

**STATE OF OREGON
SERVICES PURCHASE ORDER
FOR PROCUREMENTS NOT EXCEEDING \$150,000**

CONTRACTOR	AGENCY
<p>Choices for Change Counseling Agency, PLC Attention: Michelle Serlin 218 West Walnut Kalamazoo, MI 49007 Telephone: 269-501-5847 Email: michelle.serlin@yahoo.com</p>	<p>Department of Human Services Office of Child Welfare Programs Well Being Treatment Services Program 500 Summer Street NE Salem, Oregon 97301 Contract Administrator: Glenda Marshall or delegate Telephone: (503) 931-1655 Facsimile: (503) 947-5084 E-mail address: glenda.r.marshall@dhsosha.state.or.us DHS Caseworker: David Milne E-mail address: david.milne@dhsosha.state.or.us</p>

Upon Agency signature and delivery to Contractor, this Services Purchase Order constitutes Agency's offer to purchase from Contractor, under the terms and conditions set forth in this Services Purchase Order, the Services described in Exhibit A. This offer may be accepted solely through Contractor's commencement of performance of the Services and upon such commencement, this Services Purchase Order shall become a legally binding Contract between Agency and Contractor and the Contract's terms and conditions shall be those contained in this Services Purchase Order (the "Contract"). If Contractor does not commence performance of the Services on or before 7/13/2018, the offer represented by this Services Purchase Order is and shall be automatically revoked without further Agency action. This Services Purchase Order consists of the documents identified as Contract Documents below.

Working Title

FOCUS Program Services -- Placement Related Supports

Effective Date and Duration

The Execution Date of this Contract shall be the date the Contractor begins performance of the Services described in Exhibit A. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate on 6/30/2019, or upon acceptance of all deliverables; whichever comes first. Contract termination shall not extinguish or prejudice Agency's right to enforce this Contract, with respect to any breach by Contractor that has not been cured.

Compensation and Payment Methodology

1. **Compensation:** The not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses as set forth herein, is \$5,400.00. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for performance of the Services, and will not pay for Services performed before the Effective Date 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 Services subject to the amendment.
2. **Payment Methodology:**
 - A. **Payment Provisions**
 - 1) Placement Related Support Services will be paid a rate of \$90.00 per hour.
 - 2) **Contractor Invoice, Completion and Submission:**
 - a. Contractor shall submit monthly billings on the approved DHS invoice form located at: <https://apps.state.or.us/Forms/Served/ce0846.xlsm>. Instructions and requirements for completion and submission of an invoice are included on the third tab of the Excel invoice document. Invoices must be submitted with all fields properly populated.
 - b. Payment will be made by DHS to the Contractor monthly on or after the first of each month following the month in which Services were performed, subject to receipt and approval by DHS of the Contractor's invoice and any required reporting as defined in the Statement of Work for this Contract.
 - c. For questions regarding payments please email the local DHS office from which the referral was made. Email addresses may be obtained at: <http://www.oregon.gov/dhs/children/providers-partners/Documents/Local%20Office%20Contact%20List%20for%20Contracted%20Providers.pdf>
 - b. **Travel and other authorized expenses**
 DHS will not allow Contractor to provide Client transportation, nor will reimburse for transportation, travel or other expenses not specified in this Contract.
3. **Vendor Only: Catalog of Federal Domestic Assistance (CFDA) #: NA**

Contract Documents

This Contract consists of this document and includes the following listed exhibits unless otherwise specifically noted below:

- (1) Exhibit A: Statement of Work/Special Provisions
- (2) Exhibit B: Standard Terms and Conditions
- (3) Exhibit C: Insurance Requirements

Required Reserved

(4) Exhibit D: Required Federal Terms and Conditions

Required

Reserved

There are no other Contract documents. This document and the applicable Exhibits listed above, shall be in the following descending order of precedence: this document less all Exhibits, Exhibits D, B, A and C.

Provided this Services Purchase Order has been signed by Agency, this Services Purchase Order shall become a binding Contract upon Contractor's commencement of performance as described above.

