

**COVER PAGE**

**Oregon Sweet Cherry Commission (OSCC)**

**ADMINISTRATIVE SERVICES**

Request for Proposal (RFP)

**PROPOSAL NUMBER 669-2025**

Date of Issue: March 7, 2025

Closing Date and Time: April 7, 2025 5:00 pm PST

Single Point of Contact (SPC): Ian Chandler, Chair  
Oregon Sweet Cherry Commission

Send Proposals to: [osccchair@gmail.com](mailto:osccchair@gmail.com)

Proposal requirements, format and delivery details are in Sections 3, 4, and 5.

The State of Oregon promotes equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual orientation, or veteran status.

## SECTION 1: GENERAL INFORMATION

### 1.1 INTRODUCTION

The Oregon Sweet Cherry Commission (OSCC) or Commission is issuing this Request for a Proposal (RFP) for administrative services to be provided from July 1, 2025 to June 30, 2026. The Commission will begin the contract June 1, 2025 for purposes of transition and on-boarding.

Commission's intent for this RFP is to award a Personal Services Contract. Additional details on the Scope of the goods or services or both are included in the Scope of Work/Specifications section below.

The Commission must approve all contracts, including the administrative services contract, annually.

### 1.2 BACKGROUND

#### Oregon Sweet Cherry Commission (OSCC)

The OSCC is a state commodity commission created under ORS 576 and works on behalf of over 100 producers of sweet cherries in the state of Oregon. The Commission is directed by a board comprised of eight producers, two handlers (first purchasers), and a public member who are all appointed by the Director of the Oregon Department of Agriculture (ODA). Committed to improving the industry, the Commissioners are volunteers; they have full-time jobs in Oregon's sweet cherry industries.

The OSCC meets an average of six times a fiscal year (July through June). In addition to meetings of the full commission, the OSCC has two committees including research and budget.

As an Oregon commodity commission, the OSCC is authorized under Oregon Revised Statute (ORS) 576.325 to collect a mandatory assessment on sweet cherries produced in Oregon. The first purchaser or producer acting in the capacity of his or her own first purchaser will deduct and withhold for assessments the following amounts for all sweet cherries grown in Oregon and sold for the following purposes on any crop harvested after this date:

Fresh market — \$27 per ton;

Canned — \$9.00 per ton;

Frozen — \$9.00 per ton;

Brined — \$9.00 per ton.

then send the assessments annually to the OSCC office.

The OSCC website is [www.osweetcherry.org](http://www.osweetcherry.org)

In addition to the mandatory assessments, commodity commissions are permitted

to receive funds from other sources, such as grants for special projects.

All commodity commissions are public agencies established by the Oregon legislature. All commodity commissions comply with Oregon’s public meeting and public records law, ORS chapter 192; Oregon government ethics law, ORS chapter 244; and other applicable state laws, rules and required financial reporting. All commodity commissions adopt budgets each year in a public hearing process set forth in ORS 576.416 and are subject to audit; see OAR Chapter 603, Division 42.

The Director of the Oregon Department of Agriculture (ODA) appoints all commissioners, who must meet qualifications set in ORS [insert applicable statute: 576.225 and Oregon Administrative Rule (OAR) Chapter 669, Division 30. Oregon State University (OSU) and the Oregon Department of Agriculture (ODA) are represented on the Commission by ex-officio non-voting members, designated by the OSU Dean and the ODA Directors respectively. The ODA Commodity Commission Oversight Program (pursuant to ORS 576.066) reviews the Commission’s annual operational plan, all contracts and other agreements, and provides resources and technical advice.

### **1.3 AUTHORITY AND METHOD**

A Commission is authorized to enter into a contract for personal services pursuant to ORS 576.304(4) and ORS 576.306(1), consistent with OAR Chapter 122, Division 50 and OAR Chapter 603, Division 42, as applicable. All contracts are reviewed by the ODA pursuant to ORS 576.306(9) and OAR 603-042-0010(10), and, depending on the anticipated amount of the procurement, the contract must be approved by the Oregon Department of Justice (DOJ) prior to execution.

Commodity commissions are authorized pursuant to ORS 576.306(1) to contract with an independent contractor for administrative services but may not contract to perform the discretionary functions of the commission. Discretionary functions do not include collecting assessments, scheduling meetings, processing payments or other administrative duties assigned by the commission.

Commodity commission contractors are independent contractors and not employees, eligible employees, public employees or employees of the state for purposes of Oregon law. A contractor may not be considered a public official, public officer, state officer or executive official for purposes of Oregon law.

### **1.4 SCHEDULE**

The table below represents a schedule of events. All times are listed in Pacific Time. All dates listed are subject to change.

Event	Date	Time/Location
Questions / Requests for Clarification Due to SPC	March 17, 2025	Due by 4:00 PM to SPC via email to <a href="mailto:osccchair@gmail.com">osccchair@gmail.com</a>
Answers to Questions / Requests for Clarification	March 24, 2025	Posted by 1:00 PM on <a href="http://www.osweetcherry.org">www.osweetcherry.org</a>
Closing (Proposal Due) to SPC	April 7, 2025	Delivery no later than 5:00 PM via email
Interviews	April 22, 2025	Via Zoom video conferencing. Successful proposers will be notified of their interview time in advance by April 17, 2025.
Issuance of Notice of Intent to Award (approximate date)	No later than May 1, 2025	Phone and email to highest scoring proposer. Notice via email to all but highest scoring.

## SECTION 2: SCOPE OF WORK

### 2.1 SCOPE OF WORK/SPECIFICATIONS

The Commission is seeking an administrative services contractor to carry out the daily business affairs of the Commission. The commission intends to issue a contract for administrative services.

The commissioners are public officials volunteering their time to the industry. Each commissioner has a full-time job in addition to their Commission duties. The producer commissioners are farmers, the handler commissioners work for a processor that is a first purchaser of sweet cherries and the public member is interested in the positive economic development of the commodity.

The administrative services contractor carries out the policies, procedures and directives previously approved by the Commission during public meetings. The chairperson administers the contract between the Commission and the administrative services contractor. The administrative services contractor frequently consults with the chairperson, vice chairperson, secretary/treasurer; and the ODA Commodity Commission Oversight Program manager.

On an annual basis, the Commission separately evaluates the administrative services contractor's performance. The Commission must approve the administrative services contract on an annual basis.

Commodity commissions are authorized to collect mandatory assessments by statute. During public meetings, the commissioners discuss and approve motions to

direct funds toward promotion, education, communication, research and administrative costs.

The Commission's administrative services needs include:

**2.1.1 Office Facility & Equipment**

- a. Providing the office equipment, computer and compatible software, data back-up system, phone and voicemail systems, and personnel the Commission consider necessary;
- b. Providing office space for Commission's records, up to five boxes;
- c. Performing maintenance of Commission's public records in a timely manner pursuant to OAR Chapter 166, Divisions 030, 300, and 350;
- d. As required by ORS 576.385, obtaining and filing with Commission a fidelity bond of \$50,000. Submitting reimbursement request for the cost of this bond;
- e. Paying, and holding the Commission harmless from, all of the contractor's normal operational expenses, including but not limited to salaries, rents, utilities, taxes and fees (such as income, employment, license or others) and other similar expenses;
- f. Maintaining compliance with all governmental (local, state, or federal) laws and rules applicable to the operation of Independent Contractor's business.

**2.1.2 Bookkeeping and Financial Management**

- a. Managing the Commission's assessment program in accordance with OAR Chapter 669, Division 10, which includes providing reporting forms, receiving and depositing assessments, recordkeeping, collecting late assessments, and reporting to the Commissions on delinquencies, among other duties;
- b. Receiving and depositing other funds;
- c. Preparing payment of Commission's approved expenses for signature by commissioners;
- d. Preparing periodic quarterly reports on revenue and providing them to ODA on a timely basis;
- e. Maintaining and updating information related to sweet cherry production to forecast the Commission's future assessment income for budgeting and planning purposes;
- f. Assisting the chairperson and commissioners with all functions necessary to prepare annual draft budgets pursuant to ORS 576.416, advertise the budget hearings, conduct the budget hearings, and submit required adopted budget materials to ODA for authorization;
- g. Preparing financial reports, state-required year-end financial statements, other reports and related financial records pursuant to ORS 576.395;
- h. Monitoring Commission's finances monthly and providing both written and verbal reports on monthly Commission's finances (balance sheet, monthly check activity, monthly transactions, revenue & expenditure statement,

reconciliations for a checking account, money market/savings accounts) at each Commission meeting;

- i. Alerting Commission's leadership to critical financial occurrences, for example: revenues are less than forecasted in the annual budget or expenses in a budget category will or are being exceeded;
- j. Obtaining information on marketing trends and commodity values at request of Commissions; however, contractor must obtain approval of informational content from Commissions before its dissemination;
- k. Preparing requests to ODA for emergency fund transfer;
- l. Ensuring receipt of commissioner expense reports and preparing reimbursements and their recordkeeping;
- m. Acting in compliance with applicable laws, OARs, generally accepted accounting principles, and the Commission's Policies and Procedures Manuals.

### **2.1.3 Communications & Meeting Planning**

- a. Assisting the chairperson with scheduling meetings;
- b. Providing legally required notices of meetings and hearings pursuant to ORS 192 and ORS 576.416;
- c. Assisting committee chairpersons with preparing meeting agendas and providing notices of committee meetings;
- d. Scheduling and setting up ADA-accessible meeting rooms, and catering service;
- e. Preparing and providing copies (digital or paper depending on commissioners' preference) of packets for commission and committee meetings;
- f. Taking notes and preparing draft minutes of Commission's meetings;
- g. Providing information to growers, buyers, agencies, industries, news media and others that is consistent with approved Commission positions; however, contractor must obtain approval of informational content from Commissions before its dissemination, as provided by OAR 603-042-0015(6);
- h. Representing Commission at hearings or meetings on proposed legislation, rules, or issues affecting Commission and producers/handlers at request of Commission; however, contractor must obtain prior approval from Commission of all positions that may be taken on behalf of Commission;
- i. If approved in advance by Commission, traveling to assist Commission to fulfill its promotional, educational or research purposes. Contractor will submit request for reimbursement of allowable travel expenses in accordance with Exhibit A, the Sample Administrative Services contract, Section 3 and Section II;
- j. Updating information on the Commission's website in a timely manner. Contractor will maintain and update all pages on the Oregon Sweet Cherry Commission website. Contractor will maintain and update all pages of the website.

