement	
Attachment 3: Proposal Summary	

Section 1: Purpose and General Information

1.1 INTRODUCTION

1.1.1 Overview, Objectives, and Background.

The Community Renewable Energy Feasibility Fund (CREFF) was established to offer grants for feasibility studies of community renewable energy projects; and to encourage widespread development and utilization of Oregon's many renewable energy resources. The administrator of this fund is the Oregon Department of Energy (ODOE).

The objective of the CREFF program is to reduce Oregon's dependence on fossil-based energy sources and to promote sustainable economic development for communities throughout the state. By offering support to promising renewable energy projects in the feasibility stage, the CREFF program will promote sound financial and engineering analysis for project development.

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

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

1.1.2 Eligible Applicants.

CREFF awards may be made available to any entity that seeks funding for a feasibility study for a renewable energy project that will benefit Oregon energy consumers and communities. Eligibility is not limited by utility service territory. Entities eligible for CREFF program awards may include but are not limited to:

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

Municipal entities are eligible to apply for CREFF awards; however, these applicants are advised to apply to the Renewable Energy Feasibility Fund (REFF) program administered by Business Oregon. The REFF program provides a similar funding structure to CREFF, but it is targeted to renewable energy feasibility studies performed for municipally owned projects.

1.1.3 Eligible Projects.

Studies must be for a renewable energy project for the purpose of generating electricity, heat and/or fuel. Projects that would qualify as a "Renewable Resource Project" under Oregon's Business Energy Tax Credit (BETC)

or State Energy Loan Program (SELP) may be considered for CREFF awards. For electricity production, studies are limited to development projects with minimum capacity of 25kW and a maximum of 10MW. For heat and/or fuel generation projects, eligibility will not be limited by project size. However the selection process for each round of funding will favor development of small-scale projects over large-scale projects.

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

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

Preference will be given to applicants that are willing and committed to developing the project if it is deemed feasible through the course of the study and terms of the award.

The CREFF grants process is competitive. Applications that meet threshold eligibility terms of the CREFF program will qualify for scored review by an evaluation committee. Final awards will be determined on indicators including but not limited to score reviews by an evaluation committee, funding availability, representation of multiple renewable energy sectors and geographical representation in Oregon.

1.1.4 Contract Term.

All Contracts are anticipated to start in April 2010. The duration of each Contract executed under this RFP is contingent on the type of project described in the proposal, and the anticipated time required to complete the project. The Agency will not fund any work completed prior to issuance of the contract.

1.1.5 Method of Compensation.

Each award will be disbursed in full upon execution of the contract. The maximum amount for a single award under this RFP is \$50,000. The Oregon Department of Energy anticipates that most awards will be in the \$10,000 to \$30,000 range.

The successful Applicant must provide 25% of the cost of the study, up to half of which may be in-kind contributions. Qualifying in-kind contributions include payments to others for goods or services required to complete the study. Recipient or project overhead or indirect expenses are not eligible in-kind contributions.

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

1.2 SCHEDULE

Event	Date	Time (Pacific Time)
Solicitation Release	01/27/2010	See ORPIN System
Webinar to Answer RFP Questions (section 2.7.1)	02/09/2010	9:00 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
Deadline for Questions/Clarifications	02/12/2010	5:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Closing Date and Time for Submittals	03/01/2010	5:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Evaluation Period Opens	03/02/2010	9:00 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
Contract Start (approximate)	04/25/2010	See ORPIN System

1.3 DEFINITIONS

For the purposes of this RFP, the following definitions will be used. These definitions do not apply to the contracts attached as Attachments 1 and 2.

“**Addendum**” means an addition to or deletion of, a material change in, or clarification of, the RFP. Addenda shall be labeled as such, issued by Agency, and shall be made available to all interested Applicants as set forth in this RFP.

“**Agency**” is the Oregon Department of Energy. Used interchangeably with “ODOE.”

“**Applicant**” is a person, organization or governmental entity submitting an application or proposal.

“**Closing Date and Time**” is the date and time on or before all Applicants must be submitted.

“**Contractor**” is a person, organization, or governmental entity, who submitted a proposal or application, was selected by ODOE as the winning Applicant, and entered into a contract with ODOE to perform the work as defined in this RFP.

“**CREFF**” is the Community Renewable Energy Feasibility Fund.

“**ODOE**” is the Oregon Department of Energy.

“**Proposal**” means an application or proposal submitted in response to this RFP.

“**RFP**” is Request for Proposals.

“**SPC**” is the Single Point of Contact listed on the cover page of this RFP document.

“**State**” means the State of Oregon.

“**Successful Applicant**” is the person, organization or governmental entity to which the award will be made. Used interchangeably with “Contractor.”

“**Work**” is the proposed deliverables pursuant to a prospective Contract and outlined in the Proposal’s Scope of Work.

1.4 SCOPE OF WORK

Successful Applicants will be responsible for performing or retaining a consultant to perform the feasibility study described in the Proposal. Agency and the successful Applicant may negotiate a Statement of Work for purposes of the Contract.