Brenda Brown

Signature: Agency Designated Procurement Officer or Designee

6/26/2018

Date

Exhibit A, Part 1
Statement of Work

The following Statement of Work describes the services to be performed by the Contractor under this Contract (the "Services").

1. Tasks/Schedule:

- A. Contractor shall provide Placement Related Support Services to Child Or-kids ██████████ Cas ██████████ Contractor shall
- 1) Perform Services at the Detroit Behavioral Health treatment facility located in Detroit, Michigan, hereinafter referred to as Program; where the Child is currently placed. Obtain contact information from assigned DHS caseworker.
 - 2) Conduct Face-to-Face contact with the Child a minimum of every 30 days.
 - 3) Monitor, assess and report on the Child's safety and well-being at each visit within the 30-day period.
 - 4) Complete all of the following activities at each Face-to-Face visit:
 - a. Have a conversation with the Child;
 - b. Assess the Child's progress and adjustment in the Program;
 - c. Notify the DHS Contract Administrator when Contractor determines that the ongoing safety plan or the living environment is insufficient to ensure the safety of the Child to determine if a protective action plan is necessary to ensure safety; and
 - d. Notify the DHS Contract Administrator when the well-being needs of the Child are not being met by the Program.
 - 5) Documentation of all contacts with Child shall include:
 - a. The date, type of contact, location of each contact with the Child and the issues addressed during the contact.
- B. Contractor shall provide Consultation to the Child's Team as follows:
- 1) Participate, if possible, in Child and Family Team Meetings;
 - 2) Communicate regularly with the DHS caseworker about the needs and progress of the Child; and
 - 3) Provide consultation to the Child's Team in planning related to treatment, services, placement and permanency, as needed.

2. Deliverables:

- A. Contractor shall document the Face to Face Contact with the Child:
- 1) The date, type, and location of each contact with the Child
 - 2) The issues addressed during the contact.
 - 3) This information shall be emailed to the Child's DHS caseworker and Contract Administrator within two (2) business days of the Face to Face contact.

3. Certifications:

Without limiting the generality of the foregoing, by signature on this Contract, the undersigned hereby certifies under penalty of perjury that:

- a. Contractor is in compliance with all insurance requirements of this Contract and notwithstanding any provision to the contrary, Contractor shall deliver to the Agency Contract Administrator (see above) the required Certificate(s) of Insurance within 30 days of execution of this Contract. By certifying compliance with all insurance as required by this Contract, Contractor acknowledges it may be found in breach of the Contract for failure to obtain required insurance. Contractor may also be in breach of the Contract for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Contract;
- b. Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the Contractor and that pertains to this Contract or to the project for which the Contract work is being performed. Contractor certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Contractor further acknowledges that in addition to the remedies under this Contract, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Contractor;
- c. The undersigned is authorized to act on behalf of Contractor and represents and warrants that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions;
- d. To the best of undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- e. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- f. 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 it is no longer subject to backup withholding; and
- g. The Federal Employer Identification Number ("FEIN") or Social Security Number ("SSN") provided to Agency is true and accurate. If this information changes, Contractor is required to provide Agency with the new FEIN or SSN within 10 days.