#### **2.1.4 Administrative and Time Management**

- a. Preparing annual Operational Plans for Commission approval, and submitting plans to ODA pursuant to OAR 603-042-0015;
- b. Maintaining the domain name [www.osweetcherry.org](http://www.osweetcherry.org);
- c. Maintaining records of Commission and committee minutes, actions and other records pursuant to ORS 192 and ORS 576;
- d. Maintaining databases in a timely manner, including producer mailing lists, meeting mailing lists, and handler lists;
- e. Maintaining and updating a list of interested parties;
- f. After Commission approval, prepare contracts and similar documents in a timely manner according to procedures which include but may not be limited to:
  - i. completing templates prepared by the Oregon Department of Justice and provided by ODA's Commodity Commission Oversight Program;
  - ii. writing a statement of work;
  - iii. emailing completed document to ODA for review;
  - iv. providing additional information to ODA on a timely basis when requested;
  - v. after ODA completes review, obtaining contractor and Chairperson signatures;
  - vi. providing one fully signed digital document to ODA;
  - vii. maintaining one fully signed document in commission records;
  - viii. providing contractor with one fully signed document;
- g. When delegated and authorized in writing by the Commission, monitoring a contractor's work to ensure that services are performed and deliverables delivered according to the schedule in the contract;
- h. Preparing and filing administrative rules in a timely manner;
- i. Participating in training on applicable state laws, policies and other administrative training.

#### **2.1.5 Interpersonal Skills & Regulatory Compliance Experience**

- a. Establishing and maintaining communications and good working relationships with commissioners;
- b. Staying current on state, regional, and national matters that affect Oregon growers and processors, then informing the chairpersons in a timely fashion;
- c. Informing the chairperson in a timely manner of matters that need to be brought to the Commission's attention for discussion and action;
- d. Informing the chairperson in a timely manner of matters related to delayed assessments, producer and handler concerns and other subjects requiring the Commission's immediate attention;
- e. Establishing and maintaining good communications and working relationships with the Oregon State University, National Cherry Growers & Industries Foundation, Northwest Horticulture Council, Columbia Gorge Fruit Growers, Washington Tree fruit Research Commission, and Northwest

- Cherries, and other organizations with interests in common with the Commission;
- f. Establishing and maintaining good communications and working relationships and acting as liaison with other industry organizations in the state, region, and nation; however, contractor must obtain prior approval from Commission of all positions that may be taken on behalf of Commission;
  - g. To the extent that the Commission elect, collaborating with other commodity commissions;
  - h. Establishing and maintaining good working relationships with, collaborating with, and consulting with the ODA Commodity Commission Oversight Program;
  - i. Assisting ODA with recruitment of applicants for commissioner positions;
  - j. Working with ODA to ensure that commissioners successfully complete mandatory trainings;
  - k. Assisting ODA Commodity Commission Oversight Program with orientation of commissioners;
  - l. Establishing and maintaining good communications and working relationships with all contractors supplying services and goods to the Commission.

## **2.2 ADDITIONAL INFORMATION RELATED TO THE WORK**

- 2.2.1 The successful submitted proposal will be incorporated into final contracts between the Commission and the successful Proposer, which will include the terms and conditions as set forth in the attached Sample Contract (Exhibit A).
- 2.2.2 The current interagency agreement for administrative services is ending June 30, 2025.

## **SECTION 3: PROCUREMENT REQUIREMENTS**

### **3.1 MINIMUM QUALIFICATIONS –**

1. Available to begin providing services to Commission July 1, 2025 to June 30, 2026. The Commission will begin the contract June 1, 2025.
2. Five years of successful experience in administrative work including financial reporting, arranging for meetings, writing reports or minutes, record-keeping, preparing and distributing communications, and monitoring timely and quality delivery of contracted services, and/or
3. Five of years of successful experience administering volunteer organization(s), working with board members, carrying out direction and priorities set by a board, drafting meeting agendas and other meeting materials, delivering verbal and written reports.
4. Five of years of successful experience in organizing meetings or in event planning.
5. Five of years of successful experience in budget processes, financial reporting, accounts



- receivable and bookkeeping processes.
6. Experience or familiarity with working with technical subjects such as bylaws, laws, government, government regulations, or research projects.
  7. Demonstrated excellent written and verbal communication skills including public speaking and reporting during meetings.
  8. Proven success in prioritizing multiple time-sensitive tasks and meeting deadlines.
  9. Ability to provide staff, office equipment, computer software compatible with Commission's existing software (Word, Excel, Powerpoint, Wix, Google Docs/Sheets, QBO), high-speed internet, secure data storage space and back-up system, file storage space, and phones with reliable voicemail system.
  10. Have a driver's license and insurance, with an acceptable driver's record or an alternative means of transportation

### 3.2. ADDITIONAL CERTIFICATION REQUIREMENT

To submit a Proposal, Proposer must meet the Independent Contractor Certification, shown below. The certification is part of Exhibit A, Sample Contract.

#### INDEPENDENT CONTRACTOR CERTIFICATION

##### A. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

1. I am free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;
2. I am registered under ORS Chapter 58, 60, 62, 63, 65, 67, 70 or 648 to provide the services, if such registration is required.
3. I am responsible for obtaining other licenses or certificates necessary to provide the services.
4. I am customarily engaged in an independently established business because three of the following requirements are satisfied:
  - A. I maintain a business location:
    - 1) That is separate from the business or work location of the person for whom the services are provided; or
    - 2) That is in a portion of my residence, and that portion is used primarily for business.
  - B. I bear the risk of loss related to the business or the provision of services as shown by factors such as:
    - 1) Entering into a fixed-price contract;
    - 2) Being required to correct defective work;
    - 3) Warranting the services provided; or
    - 4) Negotiating indemnification agreements, or purchasing indemnification liability insurance, performance bonds or errors and omissions insurance.
  - C. I provide contracted services for two or more different persons within a 12-month period, or routinely

- engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- D. I make a significant investment in the business, through means such as:
    - 1) Purchasing tools or equipment necessary to provide the services;
    - 2) Paying for the premises or facilities where the services are provided; or
    - 3) Paying for licenses, certificates or specialized training require to provide the services.
  - E. I have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

(Section 4 does not apply if a Person files a Schedule F as part of an income tax return and the Person provides farm labor or farm services that are reportable on Schedule C of an income tax return.)

## **SECTION 4: SUBMISSION REQUIREMENTS**

### **4.1. MINIMUM SUBMISSION REQUIREMENTS**

#### **4.1.1. Proposal Submissions**

As used in this RFP, “Proposal” refers to the complete package of required materials submitted to the SPC, including Attachments A – F as described below. “Proposal for Services” refers to Attachment B only.

To be considered for evaluation, the Proposal must contain each of the following elements (further detailed in Proposal Requirements section below):

- a. Executive Summary of Proposed Services (Label as Attachment A)
- b. Proposal for Services (Label as Attachment B)
- c. Proposed Timeline for Provision of Services (Label as Attachment C)
- d. Proposer Information and Certification Sheet (Exhibit D of RFP, label as Attachment D)
- e. Cost Proposal stated as a base fixed fee for administrative services and separately showing any costs for materials. (Label as Attachment E). The Commission will reimburse invoices at cost-only, without mark-up, for commission meeting rooms and related catering for meetings; commission business-related travel, mileage, postage; and the required bond. Submit Cost Proposal as a separate attachment from the proposal. Do not refer to your Cost Proposal in any other part of your Proposal.
- f. Key Persons and Resumes (Label as Attachment F)

#### **4.1.2. Proposal Format and Quantity**

Proposer shall send its Proposal to the Single Point of Contact (SPC) listed on the first page by the Closing Date and Time.

Proposal should follow the format and reference the sections listed in the Proposal Requirements section. Responses to each section and subsection should be labeled to indicate the item being addressed.

Proposal shall be submitted to the SPC in the following format:

One (1) electronic copy of Proposal including Attachments A – D and F, with a separate attachment for the Cost Proposal (Attachment E). Proposer’s electronic copy must be formatted using Adobe Acrobat (pdf), Microsoft Word (docx), or Microsoft Excel (xlsx).

The Proposal for Services (Attachment B) must follow the format and reference the sections listed in Section 4.2.2. Responses to each section and subsection should be labeled with the corresponding number to indicate the item being addressed.

The Proposer Information and Certification Sheet (Attachment D) must bear the Proposer’s authorized representative’s Signature. Failure of the authorized representative to sign the Proposal may subject the Proposal to be rejected by the Commission.

## **4.2. PROPOSAL REQUIREMENTS**

Proposal must address each of the items listed in this section and all other requirements set forth in this RFP. Proposer shall describe the Goods to be provided or the Services to be performed or both. A Proposal that merely offers to provide the goods or services as stated in this RFP may be considered non-Responsive to this RFP and will not be considered further.

Proposal should not include materials not essential to the utility and clarity of the Proposal. Proposal should be straightforward and address the requests of the RFP. Proposal containing excess material not addressing the RFP requirements may receive a lower evaluation score if specific information addressing RFP requirements is difficult to locate.

### **4.2.1. Executive Summary (label as Attachment A)**

Provide a brief overview of your Proposal.

### **4.2.2. Proposal for Services (label as Attachment B)**

#### **4.2.2.1. Evaluation Item 1 – Office Facility and Equipment**

Describe your office facility, equipment and those who will provide administrative services:

- I. Office location and equipment including types of software;
- II. Phone and voicemail system;
- III. Internet speed;
- IV. Electronic storage system and capacity;
- V. Electronic back-up system;
- VI. Storage capacity for paper records of both a confidential and public nature;
- VII. Personnel support structure, if any;
- VIII. Identify portions of the required administrative services that you may want

to subcontract, if any.

