

**STATE OF OREGON PRICE AGREEMENT  
NUMBER 6234 FOR  
ALTERNATIVE DISPUTE RESOLUTION SERVICES**

This Price Agreement ("Agreement") is between the State of Oregon ("State"), acting by and through its Department of Administrative Services ("DAS" or "Department") on behalf of Agencies, as defined below, and Triangle Associates, Inc., a Washington corporation ("Contractor"). Upon receipt of all approvals required by law and full execution by both DAS and Contractor this Agreement is effective as of December 1, 2016 ("Effective Date"). DAS has the authority to enter into this Agreement under ORS 279A.050 (7) (a)

**RECITALS**

- A. DAS, on behalf of Agencies, desired to engage a contractor to provide certain Alternative Dispute Resolution Services ("ADR Services") to assist Agencies in the resolution of particular disputes, controversies, or projects as may be needed from time to time.
- B. To that end, on or about July 25th, 2016, DAS undertook a joint cooperative procurement under ORS 279A.200(1)(e) and ORS 279A.210 and issued RFP No. DASPS-2599-16 (the "RFP") seeking proposals from ADR Service providers.
- C. Contractor was one of the successful proposers to the RFP.
- D. DAS and Contractor now both desire to memorialize the terms and conditions pursuant to which: (i) Contractor will provide the ADR Services as may be requested from Agencies from time to time, (ii) Agencies will pay for such ADR Services.

Therefore, DAS and Contractor Agree as follows:

**AGREEMENT**

**1. Purpose.** This Agreement:

- 1.1 Identifies the process Contractor and Agencies will follow in establishing subsequent service order contracts (each a "Service Order Contract" or "SOC") for the provision of Services under this Agreement;
- 1.2 Sets forth the general terms and conditions that will apply to all SOC's entered into by Contractor and Agencies and pursuant to which Contractor will provide ADR Services (as defined in Section 3.3 below); and
- 1.3 Is not, by itself, a binding contract for the provision of Services by Contractor. Execution of this Agreement is no guarantee that Agency shall enter into any Service Order Contracts with Contractor under this Agreement.

- 2. Agreement Documents.** This Agreement includes the following Exhibits, each of which is attached to and incorporated into this Agreement by reference:
- Exhibit A – Service Order Contract
  - Exhibit B – Insurance

**3. Definitions.**

**3.1 Agency means:**

**3.1.1** DAS when DAS is engaged in Public Contracting, as defined under ORS 279A.010 (1)(y),

**3.1.2** An agency of the State of Oregon that: (i) is subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140 and with delegated authority pursuant to OAR 125-246-0170; or (ii) has independent procurement authority pursuant to ORS 279A.050 or other statutory authority under provisions of applicable State law, and

**3.1.3** Oregon Cooperative Procurement Program ("ORCPP") members with appropriate purchasing authority under their applicable statutes, rules, regulations or ordinances that submit Service Order Contracts to Contractor.

**3.2 ORCPP** means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the goods and services available under a price agreement entered into by the State. ORCPP members include cities, counties, school districts, public universities, special districts, Qualified Rehabilitation Facilities, residential programs under contract with the Oregon Department of Human Services, United States governmental agencies, and American Indian tribes or agencies. ORCPP membership can be verified through the following webpage: <http://egov.oregon.gov/DAS/PFSS/SPO/coop-menu.shtml> or by contacting DAS at (503) 378-2497.

**3.3 Services** means the Alternative Dispute Resolution ("ADR") Services ("ADR Services" or "Services") that Contractor has been approved to provide as a result of the RFP and which Contractor agrees to provide under a Service Order Contract as may be requested by Agencies from time to time. The specific Services performed by Contractor shall be agreed to by Agency and Contractor in a fully executed SOC but will fit into one of four ADR Service categories described as follows:

**3.3.1** Mediation General Practitioner: acting as an impartial third party who assists two or more parties in reaching a mutually acceptable resolution to a controversy.

**3.3.2.** Facilitation General Practitioner: assisting large groups (6 or more participants) to work effectively to achieve a desired objective.

**3.3.3** Public Policy Facilitator: assisting governmental entities and diverse stakeholders to reach agreement on controversial public policies or public projects, often within a complex legal, political or regulatory context.

**3.3.4** Public Involvement Practitioner: assisting governmental entities to engage the public on public issues or projects, with the ability to design and implement an appropriate public involvement process in projects ranging from those that seek to inform or educate the public to projects that allow for greater public involvement via consultation or collaboration.

**3.4 Key Persons** means Cherie Shanteau-Wheeler who is Contractor's Senior Associate and who was determined, as a result of the evaluation of Contractor's Proposal submitted in response to the RFP, to have the necessary qualifications and experience to provide Mediation General Practitioner, Facilitation General Practitioner, Public Policy Facilitator, and Public Involvement Practitioner ADR Services.

**4. Service Order Contracts; Provision of Services.**

**4.1 Service Order Contracts.** Agencies shall, as may be needed from time to time, have the right to enter into Service Order Contracts, which are binding and enforceable contracts, for Contractor's Services that are similar in form and substance to the SOC attached hereto as Exhibit A.

**4.2 No Exclusivity.** This is not an exclusive agreement and DAS and Agency reserve the right to engage other contractors to provide the same or similar services and Contractor may provide the same or similar services to third parties. Agency's selection of an ADR Service provider is subject to Agency's sole discretion and is final. The State reserves the right, by separate solicitation process, to obtain Services from contractors who are not parties to agreements entered into as a result of RFP No. DASPS-2599-16 which resulted in the award of this Agreement.

**4.3 Agreement Incorporated.** Each SOC executed shall be subject to the terms and conditions of this Agreement by reference therein.

**4.4 Contents of Service Order Contract.** Each Service Order Contract shall include a negotiated Statement of Work ("SOW") that shall specify the: (i) ADR Services that Contractor will provide to the contracting Agency for a particular dispute, controversy, or project, (ii) the total allowable billable hours, (iii) the location and schedule of performance, and, if applicable (iv) any deliverables that will be delivered to the contracting Agency as a result of performing the Services.

**4.5 Time of Performance and Payment.** All Services agreed to by Contractor in the SOC shall be performed to the satisfaction of Agency. Agency shall pay for Services only when performed accordingly under a SOC.

**4.6 Compliance with Agreement.** Pursuant to ORS 27A.210(c) neither Agency nor Contractor shall accept or enter into any SOC that does not comply with the terms and conditions of this Agreement. Notwithstanding the foregoing, a SOC may amend the terms and conditions of this Agreement if agreed to in an amendment made in accordance with Section 7.4 below and only to the extent that such amendment does not, in accordance with ORS 279A.210(c) amend the material terms and conditions of this Agreement.

**4.7 Independent Contracts.** Each fully executed SOC together with this Agreement incorporated therein is enforceable in accordance with its terms and shall create a separate contract between Agency and Contractor.

**5. Consideration.** Contractor shall be compensated for Services completed based on the hourly billing rates ("ADR Hourly Billing Rate(s)") set forth in Section 5.1 below. All ADR Hourly Billing Rates include all overhead and administrative expenses and Agency shall not be charged separately for any such costs incurred by Contractor. Notwithstanding the foregoing, Contractor may charge back to Agency for: (i) the costs of one or more administrative assistants or support staff as identified in Section 5.2 below, (ii) travel time and related expenses identified in Section 5.3 below, and (iii) certain services related costs, as pass through expenses, without mark-up as identified in Section 5.4 below.

