

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 **ODOE**, and its Public Utility Commission, hereafter called **PUC**, (together, "**Agencies**"), and

Contractor Name
Contractor Address

Telephone:
E-Mail:

hereafter called **Contractor**. Agencies' Contract Administrators for this Contract are

Brady Peeks, Manager
Building Technologies
Oregon Department of Energy
625 Marion Street NE
Salem, OR 97301-3737
Telephone: (503) 373-7398
E-Mail: r.brady.peek@state.or.us

Lori Koho
Electric/Natural Gas Division
Oregon Public Utility Commission
550 Capitol Street NE
Salem, OR 97301-2551
Telephone: (503) 378-6117
E-Mail: lori.koho@state.or.us

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 Agencies accept Contractor's completed performance or on September 30, 2009, whichever date occurs last. Contract termination shall not extinguish or prejudice Agencies' 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 \$_____. PUC will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- b. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A.
- c. PUC will pay only for completed Work that is accepted by the Agencies.
- d. Contractor shall submit monthly invoices to the PUC for Work performed. The invoices shall describe all Work performed with reference to the Statement of Work and Payment Provisions (Exhibit A), specifying the time period covered by the invoice, and by whom the work was performed and shall itemize and explain all expenses that this Contract requires PUC to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall send invoices to:

Lori Koho
Electric/Natural Gas Division
Public Utility Commission
550 Capitol Street NE
Salem, OR 97301-2551

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 through E are attached hereto and/or incorporated herein by this reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

- a. Contractor shall perform all Work as an independent contractor. The Agencies reserve 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 Agencies 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 ODOE or PUC, 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, PUC 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 the Contract Administrator's prior written consent. In addition to any other provisions the Agencies may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that the Agencies 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. The Contract Administrator'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 the Contract Administrator's prior written consent.

7. No Third Party Beneficiaries. ODOE, PUC 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. PUC certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within the PUC's current biennial appropriation or limitation. Contractor understands and agrees that PUC's payment of amounts under this Contract is contingent on PUC receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow PUC, 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 the Agencies 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 Agencies 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 Agencies 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 the Agencies. Agencies and Contractor agree that such original works of authorship are "work made for hire" of which the Agencies are 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 Agencies 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 Agencies' reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agencies. 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 the Agencies 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 Agencies' 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 Agencies' behalf and in the name of the Agencies 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 Agencies' behalf.

c. Contractor Intellectual Property. In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to Agencies 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 Agencies' behalf.

d. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the Agencies' behalf and in the name of the Agencies, 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 Agencies' behalf.

11. Indemnity.

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

b. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD THE AGENCIES, 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 AGENCIES BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE AGENCIES' 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 notice from ODOE or PUC or such longer period as ODOE or PUC 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 notice from ODOE or PUC, or such longer period as ODOE or PUC may specify in such notice.

b. Agencies' Remedies for Contractor's Default. In the event Contractor is in default under Section 13.a, the Agencies may, at their 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 Agencies 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 Agencies. Agencies shall be in default under this Contract if:

- (i) PUC fails to pay Contractor any amount pursuant to the terms of this Contract, and PUC or ODOE 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) ODOE or PUC 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 Agencies' Default. In the event Agencies terminate the Contract under Section 13.e(i), or in the event either 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 Agencies, less previous amounts paid and any claim(s) that either Agency has against Contractor. In no event shall Agencies 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 PUC upon written demand provided in accordance with Section 20.

e. Termination.

(i) Agencies' Right to Terminate. At its sole discretion, ODOE or PUC may terminate this Contract:

- (A) For its convenience upon thirty (30) days' prior written notice to Contractor;
- (B) Immediately upon written notice if PUC 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 Agencies' purchase of the Work or Work Products under this Contract is prohibited or either Agency is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) Agencies' Right to Terminate for Cause. In addition to any other rights and remedies Agencies may have under this Contract, either Agency may terminate this Contract immediately upon written notice to Contractor, or at such later date as may be established 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 Agencies' notice or such longer period as Agencies 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 Agencies' notice, or such longer period as Agencies may specify in such notice.

(iii) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract with such written notice to Agencies 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) PUC is in default under Section 13.c(i) because PUC fails to pay Contractor any amount pursuant to the terms of this Contract, and PUC 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) ODOE or PUC is in default under Section 13.c(ii) because ODOE or PUC 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 ODOE or PUC 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 the appropriate Agency all of that Agency's property (including without limitation any Work or Work Products for which payment has been made in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless expressly directed otherwise in such notice of termination. Upon request of either Agency, 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 the Agencies 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. Agencies' 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)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

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 Agencies 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 Contract Administrator 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 Agencies, any notice transmitted by facsimile must be confirmed by telephone notice to the Contract Administrator for this Contract. 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 Agencies (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 Agencies to enforce any provision of this Contract shall not constitute a waiver by Agencies of that or any other provision.