**4.2.2.2. Evaluation Item 2 – Bookkeeping and Financial Management**

Identifying all computer software you have used, describe your experiences, including the number of years, preparing, presenting verbal and written reports on, as well as maintaining records of:

- I. Accounts payable and receivable, identifying who will handle which;
- II. Monthly financial reports;
- III. Bank reconciliations;
- IV. Annual financial reports;
- V. Preparing for and responding to audits;
- VI. Administering grant funds and reporting;
- VII. Provide an example of analyzing several years of annual financial reports and identifying a fiscal trend that called for a decision by the client -- either increasing revenue or modifying spending. Be specific about how you identified the trend, who you reported it to, and what type of changes you recommended.

**4.2.2.3. Evaluation Item 3 – Communications and Meeting Planning**

Describe your experiences and number of years spent in:

- I. Writing and preparing reports, minutes, correspondence, newsletters: identify all computer software you have used and describe your skill level with each;
- II. Verbal communication as it relates to public speaking, presenting reports, managing meetings or assisting someone who is managing a meeting;
- III. Organizing meetings and events;
- IV. Maintaining and updating websites in a timely manner;
- V. Establishing and maintaining communication with board members, industry, government agencies, elected officials, and stakeholders.

**4.2.2.4. Evaluation Item 4 – Time Management**

- I. Describe your time commitments and requirements to other clients. Include both current and any you anticipate adding during July 1, 2025 to June 30, 2026;
- II. Describe the type of time management skills you have used to manage all responsibilities well;
- III. Explain how you adjust your work-flow when a client has an unanticipated need that requires immediate attention;
- IV. Provide an example of your experience delivering projects within specified deadlines;
- V. Explain your experience and provide an example of completing tasks with minimal oversight.

**4.2.2.5. Evaluation Item 5 – Interpersonal Skills & Regulatory Compliance Experience**

- I. Describe your experiences, including the number of years spent, working

- with a variety of people, including:
  - a. Boards of directors as a whole and volunteer board members;
  - b. The public;
  - c. Researchers;
  - d. Government staff and elected officials;
  - e. Members of an organization or business that you provide administrative services to; and
- II. Give an example of previous experience complying with rules, regulations, bylaws, policies and/or procedures.

## SECTION 5: ADDITIONAL REQUIREMENTS

### 5.1. PROPOSED TIMELINE FOR PROVISION OF SERVICES (LABEL AS ATTACHMENT C)

Describe how you plan to meet the deadlines related to the Commission’s administrative services work. Address any conflicts your current work may present vis-a-vis the Commission’s major work elements.

To assist Proposers, the following table highlights the major activities of the Commission’s administrative services work elements. It does so with estimated dates for major work elements. *The following table DOES NOT present a complete calendar of work for the Commission’s administrative services contractor.*

Major Work Elements	Date	Notes
Regular meetings of the full Commission	Periodically between August and May	Schedule meeting location and catering (as needed), draft agenda with chairperson, provide public notice, prepare and make copies of meeting packets to email which include financial reports and other materials, take notes, prepare draft minutes and follow-up on meeting actions and requests.
<u>Assessment Process</u> Prior to the dates listed, update Assessment Report forms if necessary. Notify and provide blank Assessment Report forms to first purchasers either through USPS, via email or	Receive assessment checks September through March – the commission’s source of operational revenue  (See bottom of this chart for the monthly average of the number of checks received	Receive Assessment Reports. Reconcile Reports received with ODA’s list of licensed Growers / Producers. Record Assessment Report data. Inform Commissioners of any discrepancies.  Utilize collection procedures as

posting and commission's website. Receiving assessments involves record-keeping and bank deposits.	and checks written for the Commission.)	necessary.
Income Reports – ODA Census Reports – form provided by ODA and submitted via email	Approximately January 15, April 15, July 15 and October 15.	Report total monthly assessments and other funds received for the quarter. Email Excel form to ODA. This report is required even when revenue is zero.
Budget Preparation & Adoption Process – ODA provided template	Work occurs sporadically from February through late May. The mandatory public hearing notice requires publication a specific number of days before the budget hearing.	Process includes drafting a budget, holding a budget committee meeting, notification, public hearing before June 6, adoption of budget, notarizing budget affidavit, submitting required documents to ODA for authorization to spend funds.
Year-end Financial Statement and other state-required financial and online risk reports	This work takes place approximately July 1 through July 18 and continues sporadically through September.	State of Oregon requirement. Some forms provided by ODA about three weeks before due date.
Assist ODA with process of recruiting candidates for commissioner.	Periodically January through March	Verify which commissioner positions expire June 30 of that year. Outreach to producers and handlers who qualify to apply.
Add newly appointed commissioner(s) to commission records.	June	ODA provides a copy of commissioner appointment letter(s) and application(s).
With ODA, provide an hour-long orientation to commissioners.	Prior to or during first Commission meeting of the new fiscal year; in-person or virtually.	Orientation covers commission budgeting, selection process for research and promotional projects. Also covers Oregon public records and meeting law, Oregon ethics law.
Assist newly appointed and reappointed commissioners to ensure successful completion of mandatory Workday Learning - Oregon training.	Approximately July - September	Governor requires all commissioners and public employees to complete training on specific state policies.

Monthly Transactions Three-Year Average	Oregon Sweet Cherry Commission	
	# Checks Deposited	# Checks Written
July	0	0
August	2	5
September	8	3
October	15	5
November	5	5
December	3	3
January	1	6
February	1	2
March	1	0
April	0	3
May	0	2
June	0	2

**5.2 PROPOSER INFORMATION AND CERTIFICATION SHEET (LABEL AS ATTACHMENT D)**

Complete the Proposer Information and Certification Sheet, attached to this RFP as Exhibit D. Label your completed Proposer Information and Certification Sheet as Attachment D. As provided in the Proposer Information and Certification Sheet, Proposers must certify that their Proposal constitutes a firm offer for 180 days following Closing of this RFP.

**5.3. COST PROPOSAL (LABEL AS ATTACHMENT E)**

In a separate attachment, labeled Cost Proposal Attachment, provide the proposed cost bid expressed as a base fixed fee for administrative services. The fixed fee should not exceed the funds, \$86,000.00, that the Commission has budgeted as a maximum fixed cost. Do not include reimbursable items as part of the base fixed fee. The Commissions will reimburse invoices for the cost only for meeting rooms and catering for meetings, travel, mileage, and postage related to Commission’s business and for the required bond.

**5.4. REFERENCES**

Provide two (2) references from current or former relevant volunteer or professional organizations for similar work within the last three years. Proposer shall submit reference names and contact information. References must be able to verify the quality of previous, related Work. Commission or SPC will make three attempts to contact each of the references provided by the Proposer. If these attempts are unsuccessful, the Proposer will receive a score of zero for that reference.

Commission may also check to determine if references provided support Proposer’s ability to comply with the requirements of this RFP. Commission may use references to obtain additional information, or verify any information needed. Commission may contact any reference (submitted or not) to verify Proposer’s qualifications.

## **5.5. KEY PERSON(S) AND THEIR RESUME(S) (LABEL AS ATTACHEMENT F)**

Specify key person(s) to be assigned to this project (if applicable), and include a current resume (not to exceed 2 pages each) for each individual who demonstrates qualifications and experience for the Work described.

## **SECTION 6: RFP SOLICITATION PROCESS**

### **6.1. PUBLIC NOTICE**

Notification of the availability of this RFP was mailed to the applicable entities on the Oregon Agriculture Commodity Commission (OACC) RFP Mailing List and to those who requested to be notified by the Commission, and posted on OregonBuys (state procurement website) and advertised in the Daily Journal of Commerce, Special Districts Association, Good Fruit Grower, Capitol Press, as well as posted to the Commission's web page.

Modifications, if any, to this RFP will be made through posting on the Commission's website. Prospective Proposers are solely responsible for checking with the Single Point of Contact prior to the RFP Closing Date to determine whether any Addenda have been issued. Addenda are incorporated into the RFP by this reference.

### **6.2. QUESTIONS / REQUESTS FOR CLARIFICATIONS**

All inquiries, whether relating to the RFP process, administration, deadline or method of award, or to the intent or technical aspects of the RFP, or relating to the potential Contract terms and conditions, or both, must:

- I. Be delivered to the SPC via email
- II. Reference the RFP Title and Number
- III. Identify Proposer's name, phone, and email information
- IV. Refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number) or Contract term or condition, as applicable; and
- V. Be received by the due date and time for Questions/Requests for Clarification identified in the Schedule

### **6.3. PROPOSAL DELIVERY**

Proposer is solely responsible for ensuring its Proposal is received by the SPC before Closing.

Commission is not responsible for any delays in email, or by transmission errors, or for any mis-delivery for any reason. A Proposal submitted by any means not authorized below will be rejected:

A Proposal must be submitted through email and must clearly identify the Proposer's name and the RFP title and number. It must be sent to the attention of the SPC at the address listed on the Cover Page.



#### **6.4. PROPOSAL DUE**

A Proposal (including all required submittal items) must be received by the SPC on or before Closing. All Proposal modifications or withdrawals must be received prior to Closing.

#### **6.5. PROPOSAL REJECTION**

Commission may reject a Proposal for any of the following reasons:

- I. Proposer fails to substantially comply with all prescribed RFP procedures and requirements, including but not limited to the requirement that Proposer's authorized representative sign the Proposal.
- II. Proposer makes any contact regarding this RFP with State representatives such as but not limited to Commission's employees, Commission's contractors, Commissioners or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.
- III. Proposer attempts to influence a member of the Evaluation Committee or a Commissioner.
- IV. Proposal is conditioned on Commission's acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda.

#### **6.6. EVALUATION PROCESS**

##### **6.6.1. Responsiveness determination**

A Proposal will be reviewed to determine if it meets all RFP requirements. If an aspect of the Proposal is unclear, the SPC may request clarification from Proposer. If the SPC finds the Proposal does not meet any one or more requirements of the RFP, including but not limited to compliance with requirement for submission by Closing, the Proposal may be rejected; however, either Commission may waive mistakes in its sole discretion.