**5.1 Contractor ADR Hourly Billing Rates.** Contractor shall be compensated for the ADR Services performed by its Key Persons at the ADR Hourly Billing Rates identified in this Section. Except as expressly permitted in subsections 5.2-5.4, all ADR Billing Rates include all administrative and overhead costs. ADR Billing Rates shall not be subject to separate negotiation between Agency and Contractor. In no event shall any ADR Billing Rate be subject to change except as may be agreed to in a written amendment signed by both Contractor and DAS and made in accordance with Section 5.1.1 below. All Services shall be charged in fifteen (15) minute increments.

ADR SERVICE	ADR HOURLY BILLING RATE
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Mediation General Practitioner <input checked="" type="checkbox"/>	\$208.20
Facilitation General Practitioner <input checked="" type="checkbox"/>	\$208.20
Public Policy Facilitator <input checked="" type="checkbox"/>	\$208.20
Public Involvement Practitioner <input checked="" type="checkbox"/>	\$208.20

**5.1.1** The ADR Hourly Billing Rates agreed to in Section 5.1 above shall remain firm for the first two years of the Agreement term. Thereafter, Billing Rate adjustments may be considered by the State once per twelve month period and if accepted by the State will become effective no earlier than the anniversary of the Effective Date. Billing Rate and any other price increases shall not exceed increases in the Consumer Price Index (CPI), based on the Portland/Salem Urban Consumers percentage adjustment proposed price adjustments must be accompanied by documentation supporting such a request. All information regarding proposed Billing Rate and other price adjustments shall be submitted to State Procurement Office, in writing, at least 60 days prior to the expiration of the anniversary of the Effective Date. The State reserves the right to accept or reject any proposed price adjustment based on what is determined to be, in its sole discretion, the best interest of the State. Any Billing Rate or other price increases accepted by the State shall be agreed to in amendment made in accordance with Section 7.4 below.

**5.2 Administrative Assistant and Support Staff.** If agreed to in a SOC, Contractor shall have the right to charge Agency for the expense of one or more administrative assistants or support staff to perform administrative and other tasks directly in support of Contractor's performance of the ADR Services; however, in no event shall any Administrative Assistant or Support Staff provide the services of, or substitute for the role of, the Key Person as the "Mediation General Practitioner", "Facilitation General Practitioner", "Public Policy Facilitator" or "Public Involvement Practitioner. The hourly rates listed below ("Hourly Support Service Rates") shall not be negotiated between Agency and Contractor. The Hourly Support Services Rates for any agreed upon administrative assistant or support staff shall be charged in 15 minute increments at the rates listed in the table below and shall remain firm throughout the term of this Agreement:

ADMINISTRATIVE ASSISTANT/SUPPORT STAFF (TITLE)	ADR SERVICE CATEGORY	HOURLY SUPPORT SERVICES RATE
Administrative Assistant	Mediation General Practitioner	\$56.08 - \$70.49
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Administrative Assistant	Facilitation General Practitioner	\$56.08 - \$70.49
Administrative Assistant	Public Policy Facilitation	\$56.08
Administrative Assistant	Public Involvement	\$56.08
Project Associate	Mediation General Practitioner	\$56.08 - \$70.49
Project Associate	Facilitation General Practitioner	\$56.08 - \$70.49
Project Associate	Public Policy Facilitation	\$70.49
Project Associate	Public Involvement	\$70.49
Associate 1	Public Policy Facilitation	\$78.49

Associate 1	Public Involvement	\$78.49
Associate 2	Public Policy Facilitation	\$89.71
Associate 2	Public Involvement	\$89.71

### 5.3 Travel.

**5.3.1 Expenses** Agency shall reimburse Contractor for travel expenses incurred by Contractor in traveling to the locations listed in Section 5.3.2 below so long as travel to any such location is identified as required in a SOC. Travel expenses agreed to in a SOC and incurred by Contractor shall be reimbursed at the rates allowed under Chapter 40 of the Oregon Accounting Manual which is found at: <https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>

The Oregon Accounting Manual, as may be amended from time to time, is incorporated by reference as though fully set forth in this Section.

**5.3.2** If travel to one or more of the locations listed in the table below is identified in a SOC as required, Contractor may charge Agency an hourly travel rate or its Key Persons and Support Staff for travel to certain counties as follows: :

KEY PERSONS & SUPPORT STAFF		HOURLY TRAVEL RATE	
Key Persons		\$208.20	
Associate 1		\$89.71	
Associate 2		\$78.49	
Project Associate		\$70.49	
Administrative Assistant		\$56.08	
COUNTIES FOR WHICH TRAVEL TIME AND EXPENSES MAY BE CHARGED			
<u>Baker</u> <u>Benton</u> <u>Clatsop</u> <u>Columbia</u> <u>Coos</u> <u>Crook</u> <u>Curry</u> <u>Deschutes</u> <u>Douglas</u>	<u>Gillam</u> <u>Grant</u> <u>Harney</u> <u>Hood River</u> <u>Jackson</u> <u>Jefferson</u> <u>Josephine</u> <u>Klamath</u> <u>Lake</u>	<u>Lane</u> <u>Lincoln</u> <u>Linn</u> <u>Malheur</u> <u>Marion</u> <u>Morrow</u> <u>Polk</u> <u>Sherman</u> <u>Tillamook</u>	<u>Umatilla</u> <u>Union</u> <u>Wallowa</u> <u>Wasco</u> <u>Wheeler</u> <u>Yamhill</u>

**5.4 Service Related Expenses.** Contractor understands and agrees that it may, if agreed to in a SOC, charge back to Agency only those costs incurred in providing the specific ADR Services as identified in the table below in this Section ("Service Related Expenses"). Contractor shall not have the right to expense back to Agency any overhead or other administrative costs associated with the on-going operation of Contractor's business. All Service Related Expenses expensed back to Agency shall be invoiced as a pass-through without mark-up and invoiced in accordance with Section 6 of this Agreement.

ADR SERVICE	SERVICE RELATED EXPENSES
Mediation General Practitioner <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Copy/print charges <input checked="" type="checkbox"/> Use/Rental Fees
Facilitation General Practitioner <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Copy/print charges <input checked="" type="checkbox"/> Facility Use/Rental Fees
Public Policy Facilitator <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Copy/print charges <input checked="" type="checkbox"/> Facility rental fees <input checked="" type="checkbox"/> Mail or bulk email fees <input checked="" type="checkbox"/> Telephone charges <input checked="" type="checkbox"/> Website hosting, online software or online services fees <input checked="" type="checkbox"/> Video production services <input checked="" type="checkbox"/> Subcontractors
Public Involvement Practitioner <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Copy/print charges <input checked="" type="checkbox"/> Facility rental fees <input checked="" type="checkbox"/> Mail or bulk email fees <input checked="" type="checkbox"/> Telephone charges <input checked="" type="checkbox"/> Website hosting, online software or online services fees <input checked="" type="checkbox"/> Video production services <input checked="" type="checkbox"/> Subcontractors

**6. Invoicing.** Contractor shall invoice Agency for the Services and expenses agreed to in the applicable SOC. Invoices shall be submitted to Agency and paid only in accordance with the applicable SOC following Agency's review and approval of invoices submitted by Contractor. Invoices shall be submitted to the Contract Administrator identified in the SOC and shall: (i) describe all Services performed, Deliverables delivered, and, if applicable billable travel, with particularity, including the dates and locations, (ii) identify by whom the Services were performed and attach any notices of acceptance of Deliverables (iii) itemize and explain all Service Related Expenses and travel expenses for which reimbursement is claimed (and permitted under Section 5 above) and (iv) attach all receipts for which expenses are claimed. Payment for all Services performed under the SOC shall be made within 45 days of the date of an accurate invoice. All payments are subject to the provisions of ORS 293.462 and shall not exceed the total maximum not-to-exceed compensation, which includes any allowable expenses, set forth in the SOC. All Billing Rates and allowable expenses invoiced by Contractor shall be charged at the rates agreed to in Section 5 above. Agency shall have no liability for any Billing Rates or expenses that are charged in amounts that exceed those agreed to in Section 5 above nor shall Agency have any liability for any Billing Rates, expenses, or any other fees that exceed the maximum not-to-exceed compensation agreed to in a SOC.