Work products that are created using funds from the CREFF program will be considered the property of the state of Oregon, and as such, shall be subject to the Oregon Public Records Law and other public information laws. Work products shall clearly acknowledge state ownership and funding through the CREFF program. Contracts may include provisions to protect intellectual property rights, on a case-by-case basis and consistent with applicable law.

1.5 SINGLE POINT OF CONTACT (SPC)

All questions about the technical requirements of this RFP, contractual requirements, or the procurement process must be directed to the person identified on the cover page of this RFP.

Section 2: Solicitation Process

2.1 PROCUREMENT AUTHORITY AND METHOD

Agency is conducting this RFP pursuant to its authority under OAR 125-246-0170(2)(c)(G).

2.2 PROCUREMENT METHOD

Agency intends to use the competitive sealed Proposal method, pursuant to OAR 125-247-0260. Agency intends to initially conduct a single-step competitive sealed Proposal method and reserves the right, based upon evaluation of Proposals, to conduct discussions and negotiations.

2.3 ORPIN SYSTEM

The RFP, including all Addenda and Attachments, shall be posted on the Oregon Procurement Information Network System (ORPIN). Agency is not required to mail the RFP, its Addenda or Attachments. Notification of any substantive clarifications provided in response to any question will be provided and published at the ORPIN web site below. For complete RFP documentation please go to the ORPIN web site:

<http://orpin.oregon.gov/open.dll/welcome>

View **Agency Opportunity** number **330-1027-10**. Applicants without electronic access to the ORPIN system may contact the SPC directly to request the documents be e-mailed to them.

2.4 SOLICITATION ADDENDA

Addenda are incorporated into the RFP and can be viewed and downloaded by registered suppliers. Applicants should consult ORPIN regularly until the Closing Date and Time to assure that they have not missed any Addenda announcements. Agency is not responsible for sending Addenda to any potential Applicants, whether requested or not.

Any oral communications shall be considered unofficial and non-binding. Applicants shall rely only on written statements issued by the SPC.

2.5 ORPIN USAGE

Applicants unfamiliar with the ORPIN System may contact the State Procurement Office (SPO) at the Department of Administrative Services, 1225 Ferry Street SE – U140, Salem, OR 97301-4285; telephone 503-378-4642. Applicants may also look for updates about ORPIN on the SPO website: <http://procurement.oregon.gov/>.

2.6 ORPIN REGISTRATION INFORMATION

Applicants are responsible for ensuring that their registration information is current and correct. Agency accepts no responsibility for missing or incorrect information contained in the supplier's registration information in ORPIN.

2.7 QUESTIONS RELATING TO THE RFP, CONTRACT PROVISIONS OR SPECIFICATIONS

Questions, including requests for explanations of the meaning or interpretations of provisions of the RFP, shall be submitted in writing, arrive by the date and time specified in Schedule, section 1.2, and be addressed to the attention of the SPC. Faxes (including Applicant's fax number) and emails are acceptable. **No telephone questions will be accepted or considered**, with the exception of the webinar, section 2.7.1.

Requests must:

- Identify the Applicant's name;
- Clearly reference this RFP Number: ODOE #10-085;
- Refer to the specific RFP section and page and should quote the passage being questioned;
- Be received as described above by the deadline identified in the Schedule, section 1.2.

2.7.1 Webinar

The Agency will host a webinar to respond to questions about the RFP. The webinar will take place online at the following date and time:

February 9, 2010, 9:00AM

To register for the webinar, contact:

Rebecca Sherman, Oregon Department of Energy
Phone: 503-373-2120
Email: rebecca.sherman@state.or.us

Registration for the webinar is the only exception to the requirement to contact the SPC. Any substantive inquiry about the RFP that is adjoined to the registration request will not be answered.

2.7.2 Addenda to the RFP

When appropriate as determined by Agency, in its sole discretion, revisions, substitutions, or clarifications of the RFP or attached terms and conditions will be issued by Addenda to this RFP. During the solicitation process, submitted questions and Agency responses will be posted to ORPIN in a timely manner.

Section 3. Instructions to Applicant

3.1 PROPOSAL SUBMISSION – GENERAL REQUIREMENTS

3.1.1 Submittal Deadline

Proposals shall be received by the SPC no later than the closing date and time specified in the ORPIN at the address listed on the front page of the RFP. Proposals may be delivered via U.S. Mail or courier, or hand delivered. Proposals shall be sent to the attention of the SPC's name. Late, faxed or electronically submitted (with the exception of ORPIN as applicable) Proposals will not be accepted.

Agency reserves the right to extend the Closing Date and Time when it is in the best interest of the State.

3.1.2 Proposal Format

Proposals must be typewritten, single-sided on standard (8½" x 11") paper. Proposals must be stapled or clipped, instead of using plastic covers, 3-ring binders, or other materials that are not readily recyclable. Proposals that do not meet the requirements of this RFP may be rejected as nonresponsive.

