

# DEPARTMENT OF HIGHER EDUCATION PERSONAL/PROFESSIONAL SERVICES CONTRACT

This contract is between the State of Oregon, acting by and through its **Department of Higher Education, on behalf of Eastern Oregon University**, hereafter called Institution, and \_\_\_\_\_, hereafter called Contractor. Institution's supervising representative for this contract is \_\_\_\_\_.

1. **Effective Date and Duration** This contract shall become effective on the date of last signature on which every party has signed this contract and, in some instances may require approval of another State agency. Unless earlier terminated or extended, this contract shall expire when Contractor's completed performance has been accepted by Institution on \_\_\_\_\_, 20\_\_\_\_. However, such expiration shall not extinguish or prejudice Institution's right to enforce this contract with respect to: (i) any breach of a Contractor warranty; or (ii) any default or defect in Contractor performance that has not been cured.
2. **Statement of Work** The Contractor shall provide the following personal/professional services: See Exhibit A or Contractor's statement of work, including the delivery schedule for the work, is contained in Exhibit A attached hereto and by this reference made a part hereof.
3. **Consideration** (a) Institution agrees to pay Contractor, from available and authorized funds as provided in paragraph 4, a sum not to exceed \$\_\_\_\_\_ [or the hourly rate of \$\_\_\_\_\_] for accomplishing the work required by this contract. The maximum, not-to-exceed compensation payable to Contractor under this contract is \$\_\_\_\_\_, which includes any allowable expenses of \$\_\_\_\_\_. (b) If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
4. **Terms and Conditions** The terms and conditions of this contract are contained on the reverse hereof.
5. **Travel and Other Expenses** Reimbursement of travel and other expenses is allowed only as provided in Exhibit A.
6. **Amendments** The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.
7. **Insurance** Required. \_\_\_\_\_ YES \_\_\_\_\_ NO. If YES, see Exhibit B attached hereto and by this reference made a part hereof for the amount and type of insurance required under this contract

## CONTRACTOR DATA AND CERTIFICATION

**Name (tax filing):** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Citizenship**, if applicable: Non-resident alien \_\_\_\_\_ YES \_\_\_\_\_ NO

**Business Designation** (check one):

\_\_\_\_ Corporation \_\_\_\_\_ Partnership

**Federal Tax ID#:** \_\_\_\_\_

\_\_\_\_ Sole Proprietorship \_\_\_\_\_ Governmental/Non-Profit

**Federal Tax ID#:** \_\_\_\_\_ - \_\_\_\_\_ or **SSN#:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Above payment information must be provided prior to contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer ID. number submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers). Information not matching IRS records could subject contractor to 31 percent backup withholding.

**Certification:** I, under penalties of perjury, do hereby certify that (a) the number shown on this form is my correct taxpayer ID (or I am waiting for the number to be issued to me), and (b) I am not subject to backup withholding because (i) I am exempt from backup withholding or (ii) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified me that I am no longer subject to backup withholding.

I, the undersigned also (a) agree to perform the work required by Exhibit A in accordance with the terms and conditions (as listed on the attached Exhibit B); (b) certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; (c) certify that I am an independent contractor as defined in ORS 670.600; (d) certify that I am authorized to act on behalf of Contractor; (e) the statements contained in Exhibit C attached hereto are true and correct; and (f) understand that the Board has adopted policies applicable to contractors that prohibit sexual harassment and accept that my company and its employees are required to adhere to the Chancellor's Office and/or institution's policy prohibiting sexual harassment in their interactions with members of the Oregon University System community.

**Signed by Contractor:** \_\_\_\_\_  
Signature/Title Date

### INSTITUTION & OTHER SIGNATURES

**Approved by Institution:** \_\_\_\_\_ **Approved as to Legal Sufficiency by the Attorney General's Office:**  
 (Required for all interstate & international contracts)

\_\_\_\_\_  
 Dean/Department Chair Date

\_\_\_\_\_  
 Assistant Attorney General Date

\_\_\_\_\_  
 Institution Contract Officer Date

**Other Agency Approval:** \_\_\_\_\_  
 (If required) (Agency Name)

**Institution Contract Number:** \_\_\_\_\_ Name/Title Date

(Below for Institution Use Only)

INVOICE #	INDEX	ACCT. CODE	ACT. CODE	AMOUNT

It is certified by the agency that the above services have been rendered and that payment therefore is authorized.