**7. Term of Agreement; Amendments.**

**7.1 Term.** The maximum term of this Agreement shall be five (5) years, beginning on the Effective Date (the "Term").

**7.2 Extension of Term.** DAS reserves the right in its sole discretion to extend the term of this Agreement for not more than one calendar month beyond its maximum term. DAS shall notify Contractor in writing of the one-month extension at least 30 calendar days before the term expires. Contractor may not increase pricing during the one-month extension obtained pursuant to this section.

**7.3 Anticipated Amendments.** The parties anticipate that during the term of the Agreement, the parties may need to modify selected terms and conditions of this Agreement. Any Amendments agreed to shall be made in accordance with OAR 137-047-0880 and ORS 279A.210(c), which are incorporated by reference as though fully set forth in this Section. Amendments that may be required could include, without limitation, those relating to (i) changes in the State's business process or restructure of an Agency, (ii) additional Services, that are within the scope of the original procurement and the Agreement, are required, (iii) certain Services are no longer required to be performed and (iv) Billing Rates and expense reimbursement rates change but only in accordance with Section 5 above.

**7.4 Amendments.** No waiver, consent, or amendment of terms to this Agreement, including any Exhibits and SOC's, shall be binding unless in writing and signed by the authorized representatives of the applicable parties, and all approvals required by applicable law have been obtained. Pursuant to ORS 279A.210(c) no SOC or amendment hereto may amend any of the material terms or conditions of this Agreement. Any SOC that amends this Agreement in accordance with ORS 279A.210(c) shall expressly state that the amended term(s) are for purposes of such SOC only and must include the signature of an authorized representative of DAS. In no event shall any permitted amended SOC serve to amend this Agreement for purposes of any other SOC.

## **8. Independent Contractor; Responsibility for Taxes and Withholding.**

**8.1 Independent Contractor.** Contractor shall perform all Services as an independent contractor. Agency reserves the right to (i) determine and modify the delivery schedule for the Services and (ii) evaluate the quality of the Services, however, Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**8.2 No Agency or Employment.** Contractor understands and agrees that Contractor is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265.

**8.3 Responsibility of Taxes.** Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under the SOC and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under the SOC, except as a self-employed individual.

**9. Conflicts of Interest.** If Contractor is currently performing services for the State of Oregon or the federal government, Contractor represents and warrants that: Contractor's Services to be performed under a SOC create no potential or actual conflict of interest as defined by ORS 244, and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs services would prohibit Contractor's Services under a SOC.

## **10. Compliance with Applicable Law, Agency Policies and Procedures.**

**10.1** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement and all SOC's and to the performance of Services, as those provisions may be adopted or amended from time to time. Agency's performance under a SOC is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of a SOC, use recycled paper (as defined in ORS 279A.010 (1) (ee)), recycled PETE products (as defined in ORS 279A.010 (1) (ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010 (1) (gg)).

10.2 Without limiting the generality of Sections 8.3 and 10.1 above, Contractor must, throughout the duration of this Agreement, comply with all tax laws of the State and all applicable tax laws of any political subdivision of the State. For the purposes of this Section, "tax laws" includes all the provisions described in Section 14.7 below.

10.3 Contractor shall comply with all policies and procedures of the Agency with whom Contractor enters into a SOC, including, without limitation, those relating to access to and use of facilities, criminal background and driving record checks, use and dissemination of Agency information, and use of information technology and other tangible Agency assets. Contractor shall require the same from its Key Persons.

11. **Confidentiality.** Contractor shall at all times during the term of this Agreement comply with and perform all Services in accordance with ORS 36.220 through 36.238 and all rules developed and adopted under ORS 36.224, including, without limitation, OAR Chapter 137 Division 5.

12. **Special Qualifications; Permissible Subcontracts; Successors and Assignments.**

12.1 **Special Qualifications.** Contractor was a successful proposer of Request for Proposal No. DASPS-2599-16, a competitive, sealed procurement process, and was awarded the opportunity to enter into this Agreement as a result of an evaluation that Contractor possessed the special qualifications, experience, training, and integrity desired by DAS and Agencies. Contractor acknowledges that this Agreement is entered into as a result of the special qualifications, experience, training, and integrity of Contractor or, if Contractor is other than an individual, Contractor's Key Persons. Therefore, Contractor acknowledges and agrees that Contractor shall not permit any third party, Contractor employee, agent, or subcontractor, To perform the services of, or substitute for the role of, the Key Person as the "Mediation General Practitioner"; "Facilitation General Practitioner", "Public Policy Facilitator" or "Public Involvement Practitioner."

12.1.1 If Contractor is other than an individual, Contractor understands and agrees that the prohibition against the delegation and subcontracting of ADR Services, and the reasons for such prohibition, as set forth in Section 12.1 are applicable to Contractor's Key Person(s) identified in this Section:

Contractor's Key Person(s) & Contact Information	
Name:	<u>Cherie Shanteau-Wheeler</u>
Title:	<u>Senior Associate</u>
Phone:	<u>520-405-9648</u>
Email:	<u>cheriesw@triangleassociates.com</u>

12.2 **Permissible Subcontracts.** Notwithstanding Section 12.1 above, Contractor may subcontract with third parties to perform certain tasks, activities, or services related to Contractor or its Key Persons providing ADR Services specifically agreed to the applicable SOC. Such permissible subcontracted services may include, without limitation: (i) conducting email or other surveys, (ii) creating and hosting a website, (iii) drafting and designing bulk mailings, (iv) designing and printing advertisements or other informational materials, and (v) subject to Section 12.1 above, administrative or other support services

12.3 **Successors and Assigns.** The provisions of this Agreement and any and all SOC's shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.

### **13. Intellectual Property.**

**13.1 Definitions.** The following terms have the meanings set forth below:

**13.1.1** "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services provided pursuant to a SOC.

**13.1.2** "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

**13.1.3** "Work Product" every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that is specifically made, conceived, discovered or reduced to practice by Contractor (either alone or with others) pursuant to this Agreement or a SOC.

**13.2 Ownership of Certain Work Product.** Work Product that is required to be delivered to Agency as a deliverable ("Deliverable") as agreed to under a SOC shall be the exclusive property of Agency. Agency and Contractor agree that Deliverables which are required to be delivered to and which are paid for by Agency shall be "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason any such Deliverable(s) is not "work made for hire", Contractor irrevocably assigns to Agency any and all of its rights, title, and interest in such Deliverable(s). Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency.

**13.3 Contractor Intellectual Property.** Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to Agency pursuant to the Services performed under this Agreement or a SOC. Contractor shall be the owner of all Work Product that is not "work made for hire" as identified in Section 13.2 above. Contractor grants Agency a license to use any and all Contractor Intellectual Property incorporated into any Work Product.