##### **6.6.2. Evaluation Criteria.**

Each Proposal that the Committee finds meets RFP requirements will be independently evaluated by members of an Evaluation Committee. Evaluation Committee members may change. Evaluators will assign a score for each evaluation criterion listed below in this section up to the maximum points available in the Point and Score Calculation section.

SPC may request further clarification to assist the Evaluation Committee in gaining additional understanding of a Proposal. A response to a clarification request must be to clarify or explain portions of the already submitted Proposal and may not contain new information not included in the original Proposal.

The Commission reserves the right to investigate references and past performance of any Proposer with respect to the Proposer's (a) successful performance of similar projects;

(b) compliance with specifications and contractual obligations; (c) completion or delivery of a project on schedule; and (d) lawful payment of suppliers, subcontractors, and workers. The Commission reserves the right to postpone the award in order to complete its investigation.

Proposals considered responsive and complete will be evaluated by the Committee using a point scale on the evaluation criteria listed below:

<b>Maximum Possible Points</b>	<b>Qualifications-Based Evaluation Criteria of Proposal</b>
5	Evaluation Item 1 – Office Facility and Equipment
25	Evaluation Item 2 – Bookkeeping and Financial Management
20	Evaluation Item 3 – Communications & Meeting Planning
15	Evaluation Item 4 – Time Management
20	Evaluation Item 5 – Interpersonal Skills & Regulatory Compliance Experience
<b>85</b>	<b>SUBTOTAL of Qualifications-Based Evaluation Score</b>
<u>15</u>	Cost Proposal Score Added
<b>100</b>	<b>SUBTOTAL of Qualifications-Based Evaluation Score and Cost Proposal Score</b>
35	Top scoring Proposals will be invited to interview. The interview score will be added to the SUBTOTAL of the Qualifications-Based Evaluation Score and Cost Proposal Score.
<u>5</u>	References scored for Proposals invited to interview.
<b>140</b>	<b>TOTAL POSSIBLE POINTS</b>

EVALUATOR USE THIS COLUMN WHEN <b>35 POINTS IS MAXIMUM SCORE</b>	EVALUATOR USE THIS COLUMN WHEN <b>30 POINTS IS MAXIMUM SCORE</b>	EVALUATOR USE THIS COLUMN WHEN <b>20 POINTS IS MAXIMUM SCORE</b>	EVALUATOR USE THIS COLUMN WHEN <b>15 POINTS IS MAXIMUM SCORE</b>	EVALUATOR USE THIS COLUMN WHEN <b>5 POINTS IS MAXIMUM SCORE</b>	<b>EXPLANATION</b>
35	30	20	15	5	OUTSTANDING - Response meets all the requirements and has demonstrated in a clear and concise manner a thorough knowledge and understanding of the subject matter and project. The Proposer provides insight into its expertise, knowledge, and understanding of the subject matter.
34 - 21	29 - 19	19 - 12	14 - 9	4 - 3	VERY GOOD – Response provides useful information, while showing experience and knowledge within the category. Response demonstrates above average knowledge and ability with no apparent deficiencies noted.
20 - 8	18 - 7	11 - 5	8 - 4	2	ADEQUATE – Response meets all requirements in an adequate manner. Response demonstrates an ability to comply with guidelines, parameters, and requirements with no additional information put forth by the Proposer.
7 - 1	6 - 1	4 - 1	3 - 1	1	FAIR – Proposer meets minimum requirements, but does not demonstrate sufficient knowledge of the subject matter.
0	0	0	0	0	RESPONSE OF NO VALUE – An unacceptable response that does not meet the requirements set forth in the RFP. Proposer has not demonstrated knowledge of the subject matter.

**6.6.2.1. Evaluation Item 1 - Office Facility & Equipment - 5 pts.  
maximum**

- a. Is Proposer's computer software compatible with the software used by the Commission?
- b. Is the phone, voicemail system, and the internet speed at Proposer's office adequate for OSCC needs?
- c. For both electronic and paper records, will the Proposer's storage system and capacity meet the Commission's needs?
- d. Does the proposer's office meet the Commission's needs?
- e. What, if any, personnel support structure does the Proposer have? How well will the Proposer's personnel structure meet the Commission's needs?

**6.6.2.2. Evaluation Item 2 - Bookkeeping & Financial Management - 25 pts.  
maximum**

- a. What software does Proposer use for bookkeeping and financial management; how many years' experience do they have in:
  - I. Preparing accounts payable and receivable;
  - II. Preparing monthly financial reports (balance sheet, accounts payable, monthly transactions, revenue & expenditure statement, reconciling a checking account), and presenting a verbal summary of those reports;
  - III. Reconciling bank statements;
  - IV. Preparing annual financial reports and completing report forms as provided by others;
  - V. Preparing for and responding to an independent audit;
  - VI. Administering grants funds and preparing reports;
  - VII. Score the Proposer's example of analyzing several years of annual financial reports and identifying a fiscal trend that called for a decision by the client -- either increasing revenue or modifying spending. Proposers should be specific about how they identified the trend, whose attention they brought it to, and what type of changes they recommended.

**6.6.2.3. Evaluation Item 3 - Communications & Meeting Planning - 20 pts.  
Maximum**

- a. How well does Proposer's preferred method of communicating with clients, both individuals and boards, fit the Commission's needs? Does the Proposer's example of how well they have established and maintained communication with board members, industry, government agencies, elected officials, and stakeholders fit the Commission's needs?
- b. Score the Proposal's information about their ability to write and prepare reports, minutes, correspondence, newsletters. Does the computer

software used and skill level with each software work well for the Commission?

- c. Does the Proposal's description of their comfort level and experience with public speaking, presenting verbal and written reports, managing meetings, or assisting someone who is managing a meeting suit the Commission's needs?
- d. How well does the Proposal explain their skills and experience for organizing meetings of boards and meetings for larger groups?

**6.6.2.4. Evaluation Item 4 – Time Management - 15 pts. Maximum**

- a. How well does Proposal respond to the table showing the Commission's major administrative work elements on pages 13-15 and their ability to balance competing priorities and multiple deadlines on work for other clients?
- b. How well does Proposal demonstrate adjusting work flow when a client has an unanticipated need that requires immediate attention?
- c. How well does Proposal communicate their ability to perform well in delivering projects within specified deadlines?
- d. Does Proposal assure evaluator that Proposer has performed well in completing tasks with minimal oversight?

**6.6.2.5. Evaluation Item 5 – Interpersonal Skills & Regulatory Compliance - 20 pts. maximum**

- a. How well does Proposal illustrate the ability to address a client's specified needs while also going above and beyond requirements to provide value-added assistance?
- b. Does Proposer's experience indicate they work with a wide variety of personality types?
- c. How well has Proposer worked with boards? Review examples of the type of boards Proposer worked with in the last three (3) years. Consider the largest number of board members and the smallest number of board members Proposer worked with. Were the boards non-profit, corporate, association, governmental, etc.?
- d. Does Proposal illustrate previous professional experience complying with rules, regulations, bylaws, policies and/or procedures?

Proposers may be invited to participate in Proposer interviews. Interviews may be in person at a location determined by Commission; however, Commission may elect to conduct interviews via teleconference or virtual conferencing.

**6.6.3. COST EVALUATION**

Following scoring and ranking of Proposals, based on the qualifications-based criteria, the cost proposals will be scored as follows:

**6.7. POINT AND SCORE CALCULATIONS**

Scores are the points assigned by each evaluator.

The maximum points possible for each evaluation item are listed in the table below.

The SPC will average all scores for each evaluation criterion.

Cost points are calculated as stated in the Cost Evaluation section.

<b>TOTAL POINTS POSSIBLE:</b>		<b>140</b>
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<b>POINTS POSSIBLE - of Qualification-Based Evaluation Score</b>		<b>85</b>
6.7.2.1.	Evaluation Item 1- Office Facility & Equipment	5
6.7.2.2.	Evaluation item 2 - Bookkeeping & Financial Management	25
6.7.2.3.	Evaluation Item 3 - Communications & Meeting Planning	20
6.7.2.4.	Evaluation Item 4 - Time Management	15
6.7.2.5.	Evaluation Item 5 - Interpersonal Skills & Regulatory Compliance Experience	20

6.7.3.	<b>COST POINTS POSSIBLE</b>	<b>15</b>
	Top Scoring Proposals will be invited to interview	
	Maximum points possible for interview	35
5.4	References	5

**6.8. RANKING OF PROPOSERS**

The SPC will average the scores for each Proposal (calculated by totaling the points awarded by each Evaluation Committee member and dividing by the number of members).

If Commissions receive only one Proposal, Commission may dispense with the evaluation process and intent to award protest period and proceed with Contract award, as Commission deem in its best interest.

## **7. AWARD**

### **7.1. AWARD NOTIFICATION PROCESS**

#### **7.1.1. Award**

Commission, if awarding a Contract, shall award a Contract to the highest-ranking Proposer(s) based upon the scoring methodology and process described in Section 6.

#### **7.1.2. Intent to Award Notice**

Commission will notify all Proposers in Writing that Commission intends to award Contract(s) to the selected Proposer(s) subject to successful negotiation of any negotiable provisions, if any.

Notwithstanding the foregoing, the Commission reserves the right at its sole discretion and without any liability: (1) to amend this RFP, among other reasons, to revise the scope of work or to extend the resulting Contract; (2) to extend the deadline for proposal submission; (3) to determine whether a proposal does or does not substantially comply with the requirements of this RFP; (4) to waive any minor irregularity, informality, or nonconformance with this RFP's requirements; (5) to request references from other public agencies or private businesses regarding the Proposer's previous contract performance; and (6) at any time prior to contract execution (including after announcement of the tentative award): (a) to reject any proposal that fails to substantially comply with all prescribed RFP procedures and requirements; and (b) to reject all proposals received and cancel this RFP upon a finding by Commission that there is good cause and that such cancellation would be in the best interest of the Commission.

### **7.2. APPARENT SUCCESSFUL PROPOSER SUBMISSION REQUIREMENTS**

Proposers who are selected for Contract award(s) under this RFP will be required to submit additional information and comply with the following:

#### **7.2.1. Insurance**

Prior to award, Proposers shall secure and demonstrate to Commission proof of insurance as required in the Sample Contract (Exhibit A), if any.

