

MID-COLUMBIA ECONOMIC DEVELOPMENT DISTRICT

802 Chenoweth Loop Road, The Dalles, OR 97058

REQUEST FOR PROPOSAL:

GORGE TRANSIT PASS MARKETING SERVICES

ISSUE DATE: April 27, 2021

SUBMITTAL DEADLINE: May 28, 2021

TABLE OF CONTENTS

Summary	3
Background	3
Pre-Work Contractor List	4
Project Timeline & Budget	4
Project Funding.....	5
Proposal Requirements	5
Submission Requirements	6
Pricing.	6
Liability for Proposal Expenses	7
Reserved Rights	7
Project Management and Review	7
Scope of Work	8
Task 1: Develop marketing plan and campaign strategy	8
Task 2: Implement marketing plan and campaign strategy.	9
Considerations.....	10
Current Marketing Ecosystem.....	10
Current CAT marketing materials and digital ecosystem include:.....	10
Questions	11
Pre-Proposal.....	11
Selection Criteria	12
Interview	12
Attachment A: Standard State Clauses.....	13

SUMMARY

With this Request for Proposal (RFP), Mid-Columbia Economic Development District (MCEDD) and Hood River County Transportation District dba Columbia Area Transit (CAT) seek to acquire the services of a qualified marketing/advertising group or team of managed individuals to support its marketing, public relations and outreach activities for the 2022 and 2023 Gorge Pass regional transit pass program in the Mid-Columbia River Gorge region. Activities under this grant may occur in the Mid-Columbia River Gorge region, the Portland Metropolitan Area and other communities recognized as ridership markets for the Gorge Pass program.

BACKGROUND

The GORge Pass was originally developed by Columbia Area Transit (CAT) in Hood River, providing an annual pass for unlimited travel on all CAT fixed routes and travel between Portland and Hood River.

The GORge Pass program was launched in the Gorge on February 1, 2020 and by March 15, 2020 over 3000 passes had been sold in the Gorge. CAT had prepared a marketing campaign and was on the verge of launching the campaign in Portland when the COVID pandemic hit and put the launch and Pass sales on hold.

In Fall 2020, CAT approached three other fixed-route providers in the Gorge (LINK transportation in Wasco County, Skamania Transit in Skamania County, and Mount Adams Transportation Service in Klickitat County) who agreed to join the 2021 Pass program beginning July 1, 2021.

In November 2020 (when the 2021 GORge Pass became available for purchase), CAT began a limited Pass sales campaign to take advantage of their winter Gorge-to-Mountain Service. In addition, CAT & MCEDD applied for funding through the State Transportation Improvement Fund Discretionary Grant Program to market the multi-provider GORge Pass over a two-year period, with a grant cycle of July 2021-June 2023.

Working with Kerry Cobb Consulting (CAT's current marketing consultant) and providing a limited-scope contract to the Columbia Gorge Tourism Alliance, MCEDD and CAT have begun the pre-work for a July 2021 Soft Launch of the multi-provider GORge Pass and will then continue with a Full Launch of the program starting in November 2021.

Prewrite has included:

- Branding look and feel to incorporate all four providers into the marketing and communications.
- Contact list of businesses, organizations, tourism, and transit agencies to be engaged.
- Program messaging.

- Overview program materials design—rack cards, rack card folder, initial posters, initial illustrations, marketing toolkit for providers.
- Initial website design and newsletter template.
- Internal instructions for providers to use with staff, drivers, and customer service reps.
- Maps, Guide to Ride, and newsletter template.
- General structure for the Program’s Equity Fund.

CAT has retained the rights to all templates, illustrations, print copy and messaging, website, collateral design as well as contact information and lists, agreements, or other critical information for all the pre-work completed. All these elements will be made accessible to the successful bidder.

Pre-Work Contractor List

To assist you in your proposal, we are providing list of contractors who have been working with us on the pre-work portion of this project. We strongly advise you to consider adding one or more of the agencies to your proposal.