**13.4 Third Party Intellectual Property.** In the event Contractor uses any Third Party Intellectual Property in performing the Services, Contractor shall obtain a license to use all such Intellectual Property. Contractor shall also, in the event Contractor incorporates any Third Party Intellectual Property into any Work Product, secure on Agency's behalf, in the name of Agency and subject to Agency's approval, a license to all Third Party Intellectual Property that Contractor incorporates into any Work Product.

**13.5 Agency Intellectual Property; Data and Background Information.** Agency owns all Agency Intellectual Property and Agency data and background information provided to Contractor pursuant to this Agreement and a SOC. Agency grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Agency Intellectual Property and Agency data and background information only to fulfill the purposes of this Agreement and a SOC. Agency's license to Contractor is limited by the term of the applicable SOC and the confidentiality obligations of this Agreement.

**13.6 No Rights.** Except as expressly set forth in this Agreement, nothing in this Agreement or a SOC shall 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 Agency. Except as expressly set forth in this Agreement or a SOC, nothing in this Agreement shall be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor. Neither DAS nor Agency grants Contractor the right to use their respective trademarks, trade names, service marks, or other designations in any promotion or publication without prior written consent.

**14. Contractor's Representations and Warranties.** Contractor represents and warrants to DAS and Agency that:

**14.1 Authority.** Contractor has the power and authority, including the legal capacity, to enter into and perform the Services required under this Agreement and the applicable SOC;

**14.2 Enforceability of SOC.** The SOC, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;

**14.3 No Violations.** Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance, regulation, or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order;

**14.4 Licenses.** Contractor is duly licensed to perform the Services and shall maintain its license(s) throughout the term of this Agreement and all SOC's, and if there is no licensing requirement for the performance of the profession or Services, is duly qualified and professionally competent to perform the Services;

**14.5 Professional Standards.** Contractor has the skill and knowledge possessed by well-informed members of its profession, industry, or trade and Contractor will apply that skill and knowledge with care and diligence and perform all Services in a timely, professional, workmanlike manner in accordance with the highest standards applicable to Contractor's profession, industry, or trade;

**14.6 Intellectual Property.** When used as authorized by this Agreement, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party; and

**14.7 Taxes.** To the best of Contractor's knowledge, after due inquiry, for a period of no fewer than six (6) calendar years preceding the Effective Date, faithfully has complied with:

**14.7.1** All tax laws of the State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

**14.7.2** Any tax provisions imposed by a political subdivision of the 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;

**14.7.3** Any tax provisions imposed by a political subdivision of the State that applied or apply to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

The warranties specified in this Section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and will be interpreted broadly to give Agency the greatest warranty protection available.

**15. Breach; Remedies; Termination.**

**15.1 Breach by Contractor.** Contractor breaches this Agreement if Contractor:

**15.1.1** 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;

**15.1.2** No longer holds a license or certificate that is required for Contractor to perform its obligations under this Agreement and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice;

**15.1.3** Commits any material breach of any covenant, warranty, obligation or certification under this Agreement, fails to perform its obligations under this Agreement or a SOC (or both) within the time specified or any extension of that time, and Contractor fails to cure, if curable, the breach within fourteen (14) calendar days after Agency or DAS delivers notice of breach to Contractor or a longer period as Agency or DAS, as applicable, may specify in the notice; or

**15.1.4** Breaches its obligations under Sections 10.2, 10.3, 12.1, or its warranty in Section 14.7.

**15.2 Remedies.** If Contractor is in breach of this Agreement Agency shall be entitled to recover for any and all damages suffered as the result of Contractor's breach. In addition, at Agency's option, Agency shall have the right to pursue any or all other remedies Agency may have available at law or in equity, including, but not limited to any or all of the following:

**15.2.1** Termination of this Agreement under Section 15.3.3;

**15.2.2** If Contractor is in breach under Section 15.1.4, pursue and recover damages, including penalties on behalf of other Political subdivisions of the State.

To the extent they are not inconsistent, these remedies are cumulative and are in addition to any other remedies the Agency may have under a SOC, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under Section 15.1 above, the rights and obligations of the parties shall be the same as if this Agreement was terminated pursuant to Section 15.3.2 below.

**15.3 Termination.** This Agreement may be terminated as follows:

**15.3.1** The parties may terminate this Agreement at any time by mutual written consent.

**15.3.2** DAS may, at its sole discretion, terminate this Agreement, in whole or in part, upon 30 days' notice to Contractor.

**15.3.3** DAS may terminate this Agreement immediately upon written notice to Contractor, or at such later date as it may establish in such notice, if Contractor breaches its obligations under Section 12.1 or is in breach of the Agreement as set forth in Section 15.1.

**15.3.4** DAS may terminate this Agreement immediately upon written notice to Contractor, or at such later date as it may establish in such notice, if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the purchase of the Services offered by Contractor under this Agreement are prohibited.

**15.4 Effect of Termination.** Upon receipt of written notice of termination, Contractor shall stop performance under this Agreement as directed by DAS. SOCs executed prior to termination of this Agreement may continue in effect, subject to the termination provisions of Exhibit A. All property of the State or Agency (or both) in the possession of Contractor at the time of termination shall be returned to the State or Agency, as may be applicable, upon termination.

## **16. Intended Beneficiaries.**

**16.1 Agreement.** DAS and Contractor are the only parties to this Agreement; however, Agencies are intended third party beneficiaries of this Agreement. DAS, Contractor, and Agencies are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement is intended to give, or shall be construed to give or provide any benefit of right, whether directly or indirectly, or otherwise to any third party, except Agencies as the only intended third party beneficiaries and only when an Agency and Contractor have entered into a SOC in connection with this Agreement

**16.2 Service Order Contracts.** Agency and Contractor are the only parties to a SOC and are the only parties entitled to enforce its terms. Nothing in a SOC gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, or otherwise, to third parties unless such third parties are individually identified by name in the SOC and expressly identified as an intended third party beneficiary of the SOC.

**17. Funds Available and Authorized; Payments.** Except as provided otherwise in the applicable SOC, Contractor shall be compensated for the Services only by the Agency with whom Contractor enters into a SOC. Agency will not enter into a SOC unless it believes that it has, at the time of execution of the SOC, sufficient funds available and authorized for expenditure to finance the costs of the Services within the Agency's biennial appropriation or limitation. Nevertheless, Contractor understands and agrees that Agency's payment of amounts under a SOC is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under the SOC.

**18. Liability.** In the event Contractor provides mediation Services under this Agreement and any SOC, Contractor's liability shall be, to the extent such mediation Services are provided under any SOC, subject to ORS 36.210 "Liability of mediators and programs".

**19. Insurance and Indemnity for Breach of Confidentiality.**

**19.1 Insurance.** Contractor shall, at its own cost and expense, maintain insurance as set forth in Exhibit B of the Agreement.