Exhibit A, Part 2

Special Provisions

1. Confidentiality

- a. Contractor acknowledges that, in the course of performing its responsibilities under this Contract, it may be exposed to or acquire information that is confidential to Agency. For purposes of this Contract, except as set forth below, such confidential information includes all information that Agency provides to Contractor in connection with the performance of this Contract and all information as to personal facts and circumstances obtained by the Contractor on a recipient of Services ("Client") purchased under this Contract ("Confidential Information"). Contractor shall maintain the confidentiality of such Confidential Information and protect it with at least the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable degree of care. Contractor shall use the Confidential Information solely to perform the Services and shall not disclose the Confidential Information to any third party without the prior written consent of Agency
- b. Unless disclosure of the information is otherwise prohibited or restricted by law, Confidential Information shall be deemed not to include information that (1) is or becomes (other than by disclosure by Contractor) publicly known, (2) is furnished by Agency to others without restrictions similar to those imposed by this Contract, (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract, (4) is obtained from a source other than Agency without the obligation of confidentiality, (5) is disclosed with the written consent of Agency, or (6) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- c. Upon request and pursuant to the instructions of the Agency, Contractor shall return or destroy all copies of Confidential Information, and Contractor shall certify in writing the return or destruction of all Confidential Information.
- d. If Contractor, or any of its officers, directors, employees, agents or subcontractors, receives or has access to confidential Social Security Administration (SSA), Federal Tax Information (FTI) or Criminal Justice Information System (CJIS) records in the performance of Work under this Contract, Contractor shall comply, and ensure that all of Contractor's officers, directors, employees, agents and subcontractors comply, with the following provisions:
- (1) With respect to SSA records:
- (a) Provide a current list of the employees and employees of any agent or subcontractor with access to SSA records;
- (b) Adhere to the same security requirements as employees of Agency;
- (c) Abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within Agency's agreement with SSA;
- (d) Provide its employees and agents the same security awareness training as Agency's employees; and
- (e) Include the provisions of Section 1.d.(1) in any subcontract.
- (2) With respect to Federal Tax Information (FTI), as defined in IRS Publication 1075:
- (a) Contractor and its officers, directors and employees with access to, or who use FTI provided by Agency must meet the background check requirements defined in IRS Publication 1075;
- (b) Any FTI made available to Contractor shall be used only for the purpose of carrying out the provisions of this Contract. Contractor shall treat all information contained in FTI as confidential and that information shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited;
- (c) Contractor shall account for all FTI upon receipt and shall properly store all FTI before, during, and after processing. In addition, all FTI related output and products will be given the same level of protection as required for the source material;
- (d) No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS;
- (e) Maintain a list of employees who are authorized access to FTI. Such list will be provided to Agency and, upon request, to the IRS reviewing office; and
- (f) Include the provisions of this Section 1.d.(2) in any subcontract.
- (3) With respect to Criminal Justice Information Services (CJIS) information, Contractor shall:

- (a) Meet the same training and certification criteria required by governmental agencies performing a similar function, and shall be subject to the same extent of audit review as are local user agencies;
- (b) Acknowledge, via signing of the CJIS Security Addendum Certification page, and abide by all aspects of the CJIS Security Addendum approved by the Director of the FBI, acting for the U.S. Attorney General, as referenced in Title 28 CFR 20.33 (a)(7). Modifications to the CJIS Security Addendum shall be enacted only by the FBI; and
- (c) Include the provisions of this Section 1.d.(3) in any subcontract.
- (4) Failure to abide by any of the requirements in this subsection could result in criminal or civil penalties and result in termination of this Contract.
- (5) Contractor may be subject to periodic and ongoing security reviews to ensure compliance with the requirements of Section 1.d.
- (6) Except as prohibited by Section 1.d above, Agency, Contractor and any subcontractor will share information as necessary to effectively serve Agency clients.

2. Contractor Requirements to Report Abuse.

- a. Contractor shall comply with, and cause its employees to comply with, the applicable laws for mandatory reporting of abuse, including but not limited to abuse of the following classes of persons in Oregon:
- (1) Children (ORS 419B.005 through 419B.045);
- (2) Elderly Persons (ORS 124.055 through 124.065);
- (3) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
- (4) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
- b. In addition to the requirements of Section 2.a, if law enforcement is notified regarding a report of child abuse, Contractor shall also notify the local Child Protective Services Office of the Department of Human Services ("DHS") within 24 hours. If law enforcement is notified regarding a report of abuse of elderly, long term care facility residents, adults with mental illness or developmental disabilities, the Contractor shall also notify the local Aging and People with Disabilities Office of DHS within 24 hours. If known, the abuse report should contain the following:
- (1) The name and address of the abused person and any people responsible for that person's care;
- (2) The abused person's age;
- (3) The nature and the extent of the abuse, including any evidence of previous abuse;
- (4) The explanation given for the abuse;
- (5) The date of the incident; and
- (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