Payment Received By	Department Approval	Business Office Audit Approval

Form prepared by: \_\_\_\_\_ Phone Number: \_\_\_\_\_

## DEPARTMENT OF HIGHER EDUCATION STANDARD PERSONAL/PROFESSIONAL CONTRACT PROVISIONS

**ACCESS TO RECORDS.** Contractor shall maintain books, records documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this contract. The Oregon Department of Higher Education, Oregon Secretary of State, Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for three years from the date of contract expiration unless a shorter period is authorized in writing. Contractor is responsible for any audit discrepancies involving deviation from the terms of this contract and for any commitments or expenditures in excess of amounts authorized by Institution.

**ASSIGNMENT.** Contractor shall not assign or transfer its interest nor delegate its obligation in this contract without the express written consent of the Institution.

**AVAILABILITY OF FUNDS.** Institution certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract within its current biennial appropriation or expenditure limitation, provided, however, that continuation of the contract, or any extension, after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period for the purpose of this contract.

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

**COMPLIANCE WITH APPLICABLE LAW.** Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Contractor of these obligations nor of the requirements of this contract. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this contract; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this contract; not permit any lien or claim to be filed or prosecuted against the state on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim to such payment. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to any unpaid claims.

**CONFLICT OF INTEREST.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this contract no person having any such interest shall be employed.

**DUAL PAYMENT.** Contractor shall not be compensated for work performed under this contract from any other entity of the State of Oregon.

**EXECUTION AND COUNTERPARTS.** This contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**GOVERNING LAW.** This contract shall be governed and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between Institution and Contractor that arises out of or relates to performance of this contract shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**HAZARD COMMUNICATION.** Contractor shall notify Institution prior to using products containing hazardous chemicals to which Institution employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon Institution's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

**INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work under this contract, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend, indemnify, and hold harmless the State of Oregon, the State Board of Higher Education, the Institution, and their officers, agents, or employee, and members from all claims, suits, and actions of any nature resulting from or arising out of the activities or omissions of Contractor or its subcontractor's, officers, agents, or employees acting under this contract.

**INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this contract are those of an independent contractor. Contractor is not to be considered an agent or employee of Institution for any purpose, and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that Institution provides for its employees. Contractor will be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this contract. If Contractor is providing personal services as an individual, (a) Contractor: (1) Is engaged as an independent contractor and will be responsible for any Federal or State taxes applicable to this payment; (2) Will not be eligible for any Federal Social Security, State Workers' Compensation, unemployment insurance, or Public Employees Retirement System benefits from this contract payment; (3) Is not an officer, employee, or agent of the State as these terms are used in ORS 30.265 and will not be under the direction and control of Institution; (4) Is not currently employed by the Federal Government and the amount charged does not exceed his normal charge for the type of service provided if payment is to be charged against Federal funds; (5) Is not a member of the Oregon Public Employees Retirement System; or (6) is a contributing member of the Oregon Public Employees Retirement System, Contractor's contribution to the retirement system will be withheld and a corresponding institution contribution made; and (7) Must furnish Form CO-477 in duplicate with this contract if contractor is a non-resident alien and claims exemption from Federal Withholding tax. (b) The Oregon State Board of Higher Education, acting on behalf of Institution, will report the total amount of all payments to Contractor, including any expenses, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulation. (Also see Exhibit C)

**INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of this contract general liability insurance (as shown of the reverse side of Exhibit B). Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. The State of Oregon, acting by and through the State Board of Higher Education on behalf of the Institution and their officers and employees shall be included as an additional insured in said insurance policy. If any of the liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of 24 months.

**NOTICES AND REPRESENTATIVES.** All notices, certificates, or communications shall be delivered or mailed postage prepaid to the parties at their respective places of business as identified in the signature block of this contract, unless otherwise designated in writing. Copies of such correspondence shall also be sent all other contract signatories.

**OVERDUE PAYMENTS.** Any charges claimed by the Contractor for payment of an overdue amount shall be in accordance with the provisions of ORS 293.462.

**OWNERSHIP OF WORK PRODUCT.** All work products or any form of property originated or prepared by Contractor which result from this contract are the exclusive property of Institution.

**SEVERABILITY.** 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.

**SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work scheduled under this contract, or assign or transfer any of its interest in this contract, without obtaining prior written approval from the Institution.