**19.2 INDEMNITY FOR BREACH OF CONFIDENTIALITY.** CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND AGENCY AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF OR RELATING TO A DISCLOSURE OR USE OF CONFIDENTIAL INFORMATION IN BREACH OF THIS AGREEMENT, THE SOC, OR ANY RELATED AGREEMENT TO MEDIATE, IF ANY, BY THE CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS TO THE EXTENT THAT THE DISCLOSURE OR USE IS MADE IN BAD FAITH, WITH MALICIOUS INTENT OR IN A MANNER EXHIBITING A WILLFUL, WANTON DISREGARD OF THE RIGHTS, SAFETY OR PROPERTY OF ANOTHER

**19.3 CONTROL OF DEFENSE AND SETTLEMENT FOR CLAIMS AGAINST THE STATE.** CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO INDEMNIFICATION UNDER SECTION 19.2; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING PRIOR WRITTEN CONSENT FROM THE OREGON ATTORNEY GENERAL, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE PRIOR WRITTEN CONSENT OF THE OREGON ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS

ELECTION, ASSUME ITS OWN DEFENSE AND SETTLEMENT IF THE STATE OF OREGON DETERMINES THAT: (I) CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, (II) IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR (III) DETERMINES THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE. IN THE EVENT THE STATE ASSUMES ITS OWN DEFENSE UNDER (I) OR (II), IT SHALL BE AT CONTRACTOR'S EXPENSE.

**19.4 CONTROL OF DEFENSE AND SETTLEMENT FOR CLAIMS AGAINST ORCPP MEMBERS.** IN THE EVENT A CLAIM ARISES UNDER ANY SERVICE ORDER CONTRACT ENTERED INTO BY CONTRACTOR AND AN ORCPP MEMBER THAT IS NOT AN STATE AGENCY, THIS SECTION SHALL CONTROL OVER SECTION 19.3 ABOVE. IN ANY SUCH CASES, CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO INDEMNIFICATION UNDER SECTION 19.2; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE ORCPP MEMBER, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE ORCPP MEMBER, WITHOUT FIRST RECEIVING PRIOR WRITTEN CONSENT FROM SUCH MEMBER, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF SUCH ORCPP MEMBER WITHOUT THE PRIOR WRITTEN CONSENT OF THE REPRESENTATIVE OF THE ORCPP MEMBER AUTHORIZED TO PROVIDE SUCH CONSENT. THE ORCPP MEMBER MAY, AT ITS ELECTION, ASSUME ITS OWN DEFENSE AND SETTLEMENT IF SUCH MEMBER DETERMINES THAT: (I) CONTRACTOR IS PROHIBITED FROM DEFENDING THE ORCPP MEMBER, (II) IS NOT ADEQUATELY DEFENDING THE ORCPP MEMBER'S INTERESTS, OR (III) DETERMINES THAT AN IMPORTANT PRINCIPLE IS AT ISSUE AND THE ORCPP MEMBER DESIRES TO ASSUME ITS OWN DEFENSE. IN THE EVENT THE ORCPP MEMBER ASSUMES ITS OWN DEFENSE UNDER (I) OR (II), IT SHALL BE AT CONTRACTOR'S EXPENSE.

**20. Records Maintenance; Access.** Contractor shall maintain all financial records relating to this Agreement and all SOC's in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, including books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to the SOC, in such a manner as to clearly document Contractor's performance. All financial records and all other records are "Records." Contractor shall permit DAS, Agency, and the Oregon Secretary of State's Office, and the federal government, and their duly authorized representatives to have access to the Records, whether in paper, electronic or other form, to perform examinations and audits and make copies, excerpts and transcripts, except to the extent that such Records are confidential under state or federal law, or rules adopted pursuant to ORS 36.224. Contractor shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following both (i) the final payment under the last SOC entered into and (b) termination of the Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Agreement or any SOC, whichever date is later.

**21. 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 entities relative to this Agreement and the applicable SOC. Contractor shall demonstrate its legal capacity to perform the Services under this Contract and a SOC in the State of Oregon before entering into this Agreement.

**22. Disclosure of Social Security Number.** Contractor shall provide Contractor's Social Security number to DAS upon execution of this Agreement and to Agency upon execution of a SOC unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws.

**23. Force Majeure.** DAS, Agency, and Contractor will not be liable for any delays or failures in performance due to riot, acts of political sabotage, war, fire, earthquakes, tsunamis, or other similar natural disasters beyond the reasonable control of DAS, Agency, or Contractor. Each party 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 Agreement and a SOC.

**24. Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement except those rights and obligations which expressly or by their nature survive termination of this Agreement, including, without limitation, Sections 3, 4.2, 4.3, 4.5-4.7, 5-7, 11, 12.2, 13-15, 18-20, 23-31. All rights and obligations under a SOC shall cease upon termination or expiration thereof except those rights and obligations which expressly or by their nature survive termination of such SOC including, without limitation, those Sections relating to warranties and liabilities, independent contractor status, taxes and withholdings, not to exceed compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, remedies, order of precedence, third party beneficiaries, waiver, integration, and certifications.

**25. Notice.** Except as otherwise expressly provided in the applicable SOC, any communications between Contractor and DAS or notices to be given under this Agreement shall be given in writing by email, personal delivery, US mail, or parcel carrier to Contractor or DAS at the address, number or email address set forth in this Agreement in the signature blocks below, the applicable SOC, or both, or to such other addresses or numbers as the parties may indicate in writing to the others pursuant to this section. Any communication or notice so addressed shall be deemed received as follows: (i) via US Mail - five (5) calendar days after the date of the postmark, (ii) via parcel carrier - 48 hours after placing the Notice with such carrier, (iii) via hand delivery - when actually delivered to the physical address, and (iv) via email - upon receipt of auto-delivery notice from the recipients email program when followed up by a confirmation telephone call by the party providing Notice.

**26. Severability.** The parties agree that if any term or provision of the SOC is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the SOC did not contain the particular term or provision held to be invalid.

**27. Counterparts.** The SOC 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 SOC so executed shall constitute an original.

**28. Governing Law; Venue; Consent to Jurisdiction.** The SOC 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 party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

**29. Merger Clause; Waiver.** The SOC together with this Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the SOC or this Agreement. No waiver, consent, modification or change of terms of the SOC shall bind the parties unless agreed to in an Amendment made in accordance with Section 7.4 above. 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 Agency to enforce any provision of the SOC shall not constitute a waiver by Agency of that or any other provision.

**30. Mediation.** If the parties to the SOC become involved in a dispute regarding any of the terms, conditions, performance, or any obligations under the SOC, the parties shall submit to mediation prior to the commencement of litigation to enforce the SOC. The mediator shall be an individual mutually acceptable to the parties, but in the absence

of agreement, each party shall select a temporary mediator, and the temporary mediators shall jointly select the permanent mediator. Each party agrees to pay its own costs for the time and effort involved in mediation and split equally the cost of the mediator. Both parties agree to exercise best efforts and act in good faith to resolve all disputes in mediation. The parties shall mutually agree on the schedule and time allowed for mediation. The parties shall comply with statutes and administrative rules governing the confidentiality of mediation, if any.

**31. Tax Certification.** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

**31.1 Not Subject to Backup Withholding.** Contractor is not subject to backup withholding because (a) Contractor is exempt from backup withholding, (b) 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 (c) the IRS has notified Contractor that Contractor is no longer subject to backup withholding;

**31.2 Authorized to Act.** The individual signing on behalf of Contractor is authorized to act on Contractor's behalf, has authority and knowledge regarding Contractor's payment of taxes, and to the best of the signator's 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;

**31.3 Independent Contractor.** Contractor is an independent contractor as defined in ORS 670.600; and

**31.4 Tax ID Accurate.** The Contractor tax identification numbers provided to DAS are true and accurate.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT.

**CONTRACTOR: TRIANGLE ASSOCIATES, INC.**

Authorized Signature: \_\_\_\_\_

Printed Name: Michael Lyng

Title: Controller

Date: 11/23/2016

**CONTRACTOR CONTACT & NOTICE INFORMATION:**

Name (tax filing): Triangle Associates, Inc.