3. Background Checks.

- Contractor shall verify that any employee working with clients referred by DHS has not been convicted of any of the following crimes: child or elderly abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee scheduled to work with DHS' client. Contractor shall establish verification by:
- (1) having the applicant as a condition of employment, apply for and receive a criminal history check from a local State Police office, which will be shared with Contractor, OR
- (2) Contractor as an employer will contact the local State Police for a criminal history check on the applicant/employee. Contractor will need to give to the State Police the applicant's name, birth date and social security number.
- Contractor shall determine after receiving the criminal history check, whether the employee has listed convictions, and whether these convictions pose a risk to working safely with DHS clients. If Contractor notes a conviction from any of the above listed crimes on the applicant/employee's record, and Contractor chooses to hire the employee/applicant, Contractor shall confirm in writing, the reasons for hiring the individual.
- These reasons shall address how the applicant/employee is presently suitable or able to work with referred DHS clients in a safe and trustworthy manner. Contractor will place this information, along with the applicant/employee's criminal history check, in the employee's personnel file.
- The criminal history check procedures listed above also apply to Contractor. Contractor shall establish a personal personnel file and

place Contractor's criminal history check in named file for possibility of future DHS review.

4. **Equal Access to Services.** As applicable, Contractor shall provide equal access to Services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, consistent with the policy set forth in ORS 417.270.
5. **Media Disclosure.** The Contractor will not provide information to the media regarding a Client without first consulting the Agency. The Contractor will make immediate contact with Agency when media contact occurs. Agency will assist the Contractor with an appropriate follow-up response for the media.
6. **Nondiscrimination.** The Contractor must provide services to Agency Clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted Services must reasonably accommodate the cultural, language and other special needs of Clients.
7. **Workers Compensation:** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

Exhibit B

Standard Terms and Conditions

1. STATEMENT OF WORK: Contractor shall perform the Services in accordance with the schedule set forth in the Statement of Work.

2. ACCEPTANCE OF DELIVERED SERVICES: Agency shall accept or reject each deliverable. If Agency rejects the deliverable, then Agency shall give Contractor a written notice of the reasons for the rejection and the method for curing, if any.

3. PAYMENT: (a) Contractor shall send invoices to Agency at Agency's address, including details and at a frequency as agreed upon with Agency. Contractor's invoice shall include at a minimum: the Contract number; Services performed, Service dates, what was delivered, the rates (as applicable), the total amount due, and the payment address. (b) Agency shall pay Contractor, in accordance with the Compensation and Payment Methodology, for Services delivered under this Contract and accepted by Agency. Contractor shall look solely to Agency for payment. Contractor shall not be compensated by anyone else. (c) Contractor agrees that Agency's payment is contingent on Agency receiving enough funding and other expenditure authority to allow the payment. (d) Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

4. TERMINATION: The parties may terminate this Contract at any time by mutual written consent. Agency may terminate this Contract for its convenience upon written notice to Contractor. Agency or Contractor may terminate this Contract immediately or at a later designated date upon written notice to the other party, if the other party is in breach. Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor.

5. RECOVERY OF OVERPAYMENTS: IF BILLINGS UNDER THIS CONTRACT, OR UNDER ANY OTHER CONTRACT BETWEEN CONTRACTOR AND AGENCY, RESULT IN PAYMENTS TO CONTRACTOR TO WHICH CONTRACTOR IS NOT ENTITLED, AGENCY, AFTER GIVING WRITTEN NOTIFICATION TO CONTRACTOR, MAY WITHHOLD SUCH AMOUNTS FROM PAYMENTS DUE TO CONTRACTOR.

6. INDEMNIFICATION: CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND (SUBJECT TO ORS CHAPTER 180) THE STATE OF OREGON, AGENCY AND THEIR OFFICERS, EMPLOYEES, AGENTS, FROM ALL CLAIMS, SUITS OR ACTIONS OF ANY NATURE ARISING OUT OF OR RELATED TO THE ACTIVITIES OF CONTRACTOR, OR ITS OFFICERS, SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS CONTRACT.

7. GOVERNING LAW, JURISDICTION, AND VENUE: This Contract is governed by Oregon law, without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between the State of Oregon and the Contractor that relates to this Contract ("Claim") shall be heard exclusively in the Circuit Court of Marion County for the State of Oregon. If the Claim must be brought in a federal forum, then it shall be heard exclusively in the US District Court for the District of Oregon. In no way will this Section or any other provision of this Contract be construed as a waiver by the State of Oregon of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court. Contractor consents to the in personam jurisdiction of these courts.