**SUCCESSORS IN INTEREST.** The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**TAX COMPLIANCE CERTIFICATION.** Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

**TERMINATIONS.** This contract may be terminated at any time by mutual consent of both parties, or by either party upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party. In addition, the Institution may terminate this contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the Institution, if (a) Federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract; or (b) Any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked, or not renewed. This contract may also be terminated by Institution for default (including breach of contract) if (a) Contractor fails to provide services or materials called for by this contract within the time specified; or (b) Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from Institution, fails to correct such failures within ten days. The rights and remedies of Institution provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**TERMINATION DUE TO NON APPROPRIATION OF FUNDS.** If sufficient funds are not provided in future legislatively approved budgets of Institution (or from applicable Federal, state, or other sources) to permit Institution in the exercise of its reasonable administrative discretion to continue this contract, or if Institution or program for which this contract was executed is abolished, the Institution may terminate this contract without further liability by giving Contractor not less than thirty (30) days notice. In determining the availability of funds from the Oregon Legislature for this contract, Institution may use the budget adopted for it by the Joint Ways and Means Committee of the Oregon Legislative Assembly.

**FOREIGN CONTRACTOR.** If the 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. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

**FORCE MAJEURE.** Neither Institution nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, Institution's or Contractor's reasonable control. 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.

**WAIVER.** The failure of Institution to enforce any provision of this contract shall not constitute a waiver by Institution of that or any other provision.

**APPROVALS.** In some instances, another state agency may be required to approve this contract before any work may commence under this contract.

**RECYCLING.** In the performance of this contract the Contractor shall use, to the maximum extent economically feasible, recycled paper.

**MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**





**CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR**  
(Contractor to complete A or B below)

**A. CONTRACTOR IS A CORPORATION**

**CORPORATION CERTIFICATION:** I, the undersigned, am authorized to act on behalf of the entity designated below, hereby certify under penalty of perjury that entity is a corporation.

Signature \_\_\_\_\_ Date \_\_\_\_\_ Entity \_\_\_\_\_

**B. CONTRACTOR IS INDEPENDENT**

**Contractor certifies he/she meets the following standards:**

1. I am registered under ORS Chapter 701 to provide services for which such registration is required.
2. Filed all 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 services performed as an independent contractor in the previous year.
3. Represent to the public that the services are to be provided by independently established business as four (4) or more of the following circumstances exist. **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. Services are performed only pursuant to written contracts.
  - \_\_\_\_\_ E. 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 services to be provided.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

(Section C to be completed by Institution only if B applies to Contractor)

**C. AGENCY APPROVAL**

**ORS 670.600 Independent contractor standards.** As used in various ORS chapters, 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. Institution 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 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 services.
4. The Contractor has the authority to hire and fire employees to perform the services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

Institution Signature \_\_\_\_\_ Date \_\_\_\_\_

**OREGON STATE BOARD OF HIGHER EDUCATION  
PERSONAL/PROFESSIONAL SERVICES CONTRACT  
Data, Selection and Justification Form**

OSSHE: Eastern Oregon University

Today's Date: \_\_\_\_\_

Individual Preparing Form: \_\_\_\_\_

Telephone #: \_\_\_\_\_

1. Contractor Name and Address: \_\_\_\_\_

Business Designation:  Corporation       Partnership      Social Security # \_\_\_\_\_  
 Sole Proprietorship       Gov't/Non-Profit      Federal Tax ID # \_\_\_\_\_

2. Contract # \_\_\_\_\_

3. Contract Type:       Single Contract       Master Contract

4. Type of Services: \_\_\_\_\_

5. Start Date: \_\_\_\_\_      End Date: \_\_\_\_\_

6. Contract Amount \$ \_\_\_\_\_

7. Why is contract necessary?

What will be accomplished?

8. Methodology/rationale used to establish compensation:

9. Was there legislative involvement in decision to contract?

10. SUMMARY OF SELECTION PROCESS: ("x" if applicable)

- VIP System
- Sole Source
- Notice to Office of Minority, Women and Emerging Small Business
- Were minority, women and emerging small business contacted/considered?

(Describe competitive process used)

11. Contract File Located at: Eastern Oregon University, Administration Office

**FOR AMENDMENTS/EXTENSIONS**

12. Number of this Amendment/Extension:

13. Reason for this Amendment/Extension:

14. Type of Change:       Amendment of Amount (new Total Contract Amount \$ \_\_\_\_\_ with this amendment)  
                                   Amendment/Extension of End Date (new End Date: \_\_\_\_\_ )  
                                   Amendment of scope of work/other language

(File copy of this Justification Form with Chancellor's Office)