Business Name: Triangle Associates, Inc

Address: 855 1<sup>st</sup> Avenue, Suite 255, Seattle, Washington 98104

Office Phone Number: 206.583.0655

Cell Phone Number: 206.859-7881

Email Address: mlyng@triangleassociates.com

Citizenship, if applicable: Non-resident alien ☐ Yes ☐ No

Business Designation (check one):

☐ Professional Corporation ☐ Partnership ☐ Limited Partnership

☐ Limited Liability Company ☐ Limited Liability Partnership

☐ Sole Proprietorship ☒ Other – S Corporation

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

Authorized Signature: [Signature]

Printed Name: Timothy J. Jinks

Title: State Procurement Analyst

Date: December 1, 2016

**DAS CONTACT & NOTICE INFORMATION**

Address: 1225 Ferry Street SE

Email Address: Tim.Jinks@Oregon.Gov

Phone Number: 503-318-4778

*Approved for legal sufficiency by DOJ:*

[Signature]  
Ellen D. Taussig Conaty,  
Senior Assistant Attorney General

DOJ Matter No. GF0037-16

December 1, 2016  
Date

## **EXHIBIT A TO PRICE AGREEMENT**

### **FORM OF SERVICE ORDER CONTRACT**

Price Agreement # 6234

Service Order # \_\_\_\_\_

\_\_\_\_\_(“Agency”), and Triangle Associates, Inc., a Washington Corporation (“Contractor”), hereby enter into a contract for services (“Service Order Contract” or “SOC”) that consists of this document and all terms and conditions set forth in Exhibit 1, the Price Agreement entered into by and between Triangle Associates, Inc. a Washington corporation and the State of Oregon (“State”) acting by and through between the Department of Administrative Services (“DAS”) (the “Agreement”). Upon receipt of all approvals required by law and full execution by both DAS and Contractor this Service Order Contract is effective as of \_\_\_\_\_, 20\_\_ (the “SOC Effective Date”).

### **RECITAL**

A. Agency is involved in a dispute or a project that requires the services of an Alternative Dispute Resolution (ADR) Provider. That dispute or project is known as \_\_\_\_\_ (the “Matter”). Contractor desires to perform the services described in this SOC (“Services”) with respect to the Matter.

### **AGREEMENT**

The parties agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined in this SOC have the meanings assigned to them in the Agreement.

2. **Agreement Incorporated by Reference.** The Agreement is incorporated by reference as though fully set forth in this SOC.

3. **SOC Term.** Unless extended or terminated earlier in accordance with its terms, this SOC shall terminate when Agency has accepted and paid Contractor in full for all completed Services that are required under this SOC (“SOC Term”). SOC termination shall not extinguish or prejudice Agency’s right to enforce this SOC with respect to any default by Contractor that has not been cured.

4. **Statement of Work.** The Service to be performed under this SOC is indicated in this Section below and is more fully set forth in Exhibit 2, Statement of Work, attached to this SOC and incorporated by reference as though fully set forth in this Section. All Services shall be performed in accordance with the terms and conditions of this SOC.

- ☐ **Mediation General Practitioner:** Cherie Shanteau-Wheeler shall act as an impartial third party by assisting two or more parties in reaching a mutually acceptable resolution to a controversy.  
\_\_\_\_\_  
Contractor Initials                      Agency Initials
- ☐ **Facilitation General Practitioner:** Cherie Shanteau-Wheeler shall assist large groups (6 or more participants) to work effectively to achieve a desired objective.  
\_\_\_\_\_  
Contractor Initials                      Agency Initials

- ☐ **Public Policy Facilitator:** Cherie Shanteau-Wheeler shall assist governmental entities and diverse stakeholders to reach agreement on controversial public policies or public projects, within a complex legal, political or regulatory context.

\_\_\_\_\_  
Contractor Initials                      Agency Initials

- ☐ **Public Involvement Practitioner:** Cherie Shanteau-Wheeler shall assist governmental entities to engage the public on public issues or projects and design and implement an appropriate public involvement processes for projects, including without limitation, those that seek to inform or educate the public and those that allow for greater public involvement via consultation or collaboration.

\_\_\_\_\_  
Contractor Initials                      Agency Initials

## 5. Consideration.

**5.1 Maximum Not-To-Exceed Compensation.** The maximum, not-to-exceed compensation ("Maximum NTE Comp") payable to Contractor by Agency under this SOC is \$ \_\_\_\_\_, which includes all hourly rates for services, costs, and expenses agreed to in Section 5 of the Agreement in the amounts of, and for the number of hours, identified in the SOW attached to this SOC. Agency will not pay Contractor any amount in excess of the Maximum NTE Comp for completing the Services unless otherwise agreed to in an Amendment made in accordance with Section 7.4 of the Agreement, and will not pay for Services performed after the termination of this SOC. Agency will pay Contractor only for completed Services that are accepted by Agency, such acceptance shall not be unreasonably withheld.

**5.2 Source of Compensation.** When checked below, the following provisions also apply:

☐ **Splitting Contractor's Compensation.** Some or all of the other Participants ("Participants" means anyone who participates in the ADR process) in the Matter will compensate Contractor for Contractor's services associated with this Matter. Contractor's compensation from the other Participants is subject to agreement between Contractor and the other Participants, and Contractor shall look solely to the other Participants for any compensation the other Participants have agreed to pay Contractor for those services. Agency is not liable for, nor will Agency pay for, any compensation owed to the Contractor by any of the other Participants. Other Participants' failure to pay Contractor shall not relieve Contractor of any of Contractor's obligations under this SOC. Agency shall pay Contractor for these specific Services based on (check one):

☐ \$ \_\_\_\_\_ per hour, which equals \_\_\_\_\_% of Contractor's hourly rate as specified in Section 3.1 of this SOC above.

☐ A fixed amount of \$ \_\_\_\_\_.

☐ \$ \_\_\_\_\_ per hourly rate as specified in Section 5.1 of this SOC above.

☐ **Limiting Compensation for Initial Matter Assessment or process design activities.** *[This Optional Clause is available for use when Agency wants to limit that portion of the Contractor's compensation.]* Agency shall pay Contractor a maximum amount of \$ \_\_\_\_\_ for initial planning, matter assessment or process design activities as described in Exhibit 2, Statement of Work. This amount is included in the maximum amount by Agency as specified in Section 5.1 of this SOC above.

**5.3 Payment Terms.** Contractor shall submit invoices in accordance with standards set forth in Section 6 of the Agreement, which shall be submitted at intervals and in amounts

agreed to in Exhibit 2, the SOW. All invoices shall be submitted to Agency's contract administrator via [email] [U.S. Mail] at the following address:

Enter Name of Contract Administrator Here

Enter email or physical address for Contract Administrator Here

Enter phone number of Contract Administrator Here

5.3.1 Notwithstanding Section 3.5 of this SOC or anything to the contrary in Exhibit 2 to this SOC, the SOW, in no event shall Contractor be paid for any Services or reimbursed for any expenses under this SOC until Agency receives an accurate and complete W-9 Form from Contractor.