8. FORCE MAJEURE: No party is responsible for delay or default caused by an event beyond its reasonable control. The Agency may terminate this Contract without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this Contract.

9. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS: Contractor shall not assign, transfer, or subcontract rights or responsibilities under this Contract in whole or in part, without the prior written approval of the Agency. This Contract's provisions are binding upon and inure to the benefit of the parties to the Contract and their respective successors and assigns.

10. ACCESS TO RECORDS: Contractor shall maintain all accounting records relating to this Contract according to GAAP. Contractor shall retain its accounting records and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant the State of Oregon and its agencies, the Secretary of State Audits Division, the federal government, and their duly authorized representatives' access to the Records, including reviewing, auditing, copying, and making transcripts.

11. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS: Contractor shall comply with all federal, state and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the performance of the Services, as such laws, regulations, executive orders, and ordinances may be adopted, amended, or repealed from time to time. These laws, regulations, executive orders and ordinances are incorporated by

reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. Agency's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.230, and 279B.235 incorporated by reference herein.

12. OWNERSHIP OF WORK PRODUCT: Every invention, discovery, work of authorship and other tangible or intangible item that Contractor is required to deliver to Agency under this Contract (collectively, "Work Product") shall be the exclusive property of Agency. Agency and Contractor agree that all Work Product is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason any Work Product is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all such Work Product, 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 acquire such further rights and execute such further documents and instruments as are necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

13. AMENDMENTS; WAIVER: All amendments to this Contract must be in writing, signed by the both parties. The Agency's failure to enforce any provision of this Contract is not a waiver or relinquishment by the Agency of its rights to such performance in the future or to enforce any other provisions.

14. SEVERABILITY: If a court of competent jurisdiction declares any provision of this Contract to be illegal or in conflict with law, the parties intend that the validity of the remaining terms and provisions not be affected, and that the rights and obligations of the parties be construed and enforced as if the Contract did not contain the particular terms of provision held to be invalid.

15. AWARD TO FOREIGN CONTRACTOR: If Contractor is not registered to do business or has no office 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. The Agency may withhold final payment under this Contract until Contractor has met this requirement.

16. INDEPENDENT CONTRACTOR: Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by performance of this Contract, represents and warrants that Contractor's Services to be performed under this Contract create no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's performance under this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government. Contractor is responsible for all federal and state taxes applicable to compensation paid to Contractor under this Contract, and unless Contractor is subject to backup withholding, Agency will not withhold from such compensation any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or worker's compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual. Contractor shall perform all Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services and any Work Product, but 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 Services. Contractor is an independent contractor as defined in ORS 670.600.

17. BREACH: (a) Contractor breaches this Contract if Contractor: (i) ceases doing business on a regular basis, including but not limited to ceasing to do business as a result of insolvency, receivership, bankruptcy proceedings, or an assignment for the benefit of creditors; (ii) no longer holds a required license or certificate for Contractor's performance; or (iii) commits any material breach under this Contract, (vi) Contractor failed to comply with the tax laws of this state or a political subdivision of this state before the Contractor executed this Contract or fails to comply with the tax laws of this state or a political subdivision of this state during the term of this Contract, and Contractor fails to cure any such breach as Agency may specify in the notice of breach. (b) Agency breaches this Contract if Agency: (i) fails to pay Contractor any amount owed under this Contract; or (ii) commits any material breach under this Contract, and Agency fails to cure any such breach as Contractor may specify in the notice of breach.

18. AGENCY REMEDIES: If Contractor is in breach under Section 17(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: (a) termination of this Contract under Section 4, (b) reducing or withholding payment for Services or Work Product that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Contractor to perform, at Contractor's expense, additional work necessary to perform the Statement of Work or meet performance standards, (d) suspending Contractor's performance of the Services, (e) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (f) exercise of its right of recovery of overpayments under Section 5 of this Contract or setoff, or both. 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.