3.1.3 Authorized Signature

Every Proposal must be signed by the person or persons legally authorized to bind the Applicant to the contract resulting from this RFP. Upon request by Agency, any representative submitting a Proposal on behalf of the Applicant shall provide a current power of attorney or other document certifying the representative's authority to bind the Applicant. Upon request of Agency, a corporation shall provide a certified copy of the bylaws or resolution

of the board of directors showing the authority of the officer signing the Proposal to execute contracts on behalf of the entity.

3.1.4 Quantity of Proposals to be Submitted

One (1) original Proposal marked "ORIGINAL" and two (2) hard copies of the Proposal including all attachments in (MS Word format) and **two (2)** CD-ROM electronic copies of the Proposal must be submitted on or before the Closing Date and Time.

If discrepancies are found between the copies, or between the original and copy or copies, the original "ORIGINAL" will provide for the basis of resolving discrepancies. If no document can be identified as an original, Applicant's Proposal may be rejected at the discretion of Agency.

All costs incurred in preparing and submitting a Proposal in response to the RFP are the responsibility of the Applicant and shall not be reimbursed by Agency.

3.1.5 Where to Submit Proposals

Proposals must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

- Name of Applicant;
- RFP Number;
- Closing Date and Time.

Send or hand-deliver the Proposal to the following address:

Oregon Department of Energy
c/o Lorena Wise
625 Marion Street NE
Salem, OR 97301

Applicants are solely responsible for ensuring that their Proposals are received by Agency in accordance with the solicitation requirements, before the Closing Date and Time, and the place specified on the cover sheet of this RFP.

Agency shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Proposal deliveries made to another location other than to the address identified on the cover letter of this RFP will be considered non-responsive unless re-delivery is made to the address identified on the cover sheet of this RFP before the Closing Date and Time.

3.1.6 Proposal Modifications

Any Applicant who wishes to make modifications to a Proposal already received by Agency must first withdraw its Proposal in order to make the modification. Withdrawals must be made in accordance with subsection 3.1.7. The revised Proposal may then be resubmitted in accordance with the provisions of this RFP.

It is the responsibility of the Applicant to ensure that modified Proposals are re-submitted before the Closing Date and Time. All modifications made to a Proposal before submission must be made in ink and must be properly initialed by the Applicant's authorized representative. Proposals that contain omissions or improper erasures or irregularities may be rejected.

No oral, electronic, telegraphic, or telephonic or facsimile modifications will be considered.

3.1.7 Proposal Withdrawal

If an Applicant wishes to withdraw a submitted Proposal, it must do so prior to the Closing Date and Time. The Applicant must submit a written notice to withdraw, signed by the authorized representative, and submitted to the SPC at the address listed on the front page of the RFP as required by OAR 125-247-0440(2).

3.2 PROPOSAL SUBMISSION – PART ONE: PROPOSAL SUMMARY

Applicants must complete and submit the Proposal Summary form provided as Attachment 3 to this RFP. The summary form must be signed by the Applicant's authorized representative. All sections of the form must be completed, or the entire proposal may be rejected. Agency reserves the right to determine which Proposals meet the Proposal Submission Requirements of this RFP.

3.3 PROPOSAL SUBMISSION –PART TWO: PROPOSAL NARRATIVE

Applicants must create and submit a Proposal Narrative, as outlined below.

3.3.1 Length of Proposal Narrative

The Proposal Narrative must not exceed 12 pages, excluding the two-page Proposal Summary form and the optional Letters of Support indicated under section 3.4 below. The page length is a maximum, not a target; proposals should strive to be concise.

3.3.2 General Description of Proposed Work

The Proposal Narrative must provide a description of the proposed feasibility study and renewable energy project, addressing the following points:

- Generally describe the scope of the study and specific deliverables to be provided.
- What questions will be answered to determine whether or not the project is feasible? (What is the overall study goal: a price point? Technical design? Approval of utility or local authority?)
- What data will be collected and analyzed to answer these questions?
- What specific activities will be undertaken to accomplish the study? Offer a rationale for the depth and breadth of the study.
- What is the timeframe for the study (anticipated start and end dates) and what are the key factors affecting the timeframe? At what stage is the project development currently?
- What stage of the renewable energy process does this study represent (e.g. manufacturing, end use, transportation, harvest)?
- What is the estimated cost of the study? Provide a budget estimating the amounts and sources of financial support for the project and anticipated expenses.
- List any known or anticipated challenges to study and project completion.
- The names, contact information, and relevant backgrounds of all key representatives and consultants working on the study.

3.3.3 Response to Selection Criteria

The Proposal Narrative must provide an item-by-item response to the CREFF program decisional criteria, indicated under Selection Criteria, section 4.2.

3.3.4 Proposed Scope of Work

The Proposal Narrative must provide a proposed Scope of Work that can be placed into a contract upon award.

3.4 PROPOSAL SUBMISSION – PART THREE: LETTERS OF SUPPORT (OPTIONAL)

The Applicant may optionally submit up to two (2) letters of support for the application, demonstrating local community support. Letters must be submitted with the Proposal and adhere to the submission guidelines set forth above. Letters submitted to the Agency separately from the Proposal will not be considered.