25. Amendments. Agencies may amend this Contract to the extent permitted by applicable statutes, administrative rules and Exhibit D of this Contract. Additionally, for Anticipated Amendments (as defined in OAR 125-246-0560(2)(a)(A)) the Agencies 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.

Contractor: _____

Contract No. _____

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: _____

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

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

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

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

CONTRACTOR

Authorized Signature

Date

OREGON DEPARTMENT OF ENERGY

Michael L. Auman, Assistant Director
Central Services Division

Date

OREGON PUBLIC UTILITY COMMISSION

Administrator
Central Services Division

Date

**EXHIBIT A
STATEMENT OF WORK**

GENERAL INFORMATION

ORS 757.617 requires the Oregon Department of Energy and the Oregon Public Utility Commission to contract for an independent nongovernmental entity to prepare periodic reports to be submitted to the Oregon Legislative Assembly as follows:

“ORS 757.617 Report to Legislative Assembly on public purpose expenditures; independent nongovernmental entity to prepare report; report on low-income bill assistance. (1)(a) The Public Utility Commission and the State Department of Energy jointly shall select an independent nongovernmental entity to prepare a biennial report to the Legislative Assembly describing program spending and results for public purpose requirements undertaken pursuant to ORS 757.612. The first report shall be due on January 1, 2003. (b) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly describing proposed modifications to public purpose requirements undertaken pursuant to ORS 757.612. The report shall be due on January 1, 2007. (c) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly recommending whether the public purpose funding requirements under ORS 757.612 should be renewed. The report shall be due on January 1, 2011.”

This contract is for preparation and delivery of the fourth biennial report required under ORS 757.617(1)(a). For purposes of this Contract, this report will be referred to as the "Report on Program Spending and Results". The report will address the period between January 1, 2007 and December 31, 2008.

Content, format and delivery requirements for the report are described in this Statement of Work.

In addition to the reporting requirements described above, the administrators of the public purpose funds are required to do the following under Oregon Administrative Rule (OAR) 860-038-0480(16):

"The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

A. Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs;

B. Each administrator of public purpose funds must report, at a minimum:

1. The amount of funds received;
2. The amount of funds spent;
3. Administrative costs; and
4. Results, for example, measures installed, projects funded, energy saved, homes weatherized and low-income homes built/rehabilitated."

Additional information including the complete text of pertinent legislation and rules can be viewed on the Internet at the following addresses:

Public Utility Commission Web site:

General

http://www.puc.state.or.us/PUC/electric_restruc/indices/ppindex.shtml

Oregon Law Relating to Restructuring

http://www.puc.state.or.us/PUC/electric_restruc/law.shtml

Senate Bill 838 (2007)

<http://www.leg.state.or.us/07reg/measpdf/sb0800.dir/sb0838.en.pdf>

Oregon Revised Statutes (ORS) 757.600 to .691

<http://landru.leg.state.or.us/ors/757.html>

Oregon Administrative Rules (OAR)

<http://arcweb.sos.state.or.us>

WORK, DELIVERABLES AND DELIVERY SCHEDULEPart I – Data Collection

- I. Survey Existing Statute, Administrative Rule, Contract and Legislative Reporting Procedure
 - A. Review and understand all pertinent Oregon legislation and administrative rules.
 - B. Review and understand all utility public purpose charge collection procedures and allocations to fund administrators, and all legal instruments conveying those funds.
 - C. Contact Oregon Legislative Counsel and Legislative Fiscal Office(s) to determine report standards, delivery, schedule, notice and distribution requirements for both legislative reports.
 - D. Review and understand prior Public Purpose Legislative Reports.

- II. Develop Source Data
 - A. Collect information from Portland General Electric and PacifiCorp regarding collections and distribution of public purpose charges. Identify utility lead contacts for legislative reporting. Collect from each utility the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs. The contractor will be responsible for collecting any and all data required by statute regardless of any implied specific direction in this solicitation or subsequent contract.