**6. Additional Responsibilities for Confidentiality and Neutrality.** In addition to performing as represented and warranted under Section 10, Contractor's Representations and Warranties, of the Agreement, to the extent Contractor is providing alternative dispute resolution (ADR) services, Contractor:

6.1 Shall act in an impartial manner, conducting the ADR process (i.e., the mediation, facilitation, collaborative process or public involvement process) fairly, diligently, even-handedly, and with no personal stake in the outcome and shall avoid actual potential or perceived conflicts of interest that can arise from the Contractor's involvement with the Matter or with the Participants ("Participants" means anyone who participates in the ADR process), whether past or present, that reasonably could raise a question about the mediator's impartial regard, including without limitation: (a) representing or acting on behalf of one or more of the Participants in the Matter or a related proceeding, or (b) engage in any other services on behalf of any of the Participants involving the same or significantly related issues, unless all of the other Participants provide their prior, written, informed consent;

6.2 Acknowledges and agrees that Contractor is not acting as a judge, has no authority to force a solution or agreement upon Agency and other Participants, and shall not propose any solution, settlement offer or agreement without the consent of Agency and other Participants;

6.3 Shall preserve the confidentiality of the process consistent with the Agency's and other participant's desires, subject to the requirements of ORS 36.220 through 36.238, if applicable, and other provisions of law; and

6.4 Shall not reveal information disclosed to the Contractor in a private meeting with Agency or one or more of the other Participants, without the disclosing Participants' or Agency's consent; and

6.5 Shall have a continuing responsibility to disclose to all Participants any pre-existing relationships or conflicts of interest, both actual and likely, as they develop and become known to Contractor. Contractor understands and agrees that for the purposes of determining Contractor's knowledge of the existence of an actual or likely conflict of interest, all facts which the Contractor knew, or by the exercise of reasonable care should have known, will be attributed to Contractor.

## **7. Termination; Remedies.**

**7.1 Termination by Agency.** Agency and Contractor may agree to terminate the SOC at any time. Agency may terminate the SOC for any reason or no reason immediately upon written notice to Contractor or at such other date as Agency may specify in such notice.

**7.2 Termination by Contractor.** Contractor may terminate the SOC for any reason or no reason effective upon delivery of thirty (30) days written notice to Agency.

**7.3 Agency Remedies.** In addition to any other rights and remedies Agency may have under the SOC, Agency may terminate or modify the SOC immediately upon delivery of written notice from Agency to Contractor, or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:

**7.3.1** Funding from federal, state, or other sources is not obtained and continued at levels sufficient to pay for the Services;

**7.3.2** Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the Services are prohibited or Agency is prohibited from paying for the Services from the planned funding source;

**7.3.3** Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under the SOC, fails to perform the Services within the time specified herein, or so fails to pursue the Services as to endanger Contractor's performance under the SOC in accordance with its terms, and fails to cure such breach, default or failure within five (5) business days after delivery of written notice from Agency, or such other period as Agency may authorize or require.

**7.4 No Prejudice of Rights.** Termination of the SOC does not extinguish or prejudice Agency's right to enforce the SOC with respect to any default by Contractor that has not been cured. Termination pursuant to this Section shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**7.5 Contractor Remedies; Agency Liability for Expenses.** If Agency terminates the SOC or if Agency is in default and whether or not Contractor elects to exercise its right to terminate the SOC, Contractor's sole monetary remedy is a claim for: (a) unpaid and accepted invoices; and (b) hours worked and authorized expenses incurred within any limits set forth in the SOC, but not yet billed. In no event shall Agency 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 Subsection, Contractor shall pay immediately any excess to Agency upon written demand provided in accordance with the notice provisions of the SOC.

**7.6 Return of Property.** Upon termination of the SOC for any reason, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any deliverable for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development such Agency property is embodied at that time. Upon receiving a notice of termination of the SOC, Contractor shall immediately cease all activities under the SOC, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request and consistent with applicable confidentiality laws, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Services and any deliverable.

**7.7 Rights and Obligations.** Except as expressly identified in this SOC, and except for the rights and obligations for any communications between Contractor and Agency or Notices to be given under this SOC, which shall be made in accordance with Section 25 of the Agreement and sent, as applicable, to either: (a) Contractor or (b) Agency, with a copy to DAS, at the following addresses:

**Agency Notice:** Enter Name of Contract Administrator Here  
Enter Agency Name Here  
Enter physical address for Contract

Administrator Here  
Enter Email address of DAS Contact Here  
Enter phone number of Contract Administrator Here

DAS Notice: Enter Name of DAS Contact  
Enter DAS Title Here  
Department of Administrative Services  
Enter physical address for DAS Contact Here  
Enter Email address of DAS Contact Here  
Enter phone number of DAS Contact Here

Contractor Notice: Enter Name of Contractor Contact  
Enter Contractor Title Here, if any  
Enter Contractor Firm Name Here, if any  
Enter physical address for Contractor Here  
Enter Email address of Contractor Here  
Enter phone number of Contract Administrator Here

**7.8 Remedies Not Exclusive.** The rights and remedies provided in this Section are not exclusive, and are in addition to any other rights and remedies provided by law or under the SOC.

**8. Email Copy of Executed SOC.** Within 7 business days of full execution of this SOC, Contractor shall email a copy of such SOC to the Oregon Department of Justice ADR Coordinator at: [adr@doj.state.or.us](mailto:adr@doj.state.or.us)

**9. Insurance.** Throughout the SOC Term Contractor shall carry, at its own cost and expense, the types of insurance at the limits agreed to in Exhibit B to the Agreement which is incorporated by reference as though fully set forth in this Section. Contractor shall provide Agency's contract administrator with a certificate of insurance prior to commencing any Services or performing any work under this SOC.

**10. Order of Precedence.** This SOC is executed pursuant to the Price Agreement. This SOC consists of the following documents, which are listed in descending order of precedence:

Exhibit 1, the Price Agreement, less its Exhibits  
This SOC, less its Attachments and Exhibits  
Exhibit 2, Statement of Work  
Exhibit B, Insurance, to the Price Agreement

**11. Certifications.** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

**11.1 Authority to Act.** The individual signing on behalf of Contractor is authorized to act on Contractor's behalf, has authority and knowledge regarding the matters certifying in this Section 11;

**11.2 Representations and Warranties.** The Representations and Warranties set forth in the Agreement, including, without limitation, Section 14, are reaffirmed by the signator below;

**11.3 Compliance with All Laws, Terms and Conditions.** Signator affirms that Contractor will comply with all applicable laws as agreed to in Section 10 of the Agreement and that no conflicts of interest, as defined in ORS 244, preclude Contractor from performing any of the Services agreed to in this SOC. Signator further affirms that Contractor understands and agrees that Contractor is bound by

all of the other the terms, conditions, and obligations agreed to in the Agreement, which are incorporated by reference in Section 2 of this SOC;

**11.4 Not Subject to Backup Withholding.** Contractor is not subject to backup withholding because (a) Contractor is exempt from backup withholding, (b) 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 (c) the IRS has notified Contractor that Contractor is no longer subject to backup withholding;

**11.5 Certification of Tax Laws.** To the best of the signator's 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;

**11.6 Independent Contractor.** Contractor is an independent contractor as defined in ORS 670.600; and

**11.7 Tax ID Accurate.** The Contractor tax identification numbers provided to Agency under Section 5.5.1 of this SOC are true and accurate.