3.5 PUBLIC INFORMATION, CONFIDENTIALITY, AND TRADE SECRETS

All Proposals are public information after the Proposals have been opened. Copies of Proposals shall not be released until the evaluation process has closed and an award letter has been issued pursuant to OAR 125-247-0630. Copies of public information may be requested by any person.

Applicants shall label any information that it wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: **"This material constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law."** Agency shall take reasonable measures to hold in confidence all such labeled information, but the State shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

3.6 RESERVATION OF AGENCY RIGHTS

Agency is not obligated as a result of the submission of a Proposal to enter into a Contract with any Applicant, and has no financial obligation to any Applicant arising from the RFP.

Agency reserves all rights regarding the RFP, including, without limitation, the right to:

- a. Amend, delay or cancel the RFP without liability if Agency finds it is in the best interest of the Agency to do so;
- b. Reject any or all Proposals received upon finding that it is in the best interest of the Agency to do so;
- c. Waive any minor informality or non-conformance with the provisions or procedures of the RFP, and seek clarification of any Proposal, if required;
- d. Reject any Proposal that fails substantially to comply with all prescribed RFP procedures and requirements;
- e. Negotiate a Statement of Work based on the Scope of Work indicated in sections 1.4 and 3.3.4, and to negotiate separately in any manner necessary to serve the best interest of the public;
- f. Amend any Contracts that are a result of the RFP;
- g. Engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements under it to perform the same or similar services; and
- h. To extend any Contracts that result from the RFP without an additional RFP process for up to a total of 2 years, pursuant to OAR 125-246-0560.

3.7 CONTRACT FORM AND EXPECTATIONS

Successful Applicants are expected to sign the State of Oregon standard personal services contract, as revised to reflect the terms of each award. A copy of the standard contract form is attached to this solicitation (Attachment 1).

Successful Applicants that are also municipalities, special districts, and other agencies are expected to sign an intergovernmental agreement, as revised to reflect the terms of each award. A copy of a standard intergovernmental agreement is attached to this solicitation (Attachment 2).

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

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

Contractors are required to obtain and provide evidence of the following insurance coverage: Commercial General Liability, Workers' compensation (if applicable), and automobile liability. See Section 12 and Exhibit B in the sample contract (Attachment 1). Contractors are required to provide the Agency with notice of change or cancellation.

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

Section 4: Evaluation and Award

4.1 EVALUATION PROCESS

4.1.1 Evaluation Overview

Agency shall conduct an evaluation of the Proposals received in response to the RFP, scoring the Proposals against the Selection Criteria, section 4.2. All Proposals will be reviewed by more than one member of the evaluation committee. As part of the evaluation process, the evaluation committee will recommend an amount for each award.

The evaluation committee may request additional clarification from Applicants for any portion of the Proposals. No new information or documentation may be submitted, and clarifications may not be used to rehabilitate a non-responsive Proposal. Applicants shall be available during the evaluation period to respond to requests for additional clarification. Failure to provide clarification may result in a lower score.

Once scored by the evaluation committee, the Agency will rank the proposals and make a final determination, awarding top-scoring proposals that represent a range of renewable energy sectors and geographic regions in Oregon. The Agency, in consultation with the evaluation committee for this RFP, will ultimately determine the amount of each award, taking into account the number of proposals received, the total amount requested by all applicants, and the funds available.

The CREFF grants process is competitive. Final awards will be determined by the Agency based on indicators including but not limited to scored reviews by an evaluation committee, a broad effective use of funds, representation of multiple renewable energy sectors and geographical representation in Oregon.

4.1.2 Evaluation Committee

Agency shall establish an evaluation committee which may consist of Agency staff, government partners and community partners. Members of the evaluation committee will review, evaluate and score each Proposal.

4.1.3 Disqualification

Any attempt by an Applicant to improperly influence a member of the evaluation committee during the evaluation process shall result in Proposal rejection.

4.2 SELECTION CRITERIA

4.2.1. Significance of Selection Criteria

The evaluation committee shall score all Proposals against the Selection Criteria described in this section.

Applicants must respond to each of the Selection Criteria as part of the Proposal Narrative (see requirement in section 3.3.3). This component of the Proposal Narrative will assist the evaluation committee in their scoring of the Proposal against the Selection Criteria.

4.2.2. Selection Criteria

The evaluation committee shall assign points to its evaluation of each Proposal as follows:

<u>Points Possible</u>	<u>Point Basis</u>
10	The proposed feasibility study is valuable, unique, and replicable.
10	The site and applied technology of the proposed project is viable.
10	The proposed project is reasonably expected to be economically viable.
10	The project proponent is committed to the project and likely to be capable of carrying it out.
10	The proposed project yields significant energy benefits.
5	The proposed project has a limited environmental footprint.
5	The local community receives direct benefits from the proposed project.