#### **7.2.2. Taxpayer Identification Number**

The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form when requested by Commission or when the backup withholding status or any other relevant information of Proposer has changed since the last submitted W-9 form, if any.

### **7.2.3. Business Registry**

If selected for award, Proposer shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Contracts. Information about these requirements may be found at <http://sos.oregon.gov/business/pages/register.aspx>

### **7.2.4 Independent Contractor Certification**

When submitting a Proposal, the Proposer must certify that they are an Independent Contractor.

## **8. ADDITIONAL INFORMATION**

### **8.1. GOVERNING LAWS AND REGULATIONS**

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of Marion County for the State of Oregon; provided, however, if a proceeding must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court.

### **8.2. OWNERSHIP/PERMISSION TO USE MATERIALS**

All Proposals are public record and are subject to public inspection after Commission issues the Notice of the Intent to Award. Application of the Oregon Public Records Law will determine whether any information is actually exempt from disclosure.

All Proposals submitted in response to this RFP become the Property of Commission. By submitting a Proposal in response to this RFP, Proposer grants the State a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating an Agreement, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.410 through 192.505). Proposals, including supporting materials, will not be returned to Proposer.

### **8.3. CANCELLATION OF RFP; REJECTION OF PROPOSAL; NO DAMAGES.**

Commission may reject any or all Proposals in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the State, as determined by Commission. Neither the State nor Commission is liable to any Proposer for any loss or



expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.

**8.4. COST OF SUBMITTING A PROPOSAL**

Proposer shall pay all the costs in submitting its Proposal, including, but not limited to, the costs to prepare and submit the Proposal, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

**8.5. SAMPLE CONTRACT STANDARD TERMS AND CONDITIONS (EXHIBIT A)**

The successful submitted proposal will be incorporated into the final contract between the Commission and the awarded proposer, which will include the terms and conditions as set forth in the attached Sample Contract (Exhibit A), which is incorporated here into this RFP by this reference. The statement of work may be modified.

**8.6. OSCC BUDGET FOR 2024-25 – (EXHIBIT B, INCORPORATED INTO THIS RFP BY THIS REFERENCE)**

**8.7. OSCC ADMINISTRATIVE RULES ON ASSESSMENTS – (EXHIBIT C, INCORPORATED INTO THIS RFP BY THIS REFERENCE)**

**8.8. PROPOSER INFORMATION AND CERTIFICATION SHEET– (EXHIBIT D, INCORPORATED INTO THIS RFP BY THIS REFERENCE)**

**8.9. LINKS**

Commission Website: <https://www.oswwetcherry.org>

Oregon Administrative Rules Website:  
<https://secure.sos.state.or.us/oard/processLogin.action>

Oregon Revised Statutes Chapter 576 Website:  
[https://www.oregonlegislature.gov/bills\\_laws/ors/ors576.html](https://www.oregonlegislature.gov/bills_laws/ors/ors576.html)

Oregon Public Records and Meetings Manual: <https://www.doj.state.or.us/wp-content/uploads/2024/12/2024-PRM-Manual.pdf>

ODA Commodity Commission Program Website: [www.oda.direct/commissions](http://www.oda.direct/commissions)

Oregon Buys Website: <https://oregonbuys.gov/bs/>

Daily Journal of Commerce Website: <https://djcoregon.com>

Special Districts Association of Oregon Website: <https://www.sdao.com>

Good Fruit Grower Website: <https://www.goodfruit.com>

Capital Press Website: <https://capitalpress.com>

**STATE OF OREGON  
CONTRACT FOR SERVICES**

This Contract is between the State of Oregon, acting by and through its Oregon [Name] Commission, hereinafter referred to as “Commission,”

and

[insert contractor name here]  
[insert line 1 - contractor address here]  
[insert line 2 – contractor address here]  
[insert contractor phone number here]  
[insert contractor fax number here]  
[insert contractor email address here]  
[insert contractor home page URL here]

hereinafter referred to as “Contractor” (together, “Parties”). Contractor’s Representative is [First and last name].

Commission's Contract Administrator for this Contract is:

[insert name of contract administrator].  
[insert Commission name and contracting section]  
[insert Commission address]  
[insert Commission city, state, zip]  
[insert contract administrator phone number]  
[insert contract administrator fax number]  
[insert contract administrator email address]  
[insert Commission home page URL here]

Contractor may change its Contractor’s Representative, and Commission may change its Contract Administrator, by providing the other party with notice in accordance with Section 21 of this Contract.

**1. Contract Term.** This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by the Oregon Department of Agriculture and the Oregon Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when Commission accepts Contractor's completed performance or on June 30, 2026 whichever date occurs first. Contract termination shall not extinguish or prejudice Commission’s right to enforce this Contract with respect to any default by Contractor that has not been cured. The Parties may extend the term of this Contract provided that the total Contract term does not extend beyond June 30, 2026.

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

**3. Compensation.**

- a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses stated in Exhibit A (Statement of Work), is \$ \_\_\_\_\_ Commission will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- b. Payments to Contractor shall be made as set forth in this Section 3 and in Exhibit A (Statement of Work).
- c. Commission will pay only for completed Work that is accepted by Commission.
- d. Contractor shall send invoices to Commission’s Contract Administrator for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed, the hourly rates or flat fees for Work performed, and shall itemize and explain all expenses that this Contract requires Commission to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice.

Commission shall pay Contractor a flat fee for Work that Contractor performs, according to the schedule set forth in Section I.c of Exhibit A.

**4. Contract Documents.** This Contract consists of the following documents: this Contract less all exhibits, Exhibit A (Statement of Work), Exhibit B (Required Insurance), Exhibit C (Independent Contractor Certification Statement), Exhibit D (the RFP or Sole Source Justification) and Exhibit E (Proposal). Exhibits A-\_\_ are attached hereto and incorporated herein by this reference. In the event that the terms of the Contract less all exhibits or Exhibit A conflict with the terms of any other Exhibits, the Contract less all exhibits and Exhibit A will control. In the event that the terms of the Contract less all exhibits and Exhibit A conflict, the Contract less all exhibits will control.

**5. Independent Contractor; Responsibility for Taxes and Withholding; Contractor's Key Persons.**

- a. In accordance with ORS 576.306(3) and this Contract, Contractor shall act at all times and perform all Work as an independent contractor, not as an agent or employee of the Commission. Contractor has no right or authority to incur or create any obligation for or legally bind Commission in any way. The Commission reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work. The Commission may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. Contractor by signature to this Contract, represents and warrants that Contractor's performance of the Work under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.
- c. Contractor understands and agrees that it is not an "officer," "employee," or "agent" of Commission (or any other commission, agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265 or otherwise, and Contractor shall not make representations to third parties to the contrary.
- d. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless required by applicable law, Commission will not withhold from such compensation or payments any amount to cover Contractor's federal, state or local tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.
- e. Contractor acknowledges and agrees that the Commission selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's key persons identified in the Statement of Work (each a "Key Person" and, together, "Key Persons"). Neither Contractor nor a Key Person shall delegate performance of the powers and responsibilities that a Key Person is required to provide under this Contract to another Contractor employee, subcontractor or agent without first obtaining the written consent of the Commission. Further, Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the Commission with the required expertise, experience, judgment, and personal attention, without first obtaining Commission's written consent to such re-assignment or transfer, which the Commission will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that the Commission approve a reassignment or transfer of a Key Person, or if Contractor must replace a Key Person, Commission may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person, if Commission so requests. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by the Commission will thereafter be deemed a Key Person for purposes of this Contract and the Statement of Work will be deemed amended to include such Key Person.

**6. Subcontracts; Successors and Assignments.**

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without Commission's prior written consent. In addition to any other provisions Commission may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Commission will receive the benefit of subcontractor performance as if the subcontractor were Contractor with respect to Sections 5, 6, 7, 9, 10, 11, 14, 15, 16, 18, and 25. Commission's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- b. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties, their respective successors, and permitted assigns, if any.
- c. Contractor shall not assign, delegate or transfer any of its rights or delegate its obligations under this Contract without the Commission's prior written consent.

**7. No Third Party Beneficiaries.** Commission and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third

persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**8. Funds Available and Authorized.** Contractor understands and agrees that the State of Oregon's payment obligations under this Contract are conditioned upon Commission's receiving funding, appropriations, limitations, allotments, budgetary authority, or other expenditure authority sufficient to allow Commission, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. Contractor shall not be compensated for Work performed under this Contract by any agency or department of the State of Oregon other than the Commission. Nothing in this Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Commission represents that it has sufficient appropriations, limitation, and budgetary authority for the current fiscal year to finance the payments under this Contract within the Commission's [fiscal year or calendar year]budget established in compliance with ORS 576.416 through 576.445, ORS 577.295 or ORS 578.151, as applicable.

**9. Representations and Warranties.**

The representations and warranties set forth in this Section 9 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Contract. Contractor represents and warrants to the Commission that:

- a. Contractor has the power and authority to enter into and perform this Contract;
- b. This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- c. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
- d. Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty;
- e. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with: (a) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (b) 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; (c) 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 (d) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions;
- f. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;
- g. The Work and each deliverable delivered by Contractor pursuant to the Work will materially comply with any descriptions, specifications, standards or requirements set forth in this Contract;
- h. Except as otherwise provided in this Contract (including Section 10), Contractor shall transfer all deliverables to the Commission free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and
- i. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the deliverables to Contractor or Commission and no third party has any right, title or interest in any deliverables supplied to the Commission under this Contract.

**10. Intellectual Property.**

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

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

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

(iii) "Work Product" means everything that is originally made, conceived, discovered, or reduced to practice by Contractor or Contractor's subcontractors or agents (either alone or with others) pursuant to the Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

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

**c. License in Contractor Intellectual Property.** In the event that a deliverable delivered by Contractor under this Contract is or is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to the Commission an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the deliverable, and to authorize others to do the same on Commission’s behalf.

