

**STATE OF OREGON PRICE AGREEMENT
NUMBER 7612 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 3J Consulting, Inc., an Oregon Corporation. Upon receipt of all approvals required by law and full execution by both DAS and Contractor this Agreement is effective as of December 6, 2017 (“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.** The former employer of Steve Faust (for purposes of these Recitals only, “**Faust**”), Cogan Owens Cogan, LLC (“**Original Proposer**”) was a successful proposer to the RFP.
- D.** As a result, Original Proposer and DAS entered into a Price Agreement, effective as of December 1, 2016 (“Original Price Agreement”) pursuant to which Original Proposer’s Key Persons as defined in Section 3.4 of the Original Price Agreement, Faust and his co-worker, Jim Owens (“**Owens**”), were authorized to provide certain ADR Services as may have been requested from Agencies from time to time.
- E.** On or about October 31, 2017, Original Proposer ceased doing business. However, Faust and Owens have each continued to provide ADR Services; Faust as an employee of 3J Consulting, Inc, and Owens as a sole proprietor. 3J Consulting, Inc., through its employee Faust, desires to continue to provide ADR Services to Agencies under this Agreement.
- F.** Although the Original Price Agreement was entered into by and between the DAS and the Original Proposer, the Original Proposer, as a limited liability company, could only act through its Key Persons, Owens and Faust. And, since the Original Proposer has ceased doing business but its Key Persons desire to still provide ADR Services to Agencies, 3J Consulting and DAS have agreed to enter into this Agreement with Faust as a Key Person, pursuant to which Faust will continue to provide the ADR Services he was authorized to provide under the Original Agreement.
- G.** Consequently, and for purposes of clarification: (i) Owens and DAS have also agreed to enter into a second price agreement pursuant to which Owens will continue to provide the ADR Services he was authorized to provide under the Original Agreement, and (ii) Original Proposer and DAS have agreed to terminate the Original Price Agreement.

Therefore, DAS and 3J Consulting, Inc. agree as follows:

AGREEMENT

1. Purpose. This Agreement:

1.1 Identifies the process 3J Consulting, Inc through Key Person, Steve Faust, (“**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 SOCs 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 be for the services of a “**Public Involvement Practitioner**” who will assist 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 Person means Steve Faust, an employee of Contractor and who was determined, as a result of the evaluation of the Original Proposer’s proposal submitted in response to the RFP, to have the necessary

qualifications and experience to provide Public Involvement Practitioner ADR Services. Key Person's contact information is:

Steve Faust
3J Consulting, Inc.
Office: (503) 946-9365, ext. 207
Cell: (971) 409-2045
Email: steve.faust@3j-consulting.com

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 Person at \$165.00 per hour. Except as expressly permitted in subsections 5.2-5.4, this ADR Billing Rates includes all administrative and overhead costs. ADR Billing Rate is 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.

5.1.1 The ADR Hourly Billing Rates agreed to in Section 5.1 above shall remain firm until December 28, 2018. 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 “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)	HOURLY SUPPORT SERVICES RATE
Support Staff	\$90.00 per hour

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 for its Key Persons and Support Staff at the rates and to the counties as follows:

<u>KEY PERSONS & SUPPORT STAFF</u>	<u>ADR SERVICE CATEGORY</u>	<u>HOURLY TRAVEL RATE</u>
<u>Steve Faust</u>	Public Involvement Practitioner	<u>No more than \$165.00 per hour</u>
<u>Administrative Assistant</u>	<u>All ADR Service categories</u>	<u>No More than \$90.00 per hour</u>

<u>COUNTIES FOR WHICH TRAVEL TIME AND EXPENSES MAY BE CHARGED</u>		
Baker	Harney	Marion
Benton	Hood River	Morrow
Clatsop	Jackson	Polk
Columbia	Jefferson	Sherman
Coos	Josephine	Tillamook
Crook	Klamath	Umatilla
Curry	Lake	Union
Deschutes	Lane	Wallowa
Douglas	Lincoln	Wasco
Gillam	Linn	Wheeler
Grant	Malheur	Yamhill

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.

<u>ADR SERVICE</u>	<u>SERVICE RELATED EXPENSES</u>
Public Involvement Practitioner <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Copy/print charges <input checked="" type="checkbox"/> Facility Use/Rental Fees <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 term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with its terms, expire on December 28, 2021 (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 SOCs 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. Key Person's former employer, Cogan Owens Cogan, LLC a business that has ceased doing business, 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 a price agreement as a result of an evaluation that Key Person who at the time was employed by Cogan Owens Cogan LLC, 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 Key Person all of which survive the dissolution of Contractor's former employer Cogan Owens Cogan LLC. 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, "Public Involvement Practitioner."

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 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 SOCs 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 SOCs, 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. SOC's 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, upon execution of a SOC, Agencies are intended third party beneficiaries of this Agreement. DAS, Contractor, and are the only parties entitled to enforce the terms of this Agreement. Upon execution of a SOC by Agency and Contractor, the Agency and Contractor shall be entitled to enforce the terms of the resulting 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 SOCs 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: 31 Consulting, Inc.

Signature: 

Printed Name: JOHN HOWORTH

Title: PRESIDENT

Date: DECEMBER 7, 2017

CONTRACTOR CONTACT & NOTICE INFORMATION:

Name (tax filing): 3J Consulting, Inc.

Business Name: 3J Consulting, Inc.

Address: 5075 SW Griffith Dr. Ssk 150, Beaverton, OR 97005

Office Phone Number: 503-946-9365 x 207

Cell Phone Number: 971-409-2045

Email Address: steve.favest@3j-consulting.com

Citizenship, if applicable: Non-resident alien [] Yes [X] No

Business Designation (check one):

[X] Professional Corporation [] Partnership [] Limited Partnership

[] Limited Liability Company [] Limited Liability Partnership

[] Sole Proprietorship [] Other

DEPARTMENT OF ADMINISTRATIVE SERVICES

Authorized Signature: Kelly R. Mix

Printed Name: Kelly R. Mix

Title: Deputy State CPO

Date: 12/11/17

DAS CONTACT & NOTICE INFORMATION

Address: 1225 Ferry Street SE U140
Salem, OR 97302
Email Ad: tim.jenks@oregon.gov
Phone Nu: (503) 378-4778

Reviewed by DOJ:

Mary A. Bray
Mary A. Bray

Senior Assistant Attorney General

DOJ Matter No. GF1059-17

12/8/17
Date