Scores may range from a minimum of zero to a maximum of sixty (60) points. A Proposal's score will be used to rank Proposals. Proposal ranking will be the central valuation in determining successful Applicants and final award amounts.

4.3 AWARD NOTIFICATION AND PROCESS

4.3.1 First Selection

Following the identification of an apparent successful Applicant, Agency will notify this Applicant and request a signed Contract substantially in accordance with the form set forth as Attachments 1 or 2, whichever is appropriate.

4.3.2 Successive Selection

If the apparent successful Applicant does not accept the Contract offered within 30 business days of the apparent successful Applicant's receipt of the Contract, or such later date as Agency may authorize, Agency may make another selection.

4.3.3 Notification and Rejection

Once all successful Applicants have accepted their Contracts, awards shall be considered final. Only when awards are final shall all unsuccessful Applicants be notified of the status of their Proposal. No information shall be given to any Applicant (or any other individual) relative to their standing with other Applicants during the RFP process.

4.4 AWARD OUTCOME AND AGENCY DETERMINATION

Contractor shall submit the contracted Work to the Agency once the Work is complete, pursuant to the timeframes and formats established in the Contract. The Work shall be clearly marked as funded by the Agency and property of the State of Oregon, under the terms set forth in the Contract.

In response to the submission of Work, the Agency will issue a response letter. The letter shall serve as an official determination as to whether the contract responsibilities are considered complete and the examined project can be considered feasible.

4.5 RETURN OR REPAYMENT OF AWARD

4.5.1 Return of Award

Should the Contract be terminated by its terms, set forth in Attachments 1 and 2, or if the Contractor is unable to conduct the feasibility assessment, the Contractor shall return the full amount of the award to the Agency.

4.5.2 Repayment of Award

If the Agency considers the examined project to be feasible and the project is ultimately developed, the Contractor shall repay the full amount of the award to the Agency. A timeline may be indicated in the Agency response letter. If the project is determined to be infeasible, or if the Contractor chooses not to develop a feasible project, the Contractor shall not be required to return the award.

STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES CONTRACT

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

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

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

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

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

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

3. Consideration

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$_____. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

b. Contractor shall repay Agency all consideration paid to Contractor by Agency pursuant to this section 3, if the Work results in development of a "feasible" project. "Feasible" is whether the potential project is determined by Agency, in its sole discretion, to be technically and economically viable. Within 60 days after completion and submission of the entire Work, Agency will provide Contractor with written notice, pursuant to Section 20, whether the Work is sufficient to complete the Contract and whether the Work demonstrated that the potential project is "feasible." Should Contractor develop a "feasible" project pursuant to such Work, Contractor shall thereafter provide to Agency, in a form of payment acceptable to Agency, all consideration paid to Contractor by Agency. Agency's notice of a "feasible" project shall specify a prospective deadline for the repayment of Consideration paid to Contractor by Agency, should the project be developed.

c. Contractor may object to Agency's decision within 60 days of Agency's written notice by providing a written objection to Agency's determination. Agency will then provide within 30 days a written response to Contractor's objection(s). If Agency upholds its determination that the Work resulted in a "feasible" project, Agency will provide Contractor with a written notice that the Work resulted in a "feasible" project and Contractor shall provide to Agency all consideration paid to it by Agency. Agency's second notice of a "feasible" project shall specify the prospective deadline for the repayment of Consideration paid to Contractor by Agency, should the project be developed.

d. Contractor shall provide a minimum of twenty-five percent (25%), with such amount hereinafter referred to as the "Match," of the costs of the Work. Up to half of the Match may be comprised of "in-kind" contributions. If the Contractor obtains federal funds, such as grants from the US Department of Agriculture or US Department of Energy, the Contractor's portion of the Match may be reduced by these amounts. Funds the Contractor obtains from other State of Oregon agencies and funding sources may not be counted toward the Match. In the event the Consideration is required to be repaid to Agency pursuant to section 3.b. or 3.c., Agency is not required to offset, refund or otherwise provide the Match amount required under this section.

4. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Required Insurance), Exhibit C (Independent Contractor Certification Statement), Exhibit D (the RFP, or other procurement document, if any) and Exhibit E (the Proposal, or other binding Contractor solicitation submission, if any). Exhibits A-E are attached hereto and incorporated herein by this reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

a. Contractor shall perform all Work as an independent contractor. The Agency reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.

c. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.