19. CONTRACTOR REMEDIES: (a) If Agency is in breach under Section 17(b), and whether or not Contractor elects to exercise its right to terminate the Contract under Section 4, Contractor's sole monetary remedy shall be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to deliverable-based Services, 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.

20. INTENDED BENEFICIARIES: State and Contractor are the only parties to this Contract and the only parties entitled to enforce the Contract.

21. INFORMATION PRIVACY/SECURITY/ACCESS: If the Services performed under this Contract require Contractor or, when allowed, its subcontractor(s), to have access to or use of any Agency computer system or other Agency Information Asset or Network and Information System for which Agency imposes security requirements, and Agency grants Contractor or its subcontractor(s) access to such Agency Information Assets or Network and Information Systems, Contractor shall comply, and require all subcontractor(s) to which Agency has granted such access to comply, with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

22. MERGER CLAUSE/COUNTERPARTS: This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representation, oral or written, not specified herein, regarding this Contract. Any amendments to 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 an amendment so executed shall constitute an original.

23. FUNDS AVAILABLE AND AUTHORIZED: Contractor shall not be compensated for Services performed under this Contract by any other agency of the State of Oregon or the federal government. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within Agency's current biennial appropriation or limitation. Contractor understands and agrees that Agency's payment for Services performed is contingent on Agency receiving appropriations, limitations, allotments and other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

24. REPRESENTATIONS AND WARRANTIES: Contractor represents and warrants to Agency that: (a) Contractor has the power and authority to enter into and perform this Contract, (b) the obligations set forth herein are valid and binding obligations of Contractor enforceable in accordance with its terms, (c) 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 Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession (d) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services, and (e) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

25. NOTICES: Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Contractor or Agency at the address or number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this section. Any notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any notice delivered by facsimile shall be

deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number set forth in this Contract. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

26. TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence in Contractor's performance of the Services under this Contract.

27. SURVIVAL: In addition to any provisions of this Contract that by their express terms survive termination of this Contract, the confidentiality provisions of Exhibit A and the following provisions of Exhibit B shall remain in effect beyond any Contract termination or full performance: 3, 5, 6, 7, 10, 11, 12, 16, 17, 18, 19, 20, 23, 24, 25, 27 and 28.

28. LIMITATION OF LIABILITIES: THE STATE OF OREGON SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR RELIANCE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST DATA, OR HARM TO BUSINESS), REGARDLESS OF THE FORESEEABILITY THEREOF, ARISING OUT OF OR RELATED TO THIS CONTRACT. CONTRACTOR HEREBY RELEASES THE STATE OF OREGON AND ITS AGENCIES AND THEIR DIVISIONS, OFFICERS, EMPLOYEES, AGENTS AND MEMBERS FROM ANY SUCH CLAIMS.]

EXHIBIT D

Required Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Contract, to Contractor, or to the Services, or to any combination of the foregoing. For purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** Contractor shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Contract or to the performance of the Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (f) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (g) all regulations and administrative rules established pursuant to the foregoing laws, (h) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (i) all federal laws requiring reporting of Client abuse. 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. No federal funds may be used to perform the Services in violation of 42 U.S.C. 14402.
2. **Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to Agency, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
3. **Energy Efficiency.** Contractor shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94 163).
4. **Truth in Lobbying.** By signing this Contract, the Contractor certifies, to the best of the Contractor's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e. No part of any federal funds paid to Contractor under this Contract shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
- f. No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
5. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).
6. **Agency-based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
7. **Resource Conservation and Recovery.** Contractor shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
8. **Audits and associated fiscal responsibilities under this Contract.** Contractor shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
9. **Debarment and Suspension.** Contractor shall not be, nor shall Contractor permit any person or entity to be through a subcontractor relationship with the Contractor, listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and

Suspension". (Sec 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

10. **Drug-Free Workplace.** Contractor shall comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor's workplace or while providing services to Agency clients. Contractor's notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify Agency within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents or subcontractors may provide any service required under this Contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Contractor or Contractor's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to Agency clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Contract.
11. **Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Services under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:
- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work Product, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work Product developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
 - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.