- Columbia Gorge Tourism Alliance, emily@columbiagorgetourismalliance.com
- Kerry Cobb Marketing, Marketing Consultant kcobb@kcobbmarketing.com
- Amy Livingstone, Graphic Designer amy@sacredartstudio.net
- Steve Gaylord, Illustrator sgaylordmedia@gmail.com
- Fellene Gaylord, Web and Map Designer fellene@sirius-media.com
- Becky Engel Consultant, becky@beckyengel.com (worked with CAT on 2020 launch)

PROJECT TIMELINE & BUDGET

Request for Proposal Issued:	April 27, 2021
Pre-proposal Meeting	May 7, 2021, 9am
Proposal due	May 28, 2021, 9am
Interviews (if necessary)	Jun 3 – June 4, 2021
Selection	June 7, 2021
Contract Finalized	June 30, 2021
Contract Begins	July 6, 2021
Contract End	June 30, 2023

The total project budget for the two-year period is \$216,000, with an additional \$24,000 for the website contingency task if awarded as part of this contract. The proposal review team reserves the right to pull this contingency task out of this contract if the firm’s qualifications do not match the needs. The amount of funding cannot exceed this amount, but the consultant can propose to spend a higher amount the first year of the project.

Please note, there will be a project website that is tied to other Gorge websites. The consultant shall work in concert with others to ensure that the website is consistent with messaging and scope. While website content and buildout related to the Gorge Pass are part of the contingency scope of this project, the website and any content, or work product developed as part of this task are owned by the Client on behalf of the GorgeTranslink Alliance and will be handed over at the end of this contract.

Project Funding

It is important to note that the contract for this project is dependent upon Oregon Department of Transportation (ODOT) grant funds that are not yet secured. We have been informed that our application has a high initial score from ODOT Staff and the Public Transportation Advisory Committee and is likely to receive funding. However, no contract can be signed until after the formal award has been made by the Oregon Transportation Commission which is likely to be at their May 13, 2021 meeting.

Should the grant be awarded, no work on the contract will be allowed before a formal contract between MCEDD & ODOT has been signed—which will be no earlier than July 1, 2021.

PROPOSAL REQUIREMENTS

MCEDD & CAT invite proposals from interested marketing groups with experience in strategic planning, project oversight, advertising, media planning and management, website work, public relations, networking, community engagement and outreach, and copywriting and messaging, collateral design/ production/ printing/ distribution, and digital marketing. Preference will be given to those who can provide a broad range of services; subcontracts for specific services are acceptable. Bidders must follow exactly and be responsive to all requirements of this RFP. It is the bidder's responsibility to provide all specified materials in the required form and format. Responses that are not in the required form and format will not be considered. Agencies/groups with experience marketing to the Columbia River Gorge communities and markets represented in this RFP, marketing in the Portland metro market, and transit marketing will be given extra consideration, as will entities in the five-county Mid-Columbia region.

The firm should submit a proposed marketing approach that includes the elements listed above accompanied by relevant work samples. In addition, the firm should detail the proposer's experience and qualifications in similar marketing efforts.

Firms interested in bidding are requested to provide three references for current or recent projects with similar scope and requirements. This will allow the review committee to assess the vision, creative process, and potential effectiveness of each firm submitting proposals in regard to the multi-agency needs.

Submission Requirements

To be considered for the award, respondents must submit the following items in a timely manner and in proper form. Each submittal must include at a minimum:

1. Cover Letter
2. Qualifications of Firm & Individual Team Members
3. Proposed Approach
4. Scope of Work
5. Pricing (please follow the pricing format outlined below)
6. Names, phone numbers and contacts for three organizations to be contacted as references
7. Samples of Work
8. Location of principal office and branch(es)
9. An acknowledgement of compliance with applicable state clauses and signed federal clause certifications (Attachment A)

Please note the following:

- Maximum length for the proposal (not including Cover letter, work samples, and resumes) should not exceed 10 pages.
- Cover letter should be limited to 1 page.
- Please follow guidelines below for the pricing requirements.
- Contractor are encouraged to provide their RFP response by email to: kate@mcedd.org. A hard copy proposal will be accepted, but must include an electronic copy in PDF format on a USB storage device.
- Proposals lacking required information will not be considered.

Firms selected for final consideration may be required to make an in-person or Zoom presentation/ demonstration to the review committee addressing their experience and qualifications.

Pricing

Pricing should reflect the provided work scope and should include production and material costs inclusive of the proposed elements associated with the tasks proposed.

In addition, on a separate sheet the contractor should provide a rate sheet (fully loaded cost/hour) for each of the specific task members that will work on the project.

Pricing should be based on the Scope for the first 12-month period (July 2021 – June 2022) and the final 12 months (e.g., July 2022 – June 2023).

Firms must comply with all required Federal clauses and provisions in the contract.

Liability for Proposal Expenses

The Proposer is solely liable for all proposal expenses. The contracting agency will not be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.