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

6. Subcontracts, Successors, and Assignments

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

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

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

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

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

9. Representations and Warranties.

a. Contractor's Representations and Warranties. Contractor represents and warrants to Agency that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date-related data for all dates prior to, through and after January 1, 2000, (6) any software products delivered under this Contract that process date or date-related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century, and (7) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

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

10. Ownership of Work Product.

a. Definitions. As used in this Section 10, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Agency pursuant to the Work.

b. Original Works. All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. All Work Product shall be clearly marked as the exclusive property of "the State of Oregon" or "the Oregon Department of Energy." Agency and Contractor agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in

Agency. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf. In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

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

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

11. Indemnity.

a. General Indemnity. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this contract. If Contractor is an Oregon county, Contractor is required to indemnify pursuant to this Section 11 only to the extent permitted by Article XI, Section 10 of the Oregon Constitution.

b. Indemnity for Infringement Claims. Without limiting the generality of Section 11.a, Contractor expressly agrees to defend, indemnify, and hold Agency, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the Work, the Work Product or any other tangible or intangible items delivered to Agency by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the Agency's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that State shall provide Contractor with prompt written notice of any infringement claim.

c. Control of Defense and Settlement. Contractor shall have control of the defense and settlement of any claim that is subject to Sections 11.a or 11.b; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon attorney general, in a form and manner determined appropriate by the attorney general, authority to act as legal counsel for the State of Oregon, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the attorney general. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

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

13. Default; Remedies; Termination.

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

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

(ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations

under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar

days after Agency's notice or such longer period as Agency may specify in such notice; or

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

b. Agency's Remedies for Contractor's Default. In the event Contractor is in default under Section 13.a,

Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in

equity, including, but not limited to:

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

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

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

(iv) exercise of its right of setoff.

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

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

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

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

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

amounts paid to Contractor exceed the amount due to Contractor under this Section 13.d, Contractor shall pay immediately any excess to Agency upon written demand provided in accordance with Section 20.

e. Termination.

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

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

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

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

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

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

(iv) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Work or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. If the Contract is terminated before Work has been conducted, Contractor shall reimburse Agency for all consideration paid to it by Agency. If the Contract is terminated after activities pursuant to the Contract have begun, Contractor shall be responsible for returning property as described above as well as proportional consideration paid to it by Agency, the proportion of which is at the Agency's sole discretion.

(v) Notice of Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination.

Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

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

15. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Contractor understands that all Work delivered to Agency under this Agreement will be subject to disclosure under the Oregon Public Records Law, ORS 192.410 through 192.505. Agency's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

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

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

18. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 12, 13, 14, 18, 23, and 24.

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

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

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

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

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

24. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract shall not constitute a waiver by Agency of that or any other provision.

25. Amendments. Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. Additionally, for Anticipated Amendments (as defined in OAR 125-246-0560(2)(a)(A)) Agency may amend this Contract (i) to the extent provided in the solicitation document, if any, from which this Contract arose, and (ii) to the extent described in Exhibit A. No amendment to this Contract shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

26. Contractor Data and Certification.

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

Name (tax filing): _____

Address: _____

Business Designation (check one):

Corporation Professional Corporation Partnership Limited Partnership Limited Liability Partnership Limited Liability Company Sole Proprietorship Other _____

Federal Tax ID: _____ or SSN: _____

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

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

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

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

CONTRACTOR

Authorized Signature

Date

OREGON DEPARTMENT OF ENERGY

Joan M. Fraser
Deputy Director

Date

**EXHIBIT A
STATEMENT OF WORK**

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

Part II. Work; Deliverables; and Delivery Schedule. (Insert: Work to be done, schedule of Work, deliverables and tasks, performance monitoring requirements, specific Work products the Agency should expect as outcomes. The applicant shall prepare a Statement of Work as part of its application, for services that will not result in an Agency employee relationship with the potential Contractor.)

Part III. Interim Reporting. (Insert: expectations for status reports to precede final completion of Work.)

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

Part V. Payment Provisions.

Award payment will be made after full execution of the Contract.

Part VI. Travel and Other Expenses.

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

Part VII. Contract Amendments.

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

**EXHIBIT B
INSURANCE REQUIREMENTS**

Contractor shall obtain the insurance specified in this section 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.

(Agency must check boxes #2, #3, & #4 as to whether insurance is required or not.)

1. Required by Agency of contractors with one or more workers, as defined by ORS 656.027

Workers' Compensation. All employers, including Contractor, that employ subject workers who work under this Contract in State shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless the employers are exempt under ORS 656.126(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

Required by Agency Not required by Agency.

2. Professional Liability This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts:

- \$ _____ combined single limit per occurrence (Agency to enter amount)
 \$ _____ aggregate limit for all claims per occurrence (Agency to enter amount)

or

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

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).	

Aggregate limit for all claims per occurrence:

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).	

Required by Agency Not required by Agency.

3. Commercial General Liability. This to cover Bodily Injury, Death and Property Damage.

This insurance shall include contractual liability coverage for the indemnity provided under this Contract, personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Contractor shall provide proof of insurance of not less than the following amounts:

Bodily Injury/Death:

- \$ _____ combined single limit per occurrence (Agency to enter amount)
 \$ _____ aggregate limit for all claims per occurrence (Agency to enter amount)
or
 Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

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).	

Aggregate limit for all claims per occurrence:

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).	

