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| --- |
| **Contract Number:**  |
| **Contractor Name:**  |

**STATE OF OREGON PERSONAL SERVICES CONTRACT**

**FOR LITIGATION-RELATED MEDIATION SERVICES**

**(“Contract”)**

This Contract is between the State of Oregon, acting by and through its Department of Justice, (**“DOJ”**), and **[insert contractor name]** (**“Contractor”**). DOJ desires to contract for services with Contractor for the benefit of the State of Oregon, Department of Administrative Services (**“Agency”**). Contract Administrators for the parties are identified in Section 9.

**1. Contract Period.** This Contract is effective on the date this contract has been fully executed by every party and, when required, approved by the Department of Justice (“**Effective Date**”), and, unless extended or terminated earlier, continues until Agency has accepted and paid Contractor in full for all completed Services required under this Contract or **[insert expiration date]**, whichever occurs first.

**2. Statement of Work.** Contractor shall perform the mediation/facilitation services described in Exhibit A, Statement of Work, (“**Services**”) according to the terms and conditions of this Contract.

**3. Consideration.** The maximum amount payable to Contractor under this Contract is **[insert not-to-exceed amount here],** which includes all additional preparation time and travel time and all authorized expense reimbursement under subsection b. Contractor shall not submit invoices for, and Agency is not obligated to pay, any amount more than this fixed amount, nor is Agency obligated to pay for Services performed after the termination of this Contract.

**a.** Agency shall pay Contractor **[total here]** which equals **[\_\_]**% of the **[insert total here]** base charge for mediation.  Agency shall pay **[insert portion of hourly rate]** or **[percentage of hourly rate]**% of **[$insert hourly rate]** per hour for any time more than seven hours for pre-mediation review, conferences with counsel, mediation and post-mediation discussions.

**b.** Agency shall reimburse Contractor for **[insert percentage here]**% of Contractor’s costs for travel expenses incurred under this Contract at the rates specified in the Oregon Accounting Manual as of the date Contractor incurs the travel expenses. The Oregon Accounting Manual is available at [http://scd.DAS.state.or.us/](http://scd.das.state.or.us/) under “travel.”

**c.** Some or all of other non-DOJ and non-Agency participants (“**Other Participants**”) in the Matter described in Exhibit A may compensate Contractor for Contractor's services associated with the 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 obligated to pay any amount owed to the Contractor by any of the Other Participants. Other Participants' failure to pay Contractor does not relieve Contractor of any of Contractor's obligations under this Contract.

**d.** Following completion of all Services, Contractor shall submit one invoice for Services and expenses claimed for reimbursement to DOJ’s Contract Administrator identified in section 9.

**4. Contract Documents**. This Contract consists of this Contract less all exhibits and attached Exhibits A, B, C and D, which are hereby incorporated by reference.

**5. Independent Contractor; Certificate.**

1. Contractor shall perform all Services as an independent contractor.

**b.**  Upon execution of this Contract, Contractor shall deliver to DOJ Contract Administrator a signed certificate in the form attached as Exhibit C.

**6. Insurance and Liability**.

**a.** All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

**b.** Contractor shall maintain insurance as set forth in Exhibit B.

**c.** Contractor is subject to ORS 36.210 “Liability of mediators and programs.”

**7. Termination.** DOJ may terminate this Contract for any reason or no reason immediately upon written notice to Contractor or at such other date as DOJ may specify in such notice. The Contractor may terminate this Contract for any reason or no reason effective upon delivery of thirty (30) days written notice to DOJ. Termination of this Contract does not prejudice to any obligations or liabilities of either party already accrued prior to termination.

**8. Access to Records**. Contractor shall provide DOJ, Agency and the Secretary of State access to Contractor’s records related to the Contract as may be reasonably necessary for audit purposes.

**9. Notices.**

**a.** Each party giving or making any notice, request, demand or other communication (each, a “**Notice**”) pursuant to this Contract shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Contract is a writing: facsimile or e-mail (in each case, with receipt confirmed by telephone), personal delivery, Registered or Certified Mail (in each case, return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid).