Reserved Rights

The contracting agency reserves the right, in its sole discretion, to reject any or all Proposals for any reason. The contracting agency shall not be required to award or accept any Proposal and may, in its sole discretion, and at any time, choose to cancel the Request for Proposals. The contracting agency reserves the right to waive any issues of non-compliance that it deems, in its sole discretion, to be non-material. The contracting agency may accept the Proposal as submitted or may negotiate modifications with one or more Proposers before making a final selection. The contracting agency has the right, in its sole discretion, to accept the proposal it considers most favorable to MCEDD's interest and the right to waive minor irregularities in procedure.

Project Management and Review

The project will be managed by MCEDD. Work over the course of this contract will involve coordination and communication with a project management team (PMT) on day-to-day decisions regarding the project, proposed strategies, design, copy, media placements, etc. The PMT will use a collaborative decision-making process to address work scope issues and to ensure fair stakeholder participation and representation.

This PMT will consist of (at minimum):

- The Contractor responsible for carrying out the scope of work
- CAT Executive Director or designated representative
- MCEDD Contract Manager

Other agency partners would be invited to participate if desired.

Formal review of all projects and tasks will be done on a frequency agreed upon at the time of assignment and as outlined in the scope of work below.

Work over the course of this contract will involve coordination and communication with the Grant Project Management Team, Gorge-area Chambers of Commerce, Tourism/City/County/Port partners, members of the general public, employers in Portland and the Gorge, and other parties as needed. Innovation and creativity leading to increased public awareness and Pass sales is critical to the continued success and growth this program.

SCOPE OF WORK

MCEDD and CAT are requesting proposals from qualified marketing/advertising groups or teams of managed individuals to provide a Marketing Plan as outlined below. The marketing organization chosen to market this newer, expanded pass (as described above in “Background”) will be responsible for marketing the GORge Pass starting in November 2021 with a major launch, and continue to manage the marketing through June 30, 2023. The aim of the marketing is to increase awareness in affected communities in the Gorge as well as in the Portland metro area to continually increase sales of the Pass. (Please note, a Soft Launch of the new Pass will have already been planned and be in the process of being executed for July 1, 2021. The new marketing firm’s job will be to focus on the marketing happening from November 2021 and beyond.)

The goal will be to develop an overall messaging and marketing strategy to bring awareness to, and increase sales of, the new GORge Pass for the Columbia Gorge county transit providers of Hood River (CAT), Wasco (The Link), Skamania (SCT), and Klickitat (MATS). It is important to note that although the pass gives access to all four providers and is designed to show integration, each of the four providers are unique and have their own routes & schedules. The pre-work has attempted to maintain these distinctions. The contractor will need to continue to include these distinction as they move forward.

Task 1: Develop marketing plan and campaign strategy

Develop a strategic branding and marketing campaign that will be effective in the Mid-Columbia River Gorge, the Portland/Vancouver Metropolitan region and other ridership markets for the Gorge Pass including employers. The campaign should specifically seek to raise awareness and pass sales among three target groups: Tourists coming to the Gorge (both Portlanders and those coming through Portland), all Gorge residents, and employees of local and Portland companies. We envision a 2-year campaign aimed at all members in the community that will educate the public about the services offered, how to access information about those services, benefits of transit, etc.

Marketing plan shall include:

1. A campaign strategy to increase awareness and sales of the Gorge Pass, branded as “GORge Pass.” This work shall utilize, as appropriate, previously developed brand guidelines, collateral materials, website and other pre-work assets.
2. Contact list, built on pre-work, of appropriate local and Portland-based businesses and organizations to be engaged as part of this project
3. An outreach strategy, building on pre-work, to engage local business partners, organizations, affinity groups, and the general public.
4. A two-year timeline for deliverables, budget breakdown and roles and responsibilities.

5. A business plan, building on pre-work, to establish a Gorge Pass Fund Program “Equity Fund” to accept donations to purchase Passes to be given to low-income and underserved groups.
6. Utilization of existing market research to create the plan. Monitor and adjust based on PMT guidance over the course of the project to ensure effective outreach strategies for three target markets: Tourists coming to the Gorge (both Portlanders and those coming through Portland), all Gorge residents, and employees of local and Portland companies.
7. Proposal for utilizing some or all of the following marketing forums: print media, social media, website(s), media buys, radio, collateral (e.g. posters, brochures, A-frame signage, stickers), focus groups, public relations, one-on-one outreach, bus wraps, hosted or collaborative events, and other online marketing e.g. (blog, newsletter).
8. Website and website management plan that ensures integration and coordination with existing Gorge and Gorge transit-related websites.
9. A messaging toolkit that can be adapted to each unique service delivery model.
10. Recommendations on management of Equity Fund.
11. Key performance indicators and quarterly report template.