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

**e. No rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by the Commission. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon the Commission any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

**f. Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.

## 11. Indemnity.

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

**b. INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONTRACTOR EXPRESSLY AGREES TO DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY COMMISSION, THE STATE OF OREGON AND THEIR AGENCIES, COMMISSIONS, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE SUBJECT TO PROTECTION UNDER ANY STATE OR FEDERAL, INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR COMMISSION’S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY (“INFRINGEMENT CLAIM”); PROVIDED THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

**c. CONTROL OF DEFENSE AND SETTLEMENT.** CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OR COMMISSION OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE PRIOR APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON

DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

**12. Assignment of Antitrust Rights.**

a. CONTRACTOR IRREVOCABLY ASSIGNS TO STATE ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO CONTRACTOR FOR THE PURPOSE OF CARRYING OUT CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

b. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO THE STATE OF OREGON, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

**13. Default; Remedies; Termination.**

All provisions of this Section 13 are subject to the provisions of Section 21 regarding acceptable methods of providing notice, and when those methods become effective.

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

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

(ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after Commission delivers notice of default to Contractor or such longer period as Commission may specify in the notice; or

(iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, or so fails to pursue its obligations as to endanger Contractor's performance under this Contract in accordance with its terms, and Contractor fails to cure the breach, default or failure within fourteen (14) calendar days after Commission delivers notice of default to Contractor or such longer period as Commission may specify in the notice.

b. **Commission's Remedies for Contractor's Default.** If Contractor is in default under Section 13.a, then, in addition to any remedies afforded elsewhere in this Contract, Commission may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

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

(ii) Withholding payment of all amounts in Contractor's invoices for Work that Contractor is obligated, but has failed, to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

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

(iv) Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty.

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

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

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

(ii) Commission commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Commission fails to cure the default within thirty (30) calendar days after Contractor's notice of default to Commission or such longer period as Contractor may specify in the notice.

**d. Contractor’s Remedies for Commission’s Default.** If Commission terminates this Contract for convenience under Section 13.e(ii)(A), or Commission is in default under Section 13.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 13.e(iii), Contractor’s sole remedy is one of the following, as applicable:

(i) For Work compensable on an hourly basis, a claim against Commission for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Work completed and accepted by Commission, less any claims Commission has against Contractor; or

(ii) For deliverable-based Work, a claim against Commission for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Commission, less previous amounts paid and any claim(s) that Commission has against Contractor.

In no event shall Commission be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 13.d, Contractor shall pay any excess to Commission immediately upon written demand.

**e. Termination.**

(i) **Mutual Consent.** This Contract may be terminated at any time by mutual written consent of the Parties.

(ii) **Commission’s Right to Terminate at its Discretion.** Commission may, at its sole discretion, terminate this

Contract:

(A) For its convenience upon thirty (30) calendar days prior written notice of termination by Commission to Contractor;

(B) Immediately upon written notice of termination to Contractor if Commission fails to receive funding, appropriations, limitations, allotments, budgetary authority or other expenditure authority in its budget established in accordance with the process described in ORS 576.416 through 576.445, ORS 577.295 or ORS 578.151, as applicable, for the fiscal year in which a payment is due, or if Commission does not have sufficient funds available to allow Commission, in the reasonable exercise of its administrative discretion, to pay for the Work or Work Product; or

(C) Immediately upon written notice of termination to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that Commission’s purchase of the Work or Work Products under this Contract is prohibited or Commission is prohibited from paying for such Work or Work Product from the planned funding source; or

(D) Contractor is in default under Section 13.a.

Contractor shall stop performance under this Contract as directed by Commission in any written notice of termination delivered to Contractor under this Section 13.e(ii).

(iii) **Contractor’s Right to Terminate for Cause.** Contractor may terminate this Contract upon written notice of termination to Commission, or at a later date as Contractor may establish in the notice, if Commission is in default pursuant to Section 13.c.

(iv) **Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Commission all of Commission’s property. Commission property includes without limitation any Work or Work Product for which Commission has made payment in whole or in part that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Commission property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Commission expressly directs otherwise in such notice of termination. Upon Commission's request, Contractor shall surrender to anyone Commission designates, all documents, research or objects or other tangible things, including but not limited to subscriptions, needed to complete the Work and the Work Product.

**14. Insurance.** Contractor shall obtain insurance and meet all other obligations as set forth in Exhibit B, which is attached hereto.

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

**16. Compliance with Applicable Law.** Contractor shall comply, and cause all subcontractors to comply, with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract and performance of the Work. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations

and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Commission's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

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

**18. Force Majeure.** Neither Commission nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism or other acts of political sabotage, or war, or any other cause which is beyond the reasonable control of the Commission or the Contractor. 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.

**19. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract except for the rights and obligations set forth in: Sections 1, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 25, 26, and 30.

**20. Time is of the Essence.** Contractor agrees that time is of the essence in relation to its performance of its duties under this Contract.

**21. Notice.** Except as otherwise expressly provided in this Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Commission at the address, number or email address set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 21. Any communication or notice so addressed and mailed shall be effective five (5) business days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Commission, any notice transmitted by facsimile must be confirmed by telephone notice to Commission's Contract Administrator. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

**22. Severability.** The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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.

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

**24. Approvals.**



**a. Oregon Departments of Agriculture and Justice.** The Oregon Department of Agriculture must approve this Contract, and for contracts valued at more than \$150,000, the Oregon Department of Justice must also approve before any work may begin under this Contract or any amendment is made to this Contract in accordance with ORS 291.047, OAR 137-045-0015 and OAR 137-045-0030.

**b. Promotional or Informational Materials and Other Final Communications.** Pursuant to OAR 603-042-0015(6)-(7), Commission reserves the right to approve promotional or informational materials or other final communications prior to their dissemination, and reserves the right to refuse payment for the Work unless it has given approval prior to dissemination. Commission’s approval of promotional or informational materials or other final communications may be given upon assurance from Contractor that the promotional or informational materials or other final communications will include an identification statement that the material was paid for entirely or in part by Commission.

**25. Governing Law; Venue; Consent to Jurisdiction.**

**a.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between the Commission (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon.

**b.** Notwithstanding Section 25.a, if a legal action or proceeding must be brought in a federal forum, then it shall be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a legal action or proceeding brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and this section is not consent by the State of Oregon to be sued in federal court. In no event shall this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.

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

**27. Amendments.** Commission may amend this Contract to the extent provided in the solicitation document, if any, from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract shall be effective unless it is in writing, is signed by the Parties, and has been approved as required by applicable law.

**28. Restriction on Use of Funds.** Contractor may not use any money disbursed under this Contract to support or oppose any Oregon ballot measure, voter referendum, or the election or defeat of any candidate for public office.

**29. Contractor Data; Contractor Certification.**

**a. Contractor Tax Identification Information.** Contractor shall provide Contractor's Social Security number or Contractor’s federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(2). Social Security Numbers provided pursuant to this Section will be used for the administration of state, federal and local tax laws.

<b>Vendor Name – Tax Filing</b>			
<b>Federal Tax ID#</b>		<b>or SSN#</b>	
<b>Citizenship</b> , if applicable: Non-resident alien <input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>Oregon Secretary of State Business Registry Number</b>			
<b>Business Designation</b> (check one):			
<input type="checkbox"/> Professional Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other			

<b>Address</b>				
<b>City</b>		<b>State</b>		<b>Zip</b>
<b>Phone</b>		<b>FAX</b>		

**b. Contractor Certification.** The individual signing on behalf of Contractor hereby:

(i) Certifies and swears under penalty of perjury to the best of the individual’s knowledge that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate;

(ii) Certifies that, to the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;

(iii) Certifies that the information provided on the attached Exhibit C, Independent Contractor Certification, is true and correct as of the Effective Date;

(iv) Certifies that 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 <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>; and

(v) Certifies that it has a written policy and practice that meets the requirements described in ORS 279A.112, for preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class and that the Contractor shall maintain the policy and practice in force during the entire term of this Contract.

**30. Oregon False Claims Act.** Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract, that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or the Commission under this Contract or any other provision of law.

Contract #: \_\_\_\_\_

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

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

**CONTRACTOR [NAME]**

Signature		Date	
<b>Print Name</b>		Title	

**STATE OF OREGON acting by and through its OREGON SWEET CHERRY COMMISSION**

Signature		Date	
<b>Print Name</b>		Title	
<b>Address</b>			
<b>City</b>		State	Zip
<b>Phone</b>		FAX	

**APPROVED BY THE OREGON DEPARTMENT OF AGRICULTURE**

Signature		Date	
<b>Print Name</b>	Eric Morris	Title	Commodity Commission Oversight Program Manager