**b.** Any party giving a Notice shall address the Notice to the appropriate person at the receiving party at the address listed below or another address as designated by a party in a Notice pursuant to this Section.

|  |  |
| --- | --- |
| If to DOJ: | If to Contractor |
|  |  |
| NameAddressCity StatePhoneEmail address | NameAddressCity StatePhoneEmail address  |

**10. Counterparts**. The parties may execute this Contract in several counterparts, each of which is deemed an original, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

**11. Governing Law; Venue; Consent to Jurisdiction**. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract. 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.

**12. Merger Clause; Waiver**. This Contract constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the Services. The failure of a party to enforce any provision of this Contract does not constitute a waiver by that party of that or any other provision.

**13. Amendments**. The parties may not amend this Contract, except by a by written agreement signed by all parties that identifies itself as an amendment to this Contract.

**14.** **Confidentiality.** Contractor shall comply with, and shall perform all Services in accordance with, ORS 36.220 to 36.238 and applicable rules adopted pursuant to ORS 36.224, which are incorporated herein by this reference. This Section survives termination of the Contract.

**15. Key Person.** DOJ is contracting for the expertise, experience, judgment, and personal attention of **[insert mediator name here]** (“**Key Person**”). Except to the extent otherwise provided in DOJ's prior written consent, Contractor shall cause the Services to be personally provided by the Key Person.

**16. Compliance with Applicable Law.**

**a. Compliance with Law Generally.** Contractor shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to Contractor and this Contract.

**b.** **Compliance with Executive Order 21-29**. By its execution of this Contract, Contractor certifies that for the term of the Contract or the duration of Executive Order (“**EO**”) 21-29, whichever expires or terminates first, each Worker who provides Services at an Executive Branch Worksite is Fully Vaccinated against COVID-19 unless an exception under paragraph 6 of EO 21-29 applies. The definitions in Exhibit D (“**Special Definitions for Interpreting EO 21-29 Obligations**”) apply to this section. The Contractor shall maintain in its records Proof of Vaccination or permitted exceptions under paragraph 6 of EO 21-29 for such Workers providing services at an Executive Branch Worksite. DOJ may request the documentation supporting the Contractor’s certification, and Contractor shall provide additional documentation of its compliance with EO 21-29 upon DOJ’s request. The Contractor’s compliance with this section is a material term of this Contract, and the Contractor’s failure to comply constitutes a breach entitling DOJ to terminate this Contract for cause.

**REVIEWED**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: Assistant Attorney General Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: Mediator Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**STATE OF OREGON, DEPARTMENT OF JUSTICE**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: Chief Trial Counsel Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

***[DOJ Signatory—Chief Counsel up to $10,000, Deputy AG if more]***

**Approved as to Sections 1 and 3 by the STATE OF OREGON acting by and through Oregon Department of Administrative Services**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**STATEMENT OF WORK - LITIGATION-RELATED MEDIATION/FACILITATION SERVICES**

1. Background. Agency and DOJ are involved in matter titled ***[Insert Matter Name Here]*** (the “**Matter**”). DOJ desires to retain Contractor to design, convene and conduct a mediation process to assist Agency and Other Participants to reach a mutually acceptable resolution of the Matter and to otherwise facilitate communication between involved individuals in an agreement-seeking process concerning the Matter, as further described in this Contract.
2. Mediation/Facilitation Services. Contractor shall prepare for and conduct a mediation session for the Matter beginning on the date and at the location that DOJ and Contractor agree to in writing.
3. Specifically, Contractor shall:
	1. Act as an impartial intermediary and not as an advocate for the Agency or the Other Participants,
	2. Preserve Agency's and Other Participants' desired level of confidentiality as expressed in the “agreement-to-mediate,” if any, executed between Agency and Other Participants.
	3. Disclose to DOJ, Agency and Other Participants any pre-existing relationships or conflicts of interest, both actual and likely, as they develop and become known to Contractor.

Contractor shall not act as a judge, shall not force a settlement on Agency and Other Participants, and shall not propose a settlement offer or agreement without the consent of Agency and Other Participants.

**EXHIBIT B - INSURANCE**

 **A. REQUIRED INSURANCE**. During the term of this 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 DOJ. DOJ and Agency will not accept claims-made coverage.

**I. WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

**II. Automobile Liability**. [ ]  🗹 Required by DOJ. 🞎 Not required by DOJ.

Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than the Oregon Financial Responsibility Law (ORS 806.060)

 **B. ADDITIONAL INSURED.** The automobile liability insurance required under this 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 this Contract. Contractor shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

**C. 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 DOJ. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by DOJ.