Up to three presentations of the draft or final marketing plan will be presented to partners. The final marketing plan will be approved by the PMT.

Estimated Task 1 Budget: \$20,000

Estimated Task 1 Completion Date: August 15, 2021

Task 2: Implement marketing plan and campaign strategy

Implementation of marketing plan and campaign strategy as outlined in Task 1. This includes execution of the approved marketing plan; executing copy, materials, media buys, outreach, digital marketing, etc. needed launch of the multi-provider 2022 Gorge Pass in November 2021 and the 2023 pass in November 2022.

Twenty months of marketing collateral and communications content will be developed. Oregon procurement requirements must be followed when using sub-contractors for implementation of marketing plan and campaign strategy.

Completion of quarterly reporting on key performance indicators including outreach activities, passes sold, number of contacts, web and social media engagements, associated business partnerships.

Estimated Task 2 Budget – \$196,000 inclusive of costs associated with the production and dispersal of collateral and materials, ad-buys, website operations, and other costs to implement the marketing and campaign strategy (*see Considerations*).

Estimated Task 2 Completion Date: Ongoing through June 30, 2023, including quarterly report submissions.

The funding allocated for this 2-year marketing strategy development and campaign is based on all marketing needs. Some of these needs may end up being handled internally by the transit providers, depending on the marketing firm's proposal, and discussion and agreements made between the firm and the contracting agency. Please keep this in mind when submitting your proposal.

•

The contractor should be aware that MCEDD & CAT are required by law to ensure all collateral materials are available in Spanish and accessible through alternate formats for persons with disabilities.

Considerations

When creating your proposal, please propose a budget that includes estimated costs to implement the marketing plan approach. For example, your proposal may include costs associated with the following strategies:

- Social media
- Other online marketing—blog, newsletters etc.
- Advertising with targeted Bus wraps
- Media buys
- Print materials
- Interns/staffing needed to do outreach and one-on-one communicating with local affinity groups
- Events
- Developing or confirming message development via focus groups, surveys, or other means
- Public relations

Current Marketing Ecosystem

Current CAT marketing materials and digital ecosystem include:

- Brand Guidelines
- Messaging
- New GOrge Pass website and connected newsletter template
- New social media platforms—Twitter, Facebook, Instagram
- New collateral
 - Branded rack cards for each transit provider
 - Pass-specific folder/holder for rack cards, overview brochure, Guide to Ride, postcards
- Illustration inventory
- Business, tourism, and transit partner lists

- New website

As noted above all of these elements will be made available to the winning bidder.

Contingency Task: Website Updates & Maintenance

Amount Available \$12,000/ year (total \$24,000)

Consultant to create monthly content and add to website, newsletter, social media and Gorge Pass network partners. Specifically, the Monthly Website & Newsletter updates would include:

- an interesting trip idea, paired with Gorge business offers/specials, plus a highlight of one of non-profit who is focused on outdoor equity as well as 4) a spotlight on a key sponsor from the Outdoor Equity Fund.
- Consultant would be responsible for:
 - Creating relationships with each business/org (or working with organizer of equity fund)
 - Identifying and setting up deals with local businesses
 - Gathering photos and stories for each trip idea & business
 - Creating/writing the content
 - Translating highlights to social media
 - Updating website /publishing newsletter

Estimated time: 10 – 20 hours/ month

QUESTIONS

All questions regarding this bid should be provided in writing to kate@mcedd.org. Answers will be provided in writing to all submitted questions no later than 3 business days after they are received, and a full overview of all questions & responses will be provided by May 17, 2021.

PRE-PROPOSAL

A pre-proposal conference will be held via Zoom on May 7, 2021 at 9am. The conference will offer you the opportunity to get a clarification on anything in the proposal, review existing materials, and ask any appropriate question.

SELECTION CRITERIA

This is a competitive selection process. Price will be an important criterion, but it will not be the only criteria that the selection committee uses to rank the proposal. Criteria that will be used to rank the proposals include: Price (25%); Approach (25%); Qualifications (30%); Availability (20%).

Interview

Once proposals are ranked, the selection committee may hold interviews. The number of interviews conducted will be up to the selection committee and will be based on the proposal ranking. Interviews are expected to be held the week of May 31, 2021. The specific selection criteria will be sent out with the notification of interviews.