Property Damage:

- \$ _____ combined single limit per occurrence (Agency to enter amount)
 \$ _____ aggregate limit for all claims per occurrence (Agency to enter amount)
or
 Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence shall not be less than the following schedule:

From commencement of the Contract term to January 1, 2010:	\$100,000
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the amounts listed in the following schedule:

From commencement of the Contract term to January 1, 2010:	\$500,000
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

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

4. Automobile Liability. This is to cover each accident for bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. This coverage may be written in

combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the following amounts:

Bodily Injury/Death:

- \$ _____ combined single limit per occurrence (Agency to enter amount)
 \$ _____ aggregate limit for all claims per occurrence (Agency to enter amount)
or
 Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

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).	

Aggregate limit for all claims per occurrence:

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).	

Property Damage:

- \$ _____ combined single limit per occurrence (Agency to enter amount)
 \$ _____ aggregate limit for all claims per occurrence (Agency to enter amount)
or
 Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence shall not be less than the following schedule:

From commencement of the Contract term to January 1, 2010:	\$100,000.
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the amounts listed in the following schedule:

From commencement of the Contract term to January 1, 2010:	\$500,000
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

5. "Tail" Coverage

If any of the required liability insurance is on a "claims made" basis, Contractor shall 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 of all Services 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.

6. 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 sixty (60) 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.

7. Certificate(s) of Insurance

As evidence of the insurance coverages required by the Contract, the Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance prior to commencing work. The Certificate(s) must specify all of the parties who are Additional Insured. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the State of Oregon. The Contractor shall pay for all deductibles, self-insured retention and self-insurance. The Agency shall be named as the Certificate Holder.

8. Additional Insured

The Commercial General Liability insurance and Automobile Liability insurance coverage's under this Contract shall include State of Oregon, and its agencies, departments, divisions, commissions, branches, officers employees and agents as Additional Insured's but only with respect to Contractor's activities to be performed under this Contract. Contractor shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

EXHIBIT C
CERTIFICATION STATEMENT FOR AN INDEPENDENT CONTRACTOR

CONTRACTOR SHALL COMPLETE EITHER PART A OR PART B

Part A. CONTRACTOR IS A CORPORATION

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

Contractor Signature _____ Date _____

Part B. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

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

1. I am licensed under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. Please check four or more of the following:

- _____ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
- _____ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
- _____ C. Telephone listing is used for the business that is separate from the personal residence listing.
- _____ D. Labor or services are performed only pursuant to written contracts.
- _____ E. Labor or services are performed for two or more different persons within a period of one year.
- _____ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

Part C. AGENCY APPROVAL

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

ORS 670.600. Independent Contractor Standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. State agency certifies the contracted work meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of periodic progress payments as outlined in Exhibit A.

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

INTERGOVERNMENTAL AGREEMENT

This agreement is between the **State of Oregon**, acting by and through its **Department of Energy**, hereafter called **Agency**, and _____, hereafter called **Contractor**.

Administrators of this agreement are:

Contractor	Agency
Administrator: Title: Organization: Address: Phone: Fax: Email: Federal ID #:	Administrator: Title: State of Oregon: Department of Energy Address: 625 Marion Street NE Salem, OR 97301-3737 Phone: (503) Fax: (503) 373-7806 Email: _____@state.or.us

RECITALS

By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 469.010, 020 and 469.030, state agencies may enter into cooperative agreements with counties, cities, and units of local governments for the performance of any or all functions and activities relating to energy resources, for the purpose of energy conservation projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

1. Effective Date and Duration

This agreement shall become effective on the date at which every party has signed this agreement and when required, approved by the Department of Justice. Unless earlier terminated, amended or extended, this agreement shall expire when the Contractor's completed performance has been accepted by Agency or _____, whichever date occurs first.

2. Statement of Work

The Statement of Work, including the delivery schedule for the work, is contained in Exhibit A attached hereto and by this reference made a part hereof.

3. Consideration

A. Agency agrees to pay Contractor, from available and authorized funds as provided in section 9, the sum of up to \$_____ for accomplishing the work required by this agreement. The maximum, not-to-exceed compensation payable to Contractor under this agreement, which includes any allowable expenses, is \$_____.

B. Contractor shall repay Agency all consideration paid to Contractor by Agency pursuant to this section 3, if the Work results in development of a "feasible" project. "Feasible" is whether the potential project is determined by Agency, in its sole discretion, to be technically and economically viable. Within 60 days after completion and submission of the entire Work, Agency will provide Contractor with written notice whether the Work is sufficient to complete the Contract and whether the Work demonstrated that the potential project is "feasible" project. Should Contractor develop a "feasible" project pursuant to such Work, Contractor shall thereafter provide to Agency, in a form of payment acceptable to Agency, all consideration paid to Contractor by Agency. Agency's notice of "feasible" project shall specify a prospective deadline for the repayment of Consideration paid to Contractor by Agency, should the project be developed.

C. Alternatively, Contractor may object to Agency's decision within 60 days of Agency's written notice by providing a written objection to Agency's determination. Agency will then provide within 30 days a written response to Contractor's objection(s). If Agency upholds its determination that the Work resulted in a "feasible" project, Agency will provide Contractor with a written notice that the Work resulted in a "feasible" project and Contractor shall provide to Agency all consideration paid to it by Agency. Agency's second notice of a "feasible" project shall specify the prospective deadline for the repayment of Consideration paid to Contractor by Agency, should the project be developed.