**EXHIBIT A (AS PART OF SAMPLE CONTRACT)****STATEMENT OF WORK****I. STATEMENT OF WORK:**

- a. **Authority.** Pursuant to ORS 576.306 and ORS 576.304 (4), Commission may “[e]nter into contracts for carrying out the duties of the commission as set forth in ORS 576.051 to 576.595.”
- b. **General Information.** This is contract for administrative services.
- c. **Payment Terms.** In addition to all other terms set forth in the Contract, including but not limited to those set forth in Section 3, the following terms apply to payment:
- d. **Work Elements and Delivery Schedule.** This Contract shall begin and terminate according to Section 1 of the Contract. The Work Elements specifically described herein shall be completed by the dates set forth below, unless the Commission in writing agrees to an alternative deadline:
1. The Contractor shall:
    - a. Provide a Key Person who will work with the Commission and its Commissioners.
    - b. Maintain the commission's office, which includes providing office space, equipment and office supplies the Commission considers necessary, creating and maintaining an email account for the Commission.
    - c. Provide information to growers, handlers, brokers, buyers, agencies, industries, news media, and others; however, Contractor must obtain approval of informational content from the Commission before its dissemination, as provided by OAR 603-042-0015(6)
    - d. Maintain accurate financial records, prepare monthly income and expenditure statements. Contractor shall also facilitate deposit of assessments and coordinate disbursement of funds at request of Commission. Whenever possible, work to ensure that receivable accounts are handled by one individual and payable accounts are handled by another individual. Financial statements to be made available by the 15th of the month.
    - e. Maintain databases as requested by the Commission, including producer mailing lists, meeting mailing lists, handler lists and newsletter lists.
    - f. Coordinate and attend Commission meetings. Contractor shall act as recording secretary for Commission meetings, preparing minutes pursuant to ORS 192.650, distributing the minutes “within a reasonable time” after the meeting (per the Oregon Attorney General’s 2019 Public Records and Meetings Manual). Contractor shall prepare and distribute meeting notices that include date, time, place, and principal subjects pursuant to ORS 192.640. Contractor shall post meeting notices to Oregon’s transparency website: <http://www.oregon.gov/transparency/Pages/Index.aspx> » Contractor shall prepare and distribute draft agendas, financial and budget reports.
    - g. Coordinate one (1) annual Research Review. This includes but is not limited to: working with the Commission and Researchers to determine agenda for the Research Review; soliciting sponsors for the Research Review if directed by the Commission; disseminating information about the Research Review to growers; coordinating registration, logistics, food and beverages.
    - h. Contact chair or vice chair of the Commission to prepare agendas and materials, make meeting arrangements and attend any Commission committee meetings at request of the Commission.
    - i. Coordinate and implement the Commission's collection of assessments from growers and processors. Create and distribute assessment forms and follow-up letters. Record receipts using good accounting practices. Submit quarterly census reports to the Oregon Department of Agriculture. Inform Commission about late and delinquent assessment payments. Submit required Liquidated and Delinquent Accounts reports to the Oregon Department of Administrative Services.
    - j. Assist the Commission in preparing its budget following guidelines as set forth in ORS 576 and at least 45 days before the scheduled budget hearing.

- k. Coordinate and monitor the Commission's contracts and agreements in a timely fashion. The Commission must approve the terms of all contracts and agreements, but may delegate to the Contractor authority to sign contracts on behalf of the Commission following the Commission's approval of the contracts.
- l. Complete, record, and file all state-required annual financial reports and administrative rules changes in a timely fashion.
- m. Retain Commission records on the schedule set forth by the state in OAR 166-350 and other applicable OARs.
- n. Act as liaison between the Commission and research organizations including Oregon State University. Coordinate any funding proposals submitted to the Commission.
- o. Gather information about additional funding sources for research and education, and if so directed by the Commission, prepare grant applications for Commission review and approval.
- p. Coordinate, travel, and participate in industry related activities to assist the commission in fulfilling its research and educational programs as approved by the Commission.
- q. Maintain the url for Commission website. Maintain and update Commission website with information that Commission indicates is pertinent.
- r. Provide the personnel to perform the services required under this Agreement. The Contractor may, with the Commission's prior approval, subcontract for the necessary personnel.
- s. Pay, and hold the Commission harmless from all of the Contractor's normal operational expenses, including salaries, rents, utilities, taxes and fees (income, employment, license, or others), and similar expenses.
- t. Comply with all governmental (local, state or federal) laws and rules applicable to the operation of contractor's business.
- u. Act as liaison between Commission and other industry organizations in the state, region, and nation including but not limited to: National Cherry Growers & Industries Foundation, Northwest Horticulture Council, Columbia Gorge Fruit Growers, Washington Tree fruit Research Commission, and Northwest Cherries in maintaining relationships and communicating with the above-named organizations; however, Contractor must obtain prior approval from Commission of all positions that may be taken on behalf of Commission.
- v. Assist the Commission in performing and evaluation of the administrative services received from the Contractor least once annually prior to adoption of the Commission's budget and no later than April 2026.

**II. DELIVERY SCHEDULE**

- a. Begin: This Agreement shall begin when all signatures are affixed or no later than July 1, 2025.
- b. End: This Agreement shall expire on June 30, 2026.

**II. ALLOWABLE TRAVEL AND OTHER EXPENSES, IF ANY:**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum not-to-exceed compensation set forth in Section 3 of the Contract, which includes any allowable expenses and any travel and other expense reimbursement when noted below.
- b. Commission agrees to reimburse Contractor for the following expenses: Commission shall reimburse expenses only for actual cost charged to Contractor, and shall not reimburse any Contractor markups.
- c. Commission agrees to reimburse Contractor for reasonable travel expenses. The travel must be for Work performed under this Contract only. Contractor shall provide Commission with receipts for all travel expenses incurred for which Contractor seeks reimbursement. Contractor shall be reimbursed according to the rates specified in the Oregon Accounting Manual based upon approved state of Oregon rates as of the date Contractor incurs the travel expense. Commission must approve in advance all travel outside Oregon for which Contractor intends to seek reimbursement under this Contract.

**EXHIBIT B (AS PART OF SAMPLE CONTRACT)**  
**REQUIRED INSURANCE**

During the term of this Contract Contractor shall maintain in force at its own expense, each type of insurance noted below:

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

**Workers' Compensation.** All employers, including Contractor, that employ subject workers who work under this contract in 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(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

**2.  Required by Commission  Not required by Commission.**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than  \$300,000,  \$500,000,  \$1,000,000,  \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. If the coverage is on a "claims made" basis, either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the Contractor shall provide "Tail Coverage" as stated below.

**3.  Required by Commission  Not required by Commission.**

**Commercial General Liability** insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to Commission. This insurance shall include personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than  \$300,000,  \$500,000,  \$1,000,000,  \$2,000,000.

**4.  Required by Commission  Not required by Commission.**

**Automobile Liability** insurance covering all owned, non-owned, and hired vehicles with a combined single limit, or the equivalent, of not less than  \$300,000,  \$500,000,  \$1,000,000, for each accident for Bodily Injury and Property Damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability").

**5. "Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Commission's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Commission, upon Commission's request, certification of the coverage required under this section.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) calendar days written notice from Contractor or its insurer(s) to Commission.

**7. Additional Insureds and Certificates of insurance.** The Commercial General Liability insurance required under this contract shall include the State or Oregon and its agencies, departments, divisions, commissions, branches, officers and employees as Additional Insureds. Contractor shall ensure that all required coverage is primary and non-contributory with any other insurance and self-insurance. As evidence of the insurance coverages required by this Contract, Contractor shall furnish acceptable insurance certificates to Commission prior to commencing the Work under this Contract. The certificate will specify all of the parties who are Additional Insureds Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, or self-insurance, for all of the above.

EXHIBIT B

	Actual	Approved Budget	Estimated Budget	Proposed Budget	Adopted Budget
Oregon Sweet Cherry Commission	2022-2023	2023-2024	2023-2024	2024-2025	2024-2025
<b>SUMMARY OF REVENUES</b>					
Carryover/Begining Cash Balance	576,592.38	325,432.50	315,465.91	183,239.11	183,239.11
Assessments	671,824.54	918,000.00	866,364.30		
Interest income	14,864.30	10,000.00	12,511.58	10,000.00	10,000.00
Other Income	4,511.12	0.00	0.00	0.00	0.00
<b>TOTAL REVENUE</b>	<b>691,199.96</b>	<b>928,000.00</b>	<b>878,875.88</b>	<b>10,000.00</b>	<b>10,000.00</b>
Available for Expenditure	1,267,792.34	1,253,432.50	1,194,341.79	193,239.11	193,239.11
Expenditures	952,326.43	1,253,432.50	1,011,102.68	651,789.11	651,789.11
<b>Carryover</b>	<b>315,465.91</b>	<b>0.00</b>	<b>183,239.11</b>	<b>-458,550.00</b>	<b>-458,550.00</b>
<b>SUMMARY OF EXPENDITURES</b>					
Materials & Services	106,705.37	115,150.00	104,895.06	109,050.30	109,050.30
Special Payments	820,046.92	1,000,000.00	899,086.28	232,605.00	232,605.00
Contingency Fund	0.00	33,282.50	0.00	210,133.81	210,133.81
ODA Oversight	25,574.14	30,000.00	7,121.34	25,000.00	25,000.00
Emergency Fund	0.00	75,000.00	0.00	75,000.00	75,000.00
<b>Total Expenses</b>	<b>952,326.43</b>	<b>1,253,432.50</b>	<b>1,011,102.68</b>	<b>651,789.11</b>	<b>651,789.11</b>
<b>MATERIALS &amp; SERVICES</b>					
NW Hort. Council	10203.00	10,000.00	9,376.00	10,000.00	10,000.00
Per Diem	0.00	0.00	150.00	1650.00	1650.00
Grower Commuications (website & AgFest)	3000.00	400.00	635.35	650.30	650.30
In-State Travel, Meals & Lodging	2845.52	3,000.00	524.12	2,000.00	2,000.00
Out-of-Sate Travel, Meals & Lodging	4183.45	10,000.00	5,706.32	6,000.00	6,000.00
Insurance & Fidelity Bonds	504.00	750.00	712.00	750.00	750.00
Office Supplies	63.00	0.00	0.00	0.00	0.00
Bank Fees/Audit/Legal	2906.40	5,000.00	1,790.00	2,000.00	2,000.00
Administrative Services	83000.00	86,000.00	86,001.27	86,000.00	86,000.00
<b>Total Materials &amp; Services</b>	<b>106,705.37</b>	<b>115,150.00</b>	<b>104,895.06</b>	<b>109,050.30</b>	<b>109,050.30</b>
<b>SPECIAL PAYMENTS</b>					
Fresh Fruit Promotion	416,029.36	550,000.00	525,241.23	0.00	0.00
Research	404,017.56	450,000.00	373,845.05	232,605.00	232,605.00
<b>Total Special Payments</b>	<b>820,046.92</b>	<b>1,000,000.00</b>	<b>899,086.28</b>	<b>232,605.00</b>	<b>232,605.00</b>
<b>Contengency Fund</b>	<b>0.00</b>	<b>33,282.50</b>	<b>0.00</b>	<b>210,133.81</b>	<b>210,133.81</b>
<b>ODA MGMT. FEE</b>	<b>25,574.14</b>	<b>30,000.00</b>	<b>7,121.34</b>	<b>25,000.00</b>	<b>25,000.00</b>
<b>EMERGENCY FUND</b>	<b>0.00</b>	<b>75,000.00</b>	<b>0.00</b>	<b>75,000.00</b>	<b>75,000.00</b>
<b>GRAND TOTAL EXPENSES</b>	<b>952,326.43</b>	<b>1,253,432.50</b>	<b>1,011,102.68</b>	<b>651,789.11</b>	<b>651,789.11</b>

# EXHIBIT C

## Oregon Sweet Cherry Commission - Chapter 669

Division 10

### REPORTING AND PAYMENT OF ASSESSMENTS

#### **669-010-0015**

#### **Definitions**

- (1) "Person" means any individual, corporation, association, partnership, or joint stock company.
  