 - B. For the reports describing program spending and results for public purpose requirements required under ORS 757.617(1)(a), reconcile the starting point of January 1, 2007 with the previous legislative report. Copies of preceding biennial legislative reports are available upon request or are published on the Oregon Public Utility Commission web site at http://www.puc.state.or.us/PUC/electric_restruc/indices/ppindex.shtml. Any references to the amounts received or spent shall be for the Public Purposes from March 1, 2002 to the end of the reporting period (June 30, 2008 and December 31, 2008) as well as the current period (January 1, 2007) to the end of the reporting period respectively. Deliver all final reports to the project contacts in electronic as well as printed form (electronic formats will be delivered by e-mail to the OPUC and ODOE as an attached file in Microsoft Word XP™ or compatible format).
 1. Energy Trust of Oregon¹
 - a. Local conservation
 - (1) Amount of funds received by utility service territory
 - (2) Amount of funds spent by utility service territory
 - (3) Administrative costs
 - (4) Results, for example, measures installed, projects funded, energy saved, homes weatherized and low-income homes built/rehabilitated to include but not be limited to:
 - Annualized energy savings and (peak) demand savings, by utility service territory with market segment and programs subtotaled using annualized savings
 - Life of measures
 - Type of efficiency improvements (e.g., in industrial sector, a simple conversion efficiency improvement vs. a process change)
 - Cost effectiveness, total resource costs and Energy Trust-only costs for total conservation effort, by program and by market segment
 - Describe the geographic distribution of investments by consumer types served

¹ Collections, expenditures and projects funded by natural gas public purpose charges collected from NW Natural customers are not to be included in this report. Those funds, administered by the Energy Trust of Oregon, are subject to reporting requirements specified in separate Oregon Administrative Rule.

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- b. Market transformation conservation
 - (1) The amount of funds spent, by market segment and program
 - (2) Transformation actions and process
 - (3) Annualized energy savings and (peak) demand savings, by utility service territory with market segment and programs subtotaled using annualized savings
 - (4) Type and number of participating firms and organizations (i.e., NEEA, utilities, state, others)
 - (5) Cost effectiveness, total resource costs and Energy Trust-only costs, for total effort, by program and by market segment
 - (6) Identification of technology advancement
 - c. Renewable resources
 - (1) Funds received by utility service territory for the above market cost for new renewable resources
 - (2) The amount of funds spent by utility service territory for the above market cost of renewable resources
 - (3) Results, for example, systems installed, projects funded and solicitations under way, including but not limited to:
 - Generating capacity of each funded project by resource, technology and application,
 - Annual electric energy production: on and off peak,
 - Location, life of projects, and list of project partners,
 - Cost per MWh, both total resource costs and Energy Trust-only costs,
 - Other investments leveraged, and percentage of above-market cost Energy Trust paid,
 - For distributed systems, transmission and distribution investments displaced and electricity loss reduction,
 - Purchasers (numbers by customer class, market segment) and price of electricity or green tags from Energy Trust-funded renewable resource projects, and
 - Amount of electricity and green tags from renewable resources purchased by PGE and PacifiCorp customers. Quantify the disposition of all Green Tags or Tradable Certificates for renewable resources procured using Energy Trust of Oregon funds.
2. Oregon Department of Energy (Self-direction of public purpose charges)
- a. Amount of public purpose charges self-directed by eligible consumers, by utility
 - b. Amount of funds received by utility service territory
 - c. The amount of funds spent by utility service territory
 - d. Administrative costs
 - e. Results, for example, measures installed, projects funded, energy saved, to include but not be limited to:
 - (1) Number of participating large electricity consumer firms
 - (2) Number of large electricity consumer sites
 - (3) List of counties with sites, by number of sites, by conservation and renewables
 - (4) Number of pre-certified renewable resource purchases
 - (5) Number of complete efficiency/conservation projects with qualified expenditures
 - (6) Number of complete qualified expenditures in above market renewable resources
 - (7) Energy savings resulting from qualified expenditures for electric energy efficiency/conservation by utility
 - (8) Energy production resulting from qualified expenditures for new renewable resource qualified expenditures by utility
 - (9) Above market cost for new renewable resources by utility
 - (10) List of technologies employed