D. Contractor shall provide a minimum of twenty-five percent (25%), with such amount hereinafter referred to as the "Match," of the costs of the Work. Up to half of the Match may be comprised of "in-kind" contributions. If the Contractor obtains federal funds, such as grants from the US Department of Agriculture or US Department of Energy, the Contractor's portion of the Match may be reduced by these amounts. Funds the Contractor obtains from other State of Oregon agencies and funding sources may not be counted toward the Match. In the event the Consideration is required to be repaid to Agency pursuant to section 3.B. or 3.C., Agency is not required to offset, refund or otherwise provide the Match amount required under this section.

4. Subcontracts

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 Agency's prior written consent. Agency'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.

5. Amendments

All amendments to this Agreement shall comply with applicable statutes and administrative rules.

6. Ownership of Work

A. As used in this section 6, and elsewhere in this Agreement, the following terms have the meanings set forth below:

1. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.

2. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

3. "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Agency pursuant to the Work.

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

In the event that Work Product created by Contractor under this Agreement is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare

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

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

7. Termination

A. This agreement may be terminated by mutual consent of both parties, or by either party upon two weeks' notice, in writing and delivered by certified mail or in person (14 consecutive calendar days).

B. Agency may terminate this agreement effective upon delivery of written notice to the Contractor, or at such other date as may be established by Agency under any of the following conditions:

1. If Agency funding is not obtained and continued at levels sufficient to allow for purchase of the specified services. When possible, and when agreed upon, the agreement may be modified to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement, or are no longer eligible for the funding proposed for payments authorized by this agreement.
3. If Contractor fails to perform the work specified herein, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from Agency, fails to correct such failures within ten (10) days or such longer period as Agency may authorize.
4. If Contractor is unable to provide services called for by this agreement, due to lack of funding, lack of authorization, inability to obtain rights or subcontracted services, or any other stated reasons accepted by Agency.
5. If Contractor is unable to complete the potential renewable energy project for which the Work is conducted.

C. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Work or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. If the Contract is terminated before Work has been conducted, Contractor shall reimburse Agency for all consideration paid to it by Agency. If the Contract is terminated after activities pursuant to the Contract have begun, Contractor shall be responsible for returning property as described above as well as proportional consideration paid to it by Agency, the proportion of which is at the Agency's sole discretion.

D. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

8. Insurance

Contractor shall maintain insurance as set forth in Exhibit B, which is attached hereto. Before the contract is executed and work begins, Contractor shall furnish to Agency a Certificate of Insurance for the coverage and

limits as set forth in Exhibit B which is to be in force and applicable to the project for the duration of the contract.

9. Funds Available and Authorized

Agency certifies at the time the agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this agreement within the Agency's current appropriation and limitation. Contractor understands and agrees that Agency's payment of amounts under this agreement attributable to work performed after the last date of the current biennium is contingent on Agency receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this agreement. In the event the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations or other expenditure authority, Agency may terminate this agreement without penalty or liability to Agency, effective upon the delivery of written notice to the Contractor, with no further liability to Contractor.

10. Captions

The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions of this agreement.

11. Access to Records

Agency, and its duly authorized representatives shall have access to the books, documents, papers and records otherwise privileged under law of the Contractor which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts and transcript.

12. Compliance with Applicable Law

Contractor will 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 the Civil Rights Act of 1964; (ii) Section V or 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.

Agency's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235, 279B.270, which are incorporated by reference herein. Contractor will ensure that the language "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" in English and Spanish appear on each work product.

13. Sensitive Information

Except for information that is already a matter of public record, Contractor shall not publish or otherwise disclose, except to Agency or as otherwise required by law, any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication wherein the information or data furnished by or about any particular person or establishment can be identified, except with the written consent of such person or establishment. Information concerning the business of Agency, its financial affairs, and its relations with its clients and employees, as well as any other information that may be specifically classified as confidential by Agency, shall be kept confidential. Contractor shall instruct its employees and subcontractors to keep such information confidential by using the same care and discretion that they use with similar information that the Contractor designates as confidential.

14. Indemnity

Contractor shall defend (subject to any limitation imposed by Oregon laws), save, hold harmless, and indemnify the State of Oregon, Agency, and their officers, employees and agents from and against all claims,

suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Contractor or its officers, employees, contractors, or agents under this Agreement or in the implementation of the Work, including but not limited to, all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Contractor or its officers, employees, contractors, or agents.

15. Merger Clause

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement 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. There are no understandings, agreements or representations, oral or written, not specified herein regarding this agreement. Both parties, by the signature below of its authorized representative, hereby acknowledges that s/he has read this agreement, understands it and agrees to be bound by its terms and conditions.

16. The persons signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement.

SIGNATURES

OREGON DEPARTMENT OF ENERGY

By: _____
Date

By: _____
Joan M. Fraser
Deputy Director
Date