**CONTRACTOR, BY EXECUTING THIS SERVICE ORDER CONTRACT, ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS SERVICE ORDER CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**CONTRACTOR: TRIANGLE ASSOCIATES, INC.**

**AGENCY:** \_\_\_\_\_

*(include here division or section as well, if applicable)*

By: \_\_\_\_\_  
[Print Name Here]

By: \_\_\_\_\_  
[Print Name Here]

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved for Legal Sufficiency:**

*(Required if contract amount is \$150,000 or greater)*

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name  
Title: Assistant Attorney General  
DOJ Matter No. GF0037-16

## Exhibit 2 to Service Order Contract

### STATEMENT OF WORK FOR SERVICES

**I. Services.** Contractor shall perform the following Services: *[Fill in below. Provide an overview of the Matter, a general description of the services to be provided, and any other information that is pertinent to the Matter and the services]*

**II. Service Order Deliverables; Delivery Schedule; Allowable Billable Hours & Expenses.** Contractor shall provide the specific Services and deliver any specific, associated deliverables on or before the dates listed in the table below. Subject to the Maximum NTE Comp set forth in Section 5.1 above of the SOC, Agency shall pay all amounts agreed to in this Section II and shall have no liability for any amounts that exceed those agreed to herein.

**A. Services and Deliverables; Delivery Schedule; Allowable Billable Hours and Expenses:**

*[Agency shall fill in this section below with the following information:]*

- i. Indicate the type of ADR Service provided (will be the same as that indicated in Section 4 of the SOC and provide a detailed description of the specific Services to be provided, e. g:*
  - > Who is providing the services (Contractor? Key Person?) and what specific service will be provided,*
  - > Agency personnel and other persons to whom the services will be provided,*
  - > Location of where the Services will be provided,*
  - > The dates or date on or by which the Services must be delivered or completed.*
- ii. Provide a detailed description of any and all Deliverables to be provided. Also include a due date that each Deliverable must be submitted to Agency for review and acceptance, including any dates for any intermediate reviews. Also indicate the person and address to which the Deliverables must be submitted and the means of submission (email, hand deliver, U.S. Mail, etc.).*
- iii. For each Key Person providing the Services or Deliverables (or both), list the number of ADR Service billable hours they are allowed to bill Agency for each Service provided and Deliverable (if any) delivered and accepted.*
- iv. If the location where the Services are to be provided are subject to Hourly Travel Rates and travel expenses, as identified in Section 5.3 of the Agreement, identify the number of allowable billable travel hours they are allowed to bill Agency for each Key Person traveling to the ADR Service location.*
- v. If Contractor is permitted to charge for administrative assistance and other support services as identified in Section 5.2 of the Agreement, Agency should allocate an allowable number of hours that may be provided by Contractor's administrative assistants and support staff for each Service or Deliverable (or phase or task). Or, Agency may want to just list the total number of hours Contractor may bill for such assistance and leave it to the discretion of the Contractor how to allocate those hours.*

vi. *If Contractor will require the services of a subcontractor to provide certain services associated with allowable Service Related Expenses as those identified in Section 5.4 of the Agreement, the best practice would be to identify with specificity the expenses Agency expects the ADR Service Provider to incur and in Section C below, identify the total allowable amounts that Contractor can expense back to Agency.*

vii. *List or describe any other information that is pertinent to each Service performed or Deliverable provided such as Agency resources that will be provided (personnel, documentation, other)*

*If there are phases or different tasks to be performed, Agency may end up repeating the above categories for each separate phase or task.*

**B. Total Allowable Key Person ADR Billable Hours.** The total ADR Billable Hours for both the Deliverables and the [Mediation General Practitioner Services] [Facilitation General Practitioner Services] [Public Policy Facilitator Services] [Public Involvement Practitioner Services] shall be billed for the actual hours worked and to be billed in 15 minute increments as follows:

☐ No more than \_\_\_\_\_ hours at the rate of \$ 208.20 for Cherie Shanteau-Wheeler.

**C. Service Related Expenses.** Contractor may charge back to Agency Service Related Expenses in accordance with Section 5.4. of the Agreement. Agency and Contractor agree that Agency shall reimburse Contractor for Service Related Expenses in an amount not to exceed \$ \_\_\_\_\_.

**D. Total Allowable Travel Billable Hours and Travel Expenses.** The Travel Billable Hours for round-trip travel to the ADR Service location of [enter ADR Service location here -which MUST match a location identified in Section 5.3.2 of the Agreement], shall be billed for the actual time for traveled and billed in 15 minute increments as follows:

☐ No more than \_\_\_\_\_ travel hours at the rate of \$56.08 per hour for Administrative Assistant

☐ No more than \_\_\_\_\_ travel hours at the rate of \$70.49 per hour for a Project Associate, for Project Associate Support Services.

☐ No more than \_\_\_\_\_ travel hours at the rate of \$78.49 per hour for an Associate, Level 1

☐ No more than \_\_\_\_\_ travel hours at the rate of \$89.71 per hour for an Associate, Level 2.

☐ No more than \_\_\_\_\_ travel hours at the rate of \$208.20 per hour for Key Persons.

Travel expenses may be expensed back to Agency in accordance with Section 5.3.1 of the Agreement.

**E. Total Allowable Administrative Assistant and Support Staff Service Hours.** The billable hours for which Contractor may charge Agency for the services of administrative assistance and other support services shall be billed for actual hours worked and billed in 15 minute increments as follows:

☐ No more than \_\_\_\_\_ hours at the rate of \$ [enter Support Services Hourly Billing Rate from Section 5.2 of Agreement, but in no event more than \$70.49 per hour] per hour for the Support Services of an Administrative Assistant.

☐ No more than \_\_\_\_\_ hours at the rate of \$[enter Support Services Hourly Billing Rate from Section 5.2 of Agreement, but in no event more than \$70.49 per hour] per hour for the Support Services of a Project Associate.  
for

☐ No more than \_\_\_\_\_ hours at the rate of \$78.49 per hour for the Support Services of an Associate, Level 1.

☐ No more than \_\_\_\_\_ hours at the rate of \$89.71 per hour for the Support Services of an Associate, Level 2.

**III. Timing of Invoices.** All amounts agreed to this Statement of Work shall be invoiced in accordance with Section 6 of the Agreement . All amounts shall be invoiced in arrears. Services and Deliverables shall not be submitted until after such Services and Deliverables have been accepted by Agency in writing.

## **EXHIBIT B TO PRICE AGREEMENT**

### **INSURANCE**

The provisions of this Exhibit B apply to and are incorporated into each Service Order Contract executed between Contractor and Agency.

**A. REQUIRED INSURANCE.** During the term of each Service Order Contract, including warranty periods, if any, Contractor shall maintain in full force and at its own expense the following insurance (as indicated) from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency.

**i. WORKERS COMPENSATION.**

All employers, including Contractor, that employ subject workers who work under each Service Order 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.

**ii. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.**

☒ **Required by Agency** ☐ **Not required by Agency.**

Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.

Additional types of insurance may be required as specified by Agency under the SOC. At Agency's sole option, the cost for the additional insurance specified and acquired specifically for the performance of Services under the SOC, may be subject to reimbursement by the Agency.

**B. ADDITIONAL INSURED.** The commercial general liability insurance, if any, and automobile liability insurance required under each Service Order Contract shall include the State of Oregon, and its departments, divisions, commissions, branches, officers and employees as Additional Insureds with respect to Contractor's performance obligations under each Service Order Contract. Contractor shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required liability insurance is on a "claims made" basis, Contractor shall either 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 each Service Order Contract, for a minimum of 24 months following the later of (i) Contractor's completion of all Services and Agency's acceptance of all Services required under each Service Order Contract, or (iii) the expiration of all warranty periods provided under each Service Order 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 each Service Order Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this Section C.

**D. 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 sixty (60) days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the Service Order Contract and shall be grounds for immediate termination of the Service Order Contract by Agency.

**E. CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under each Service Order Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.