3. Schools Program of Public Purpose Charges (Oregon Department of Energy and Willamette Education District)
 - a. Summarize the results achieved, key activities, receipts of public purpose charges, expenditures, administrative costs and distribution of all by electric utility service territory
 - b. Amount of funds received by utility service territory
 - c. The amount of funds spent by utility service territory
 - d. Administrative costs
 - e. Results, for example, measures installed, projects funded, energy saved, to include but not be limited to:
 - (1) Number of audits completely implemented by school district
 - (2) Cost of Audits
 - (3) Number of projects completed
 - (4) Total cost of projects
 - (5) Simple payback range, mean and median of projects
 - (6) Savings identified, kWh, kW, therms, gallons, Btu's
 - (7) List of measures or technologies implemented
4. Oregon Housing and Community Services Department
 - a. Low-income weatherization
 - (1) Summarize the results achieved, key activities, receipts of public purpose charges, expenditures, administrative costs and distribution of all by electric utility service territory
 - (2) Amount of funds received by utility service territory
 - (3) Amount of funds spent by utility service territory
 - (4) Administrative costs
 - (5) Results, for example, measures installed, projects funded, energy saved, homes weatherized and low-income homes built/rehabilitated to include but not be limited to:
 - List of counties with sites, by number of sites
 - Number of homes weatherized with qualified expenditures
 - Kilowatt hours saved
 - Average cost per dwelling
 - b. Low-income housing
 - (1) Summarize the results achieved, key activities, receipts of public purpose charges, expenditures, administrative costs and distribution of all by electric utility service territory
 - (2) Amount of funds received by utility service territory
 - (3) Amount of funds spent by utility service territory
 - (4) Administrative costs
 - (5) Results, for example, measures installed, projects funded, energy saved, homes weatherized and low-income homes built/rehabilitated to include but not be limited to:
 - List of counties with sites, by number of sites
 - Number of homes weatherized with qualified expenditures
 - Kilowatt hours saved
 - Average cost per dwelling

Part II – Legislative Report on Spending for Public Purpose Requirements

- A. Develop draft reports for review by Oregon Public Utility Commission and Oregon Department of Energy which outlines the format, contents, and any data collected to date. Respond to review comments regarding organizational, content, accuracy or clarity deficiencies.

Note: Contractor is expected to conform closely to the purpose of the report as described in statute and rule and this Scope of Work. Contractor is not expected to provide policy analysis or opinions regarding the data.

- B. Identify, propose and support the specific reporting period to assure continuity and accuracy between reporting on collections, distributions, expenditures and results of public purpose charge spending.
- C. Complete a first report, which covers public purpose charge collections, spending and results for the reporting period of January 1, 2007 through June 30, 2008 and program to date (March 1, 2002 through June 30, 2008). Deliver the report to the Oregon Public Utility Commission, Oregon Department of Energy and any other parties as directed by Oregon Legislative Counsel by December 15, 2008.
- D. Complete a final report, which covers public purpose charge collections, spending and results for the reporting period of January 1, 2007 through December 31, 2008 and program to date (March 1, 2002 to December 31, 2008). Deliver the report to the Oregon Public Utility Commission, Oregon Department of Energy and any other parties as directed by Oregon Legislative Counsel by March 30, 2009.

Deliverables

- A. Provide a detailed study design and work plan. Describe how the project tasks will be carried out. Include estimated time requirements and milestones.
- B. Provide informal progress reports. Report to the ODOE and OPUC project contacts via e-mail on a monthly basis. Respond to comments, questions and suggestions from the project contacts.
- C. Present draft final report on Spending for Public Purpose Requirements. Prepare a comprehensive report that presents the information described in the scope of work above. Deliver the report to the project contacts in draft form for review and comment before final product deadlines.
- D. A first and final report on Spending for Public Purpose Requirements. Prepare comprehensive report that presents the information described in the scope of work above.
- E. Deliver all final reports to the project contacts in electronic as well as printed form (send reports to OPUC and ODOE via email as an attached file in Microsoft Word XP™ or compatible format).

PAYMENT PROVISIONS

All payments under this Contract will be made by PUC to Contractor. Interim payments shall be made to Contractor following PUC's review and approval of invoices submitted by Contractor in accordance with Section 3 (Page 1) of this Contract and the following schedule**. PUC will not reimburse Contractor for any other costs or expenses under this Contract.

TASKS					TOTAL
TOTAL					\$

** Table shown above is for example only. Actual payment schedule will reflect final terms based on the successful proposal, the Agencies' needs and negotiations, if any.

**EXHIBIT B
INSURANCE REQUIREMENTS**

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

1. Workers' Compensation.

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

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

2. Professional Liability.

Required by Agencies Not required by Agencies

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. General Liability.

Required by Agencies Not required by Agencies

General Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the State of Oregon, the Oregon Department of Energy, and their divisions, officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

4. Automobile Liability.

Required by Agencies Not required by Agencies

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, or \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to the Oregon Department of Energy.

6. Certificates of insurance. As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to the Oregon Department of Energy prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Contractor: _____

Contract No. _____

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

CONTRACTOR SHALL COMPLETE EITHER PART A OR PART B

Part A. CONTRACTOR IS A CORPORATION

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

Contractor Signature _____ Date _____

Part B. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

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

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

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

Contractor Signature _____ Date _____

Part C. AGENCY APPROVAL

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

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

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

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