**D. CERTIFICATE(S) OF INSURANCE.** Upon DOJ’s request, Contractor shall provide to DOJ Certificate(s) of Insurance for all required insurance before performing Services required under this 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.

**EXHIBIT C - CERTIFICATE OF CONTRACTOR**

**A. Contractor Tax Identification Information.** Contractor shall provide Contractor's Social Security number or Contractor’s federal tax ID number and the additional information set forth below prior to DOJ Contract Administrator prior to execution of the Contract. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(3). Social Security Numbers provided pursuant to this Section will be used for the administration of state, federal and local tax laws.

|  |  |
| --- | --- |
| Name (tax filing):  |  |
| Address: |  |
| Citizenship, if applicable:  | Non-resident alien 🞎 Yes 🞎 No 🗹 N/A |
| Business Designation:  |  |
| Federal Tax ID#:  |  |

DOJ may report the information set forth above to the Internal Revenue Service (IRS) under the name and social security number or taxpayer identification number provided.

**B. Certification.** The individual signing on behalf of Contractor certifies that: **(a)** the number shown above is Contractor’s correct taxpayer identification and the other information provided is correct; **(b)** Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; **(c)** the individual is authorized to act on behalf of Contractor, has authority and knowledge regarding Contractor’s payment of taxes, and to the best of the individual’s knowledge, Contractor is not in violation of any Oregon Tax Laws. For purposes of this certification, “**Oregon Tax Laws**” means: (i)  all tax laws of this state, including but not limited to those included in: ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions; and **(d)** Contractor is an independent contractor as defined in ORS 670.600.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022.

 **[Insert mediator name]**, Mediator

**EXHIBIT D - Special Definitions for Interpreting EO 21-29 Obligations**

1. *“EO 21-29” means* Governor of the State of Oregon’s Executive Order 21-29, <https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf>.
2. *“Executive Branch”* has the meaning given to the term Executive
Department in ORS 174.112.
3. *“COVID-19”* means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
4. *“Fully Vaccinated”* means having received both doses of a two-dose COVID-19 vaccine or one dose of a single-dose COVID-19 vaccine and at least 14 days have passed since the individual's final dose of COVID-19 vaccine.
5. *“Proof of Vaccination”* means documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date or dates given, depending on whether it is a one-dose or two-dose vaccine, and the name and location of the health care provider or site where the vaccine was administered. Documentation may include but is not limited to a COVID-19 vaccination record card, a copy or digital picture of the vaccination record card, or a print-out from the Oregon Health Authority's immunization registry.
6. *“Employee”* means any person employed by the Executive Branch, but does not include individuals whose only work for the Executive Branch is as a volunteer board, commission, or council member, and whose compensation is limited to a stipend or per diem; does not include elected or appointed District Attorneys; and does not include Workers.
7. *“Worker”* means an individual who is not an Employee, and is engaged to provide goods or services to the Executive Branch through any formal or informal agreement, whether compensated or uncompensated, including Oregon Corrections Enterprises, but does not include a visitor, patron, adult in custody, or board, commission, or council member. Individuals are exempt from the definition of Worker unless any provision of the agreement to provide goods or services requires work to be performed in person and on site at an Executive Branch worksite, regardless of frequency, whether other persons are present, or any contingent nature of that requirement. Persons making deliveries or pick-ups to Executive Branch worksites are not considered Workers.

 The following definition of Worksite is from the Executive Order 21-29 Vaccination Requirements for State Contractors Frequently Asked Questions as may be amended and is for reference only. Proposers should refer to the FAQ for the most recent definition.

[ExecutiveOrder21-29\_ContractorFAQ.pdf (oregon.gov)](https://www.oregon.gov/das/Procurement/Documents/ExecutiveOrder21-29_ContractorFAQ.pdf)

1. “*Worksite*” means any indoor premises controlled or operated by an Executive Branch agency, where a Worker performs services in person for longer than 15 minutes (“**close contact**” as defined by the Centers for Disease Control and Prevention). For leased spaces including multi-tenant environments, this includes only the spaces and services under the control of the agency, it excludes landlord-provided services and doesn’t include common areas or other areas not within the control of the Agency.