Work under this contract will be contingent upon award and execution of FY21-23 STIF Intercommunity grant through the Oregon Dept of Transportation. Additional requirements may be added to be consistent with the grant when it is execution on or around July 1 2021.

ATTACHMENT A: STATE CLAUSES

This Agreement is made and entered into by and between Mid Columbia Economic Development District, hereinafter referred to as “MCEDD”, and _____, hereinafter referred to as “Recipient”, and collectively referred to as the “Parties”.

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **July 1, 2021** or the date when this Agreement is fully executed and approved as requirement by applicable law. Unless otherwise terminate or extend, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **June 30, 2023** (Expiration Date). No Grant Funds are available for any expenditures after the Expiration Date.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Description and Budget

Exhibit B: Insurance Requirements

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibit A; Exhibit B.

3. **Project Cost; Grant Funds.** The total project cost is estimated at \$226,00, with a potentially contingency contract of \$24,000 for a total of \$240,000 if contingency is awarded. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed \$240,000 in Grant Funds for eligible costs described in Section 6.a. hereof.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by MCEDD by amendment pursuant to Section 11.d hereof.

5. **Progress Reports.** Recipient shall submit to MCEDD a bi-monthly progress reports, or a progress report to accompany each billing invoice, whichever is more frequent. MCEDD reserves the right to request such additional information as may be necessary to comply with state reporting requirements.

6. **Copyright and Document Ownership and Use.** No report, maps, or documents produced in whole or in part under this Contract shall be subject of an application for copyright by or on behalf of the Recipient. All reports, maps, documents and other materials produced by the Recipient in association with services provided under this Contract shall become the property of Translink Alliance and partners.

7. **Representations and Warranties of Recipient.** Recipient represents and warrants to MCEDD as follows:
- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
 - b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
 - c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit no accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
 - d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded from this federally-assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Records Maintenance and Access; Audit.**

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. MCEDD, the Secretary of State of the State of Oregon (Secretary) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, MCEDD, the Secretary, and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records.

- b. **Audit Requirements.** Recipient shall save, protect and hold harmless MCEDD from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and MCEDD.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient agrees to provide State with a copy of any signed subagreement upon request by State. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Recipient to State within ten (10) days of its being discovered.

10. Termination

- a. **Termination by MCEDD.** MCEDD may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by MCEDD in such written notice, if:
 - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. MCEDD fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow MCEDD, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of MCEDD and which under the provisions of this Agreement would have required the approval of MCEDD.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to MCEDD, or at such later date as may be established by Recipient in such written notice, if:
 - i. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

11. General Provisions

- a. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against MCEDD or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which MCEDD is jointly liable with Recipient (or would be if joined in the Third Party Claim), MCEDD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of the MCEDD on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of MCEDD on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. MCEDD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if MCEDD had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with MCEDD, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon recipient's breach of conditions that requires MCEDD to return funds to the State of Oregon, hold harmless and indemnify MCEDD for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from MCEDD, the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** MCEDD and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Recipient acknowledges and agrees that the State of Oregon, absent express written consent by the State of Oregon, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Recipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or MCEDD Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.g. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against MCEDD, such facsimile transmission must be confirmed by telephone notice to MCEDD Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement 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 MCEDD (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the MCEDD of any form of defense or immunity, whether 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. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient, including without limitation as described in Exhibit D. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of MCEDD. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. MCEDD cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of

performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of MCEDD, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

- I. **Severability.** If any term or provision of this Agreement 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 this Agreement did not contain the particular term or provision held to be invalid.
- m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes 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 Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Insurance Requirements

GENERAL - SUBRECIPIENT.

Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to MCEDD. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS

656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to MCEDD. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include State, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and MCEDD may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If MCEDD approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

GENERAL - RECIPIENT.

Recipient shall: i) obtain insurance specified under TYPES AND AMOUNTS (except TYPES AND AMOUNTS paragraph I applies only to Recipient's subcontractors who employ subject workers) and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under this Agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide Workers' Compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include State, its officers, employees and agents as Additional Insureds but only with respect to the Recipient's activities to be performed under this Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, Recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) Recipient's completion and State's acceptance of all Services required under this Agreement or, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Recipient elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Recipient may request and State may grant approval of the maximum "tail" coverage

period reasonably available in the marketplace. If State approval is granted, Recipient shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. Recipient or its insurer must provide 30 days' written notice to State before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. State shall obtain from Recipient a certificate(s) of insurance for all required insurance before the effective date of this Agreement. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.