- (2) "Commission" means the Oregon Sweet Cherry Commission.
  
- (3) "Casual Sale" means any sale of Oregon-produced sweet cherries made by the producer direct to any consumer(s), or any sales of fresh cherries, made direct to any retailer(s) in any one season, for an accumulated total of 2000 pounds or less during any one fiscal year.
  
- (4) "First Purchaser" means any person who buys sweet cherries from the producer in the first instance, or handler who receives the cherries in the first instance from the producer for resale or processing.
  
- (5) "Producer" means a person or other legal entity producing sweet cherries in Oregon for market, whether as a land-owner, landlord, tenant, sharecropper, or otherwise.
  
- (6) "Handler" means any producer, processor, distributor, or other person engaged in handling or marketing of or dealing in sweet cherries, whether as owner, agent, employee, broker, or otherwise.
  
- (7) Sweet cherries consist of the species *Prunus Avium* Linn and includes, but is not limited to, such varieties as Royal Annes, Corum, Sam, Black Republican, Van, Bing, Hoskins, Rainier, and Lambert. All sweet cherries grown in Oregon and sold commercially for whatever purpose (either for fresh market or processing) are to be included.
  
- (8) "Net Paid for Weight" means the actual weight of all sweet cherries sold, less culls.



(9) "Cash Buyer" means any first purchaser who fully pays for any purchase within 30 days.

**Statutory/Other Authority:** ORS 576

**Statutes/Other Implemented:** ORS 576

**History:**

OSCC 1-2004, f. & cert. ef. 1-13-04

OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89

RSC 1-1985, f. & ef. 9-17-85

RSC 4, f. 11-15-74, ef. 12-11-74

RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74

**669-010-0020**

**Assessments**

(1) The first purchaser or producer acting in the capacity of his or her own first purchaser will deduct and withhold for assessments the following amounts for all sweet cherries grown in Oregon and sold for the following purposes on any crop harvested after this date:

(a) Fresh market — \$27 per ton;

(b) Canned — \$9.00 per ton;

(c) Frozen — \$9.00 per ton;

(d) Brined — \$9.00 per ton.

(2) All casual sales of sweet cherries will be exempt from the assessment. (See definition of "Casual Sales".)

**Statutory/Other Authority:** ORS 576.066(1)(e), 576.304(2), 576.325(2)(a)(b), (4)(c) & 576.304(14)

**Statutes/Other Implemented:** ORS 576.325

**History:**

OSCC 1-2018, amend filed 04/05/2018, effective 04/19/2018

OSCC 2-2017, f. & cert. ef. 8-25-17

OSCC 1-2005, f. & cert. ef. 3-4-05

OSCC 1-2004, f. & cert. ef. 1-13-04  
OSCC 1-1998, f. 7-2-98, cert. ef. 7-2-98  
OSC 2-1994, f. & cert. ef. 11-22-94  
OSC 1-1994, f. & cert. ef. 6-15-94  
OSC 1-1992, f. & cert. ef. 1-3-92  
OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89  
RSC 2-1987, f. & ef 6-8-87  
RSC 2-1980, f. 6-6-80, ef. 6-15-80  
RSC 9, f. & ef. 11-21-75  
RSC 8, f. 8-13-75, ef. 9-11-75  
RSC 7(Temp), f. & ef. 7-1-75  
RSC 4, f. 11-15-74, ef. 12-11-74  
RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74

## **669-010-0025**

### **Reports and Payment of Assessment Moneys**

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports will include all purchases or deliveries to a first purchaser or handler of sweet cherries (net paid weight). The assessments will be reported as follows:

(a) Cherries destined for fresh market that were purchased or delivered, the assessment report is due in the commission office postmarked on or before October 1st. If a final report cannot be completed within this time frame an estimated report is due by the date specified above. If an estimate is used, the final report is due by November 1st. (Also see item 4 below.)

(b) Cherries destined for brining, canning, and or freezing that were purchased or delivered to the first purchaser before December 1st, the assessment report is due in the commission office postmarked on or before December 15th. Cherries destined for brining, canning, and or freezing that were purchased or delivered to the first purchaser after December 1st, the assessment report is due in the commission office postmarked on or before May 15th.

(2) When a first purchaser or handler has completed, signed, and forwarded a report covering his or her final purchase of sweet cherries for the crop season, he or she may mark such report in large letters "FINAL REPORT FOR THIS CROP SEASON." No further reports are necessary by such first purchaser unless or until additional purchases are made.

(3) When a first purchaser lives or has his or her office in another state, or is a federal or governmental agency, the producer will report to this Commission all sales made to such purchaser as required by

section (1) of this rule and will pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(4) At the time that reports are due the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler will attach or forward payment to the Commission for the assessment due as set forth in each such report. If an estimated report is used the payment accompanying it must equal a minimum 75% of the total assessments due for the crop year as calculated in the final report to avoid penalty and interest for late payment. The forms will be signed by the first purchaser or first handler and completely filled out, and will include, in addition to all other required information and figures, the name and complete mailing address of each producer, the crop year, the tonnage and amount of assessment deducted and withheld.

(5) Any producer who performs the handling or processing functions on all or part of his or her production of the commodity, which normally would be performed by another person as the first purchaser thereof, will report his or her sales of such commodity of his or her own production on forms provided by, and pay the assessment moneys directly to, the Commission, unless the first purchaser from such producer voluntarily makes the proper deduction and remits the proceeds to the Commission. (Examples would be the sale by a producer direct to a peddler, to a retail store, etc.)

**Statutory/Other Authority:** ORS 576

**Statutes/Other Implemented:** ORS 576

**History:**

OSCC 1-2017, f. & cert. ef. 6-9-17

OSCC 2-2005, f. 8-23-05, cert. ef. 8-26-05

OSCC 1-2004, f. & cert. ef. 1-13-04

OSCC 1-2001, f. & cert. ef. 2-16-01

OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89

RSC 1-1985, f. & ef. 9-17-85

RSC 4, f. 11-15-74, ef. 12-11-74

RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74

**669-010-0030**

**Penalties**

Penalty for delaying transmittal of assessment moneys (ORS 576.355), "In addition to the penalties prescribed in 576.99, any person who delays transmittal of funds beyond the time set by a Commission shall pay a penalty of ten percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment. If seeking a waiver of the penalties, a written explanation of the circumstances that caused the payment delay must be submitted to the Commission office for review. Penalties may be waived by a majority vote of the Commission.

**Statutory/Other Authority:** ORS 576 & 2003 OL Ch. 604

**Statutes/Other Implemented:** ORS 576 & 2003 OL Ch. 604

**History:**

OSCC 2-2005, f. 8-23-05, cert. ef. 8-26-05

OSCC 1-2004, f. & cert. ef. 1-13-04

OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89

RSC 4, f. 11-15-74, ef. 12-11-74

RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74

**669-010-0040**

**Effective Dates of Assessment**

The assessment to be withheld and paid by a first purchaser or handler, as required by ORS Chapter 576 and 669-010-0020(4) of the reports required under 669-010-0025, applies to and covers any purchase by him or her or delivery on or after June 1, 1989, of any sweet cherries grown in Oregon.

**Statutory/Other Authority:** ORS 576

**Statutes/Other Implemented:** ORS 576

**History:**

OSCC 1-2004, f. & cert. ef. 1-13-04

OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89

OSC 1-989, f. 5-24-89 & cert. ef. 6-1-89

**669-010-0050**

**Exemption Based on Type of Commodity Sale**

No assessment will be deducted for any sale or sales of sweet cherries made by the producer direct to any consumer(s) and/or retailer(s) where the total accumulated sales during a fiscal year is not more than 2000 pounds. (See casual sales as defined in 669-010-0015.)

**Statutory/Other Authority:** 2003 OL Ch. 604 & ORS 576

**Statutes/Other Implemented:** 2003 OL Ch. 604 & ORS 576

**History:**

OSCC 1-2004, f. & cert. ef. 1-13-04

**EXHIBIT D**

**INDEPENDENT CONTRACTOR CERTIFICATION**

**A. CONTRACTOR IS AN INDEPENDENT CONTRACTOR**

- 1. I am free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;
- 2. I am registered under ORS Chapter 58, 60, 62, 63, 65, 67, 70 or 648 to provide the services, if such registration is required.
- 3. I am responsible for obtaining other licenses or certificates necessary to provide the services.
- 4. I am customarily engaged in an independently established business because three of the following requirements are satisfied:
  - A. I maintain a business location:
    - 1) That is separate from the business or work location of the person for whom the services are provided; or
    - 2) That is in a portion of my residence, and that portion is used primarily for business.
  - B. I bear the risk of loss related to the business or the provision of services as shown by factors such as:
    - 1) Entering into a fixed-price contract;
    - 2) Being required to correct defective work;
    - 3) Warranting the services provided; or
    - 4) Negotiating indemnification agreements, or purchasing indemnification liability insurance, performance bonds or errors and omissions insurance.
  - C. I provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - D. I make a significant investment in the business, through means such as:
    - 1) Purchasing tools or equipment necessary to provide the services;
    - 2) Paying for the premises or facilities where the services are provided; or
    - 3) Paying for licenses, certificates or specialized training require to provide the services.
  - E. I have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

(Section 4 does not apply if a Person files a Schedule F as part of an income tax return and the Person provides farm labor or farm services that are reportable on Schedule C of an income tax return.)

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

**B. COMMISSION APPROVAL.**

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

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

**Commission Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

(Commission’s certification is solely for the State’s benefit and internal use.)