

**STATE OF OREGON  
CONTRACT FOR SERVICES**

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

and

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

hereinafter referred to as “Contractor” (together, “Parties”). Contractor’s Representative is \_\_\_\_\_.

Commission's Contract Administrator for this Contract is:

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

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

**1. Contract Term.** This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by the Oregon Department of Agriculture and the Oregon Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when Commission accepts Contractor's completed performance or on June 30, 2023 whichever date occurs last. Contract termination shall not extinguish or prejudice Commission’s right to enforce this Contract with respect to any default by Contractor that has not been cured. The Parties may extend the term of this Contract provided that the total Contract term does not extend beyond June 30, 2023.

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

**3. Compensation.**

**a.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses stated in Exhibit A (Statement of Work), is \$ \_\_\_\_\_. Commission will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

**b.** Payments to Contractor shall be made as set forth in this Section 3 and in Exhibit A (Statement of Work).

**c.** Commission will pay only for completed Work that is accepted by Commission.

**d.** Contractor shall send monthly invoices to Commission’s Contract Administrator for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed, the Work performed, and shall itemize and explain all expenses that this Contract requires Commission to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice.

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

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

a. In accordance with ORS 576.306(3), and this Contract, Contractor shall act at all times and perform all Work as an independent contractor, not as an agent or employee of the Commission. Contractor has no right or authority to incur or create any obligation for or legally bind Commission in any way. The Commission reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work. The Commission may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

b. Contractor by signature to this Contract, represents and warrants that Contractor's performance of the Work under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.

c. Contractor understands and agrees that it is not an "officer," "employee," or "agent" of Commission (or any other commission, agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265 or otherwise, and Contractor shall not make representations to third parties to the contrary.

d. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless required by applicable law, Commission will not withhold from such compensation or payments any amount to cover Contractor's federal, state or local tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

e. Contractor acknowledges and agrees that the Commission selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's key persons identified in the Statement of Work (each a "Key Person" and, together, "Key Persons"). Neither Contractor nor a Key Person shall delegate performance of the powers and responsibilities that a Key Person is required to provide under this Contract to another Contractor employee, subcontractor or agent without first obtaining the written consent of the Commission. Further, Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the Commission with the required expertise, experience, judgment, and personal attention, without first obtaining Commission's written consent to such re-assignment or transfer, which the Commission will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that the Commission approve a reassignment or transfer of a Key Person, or if Contractor must replace a Key Person, Commission may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person, if Commission so requests. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by the Commission will thereafter be deemed a Key Person for purposes of this Contract and the Statement of Work will be deemed amended to include such Key Person.

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

a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without Commission's prior written consent. In addition to any other provisions Commission may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Commission will receive the benefit of subcontractor performance as if the subcontractor were Contractor with respect to Sections 5, 6, 7, 9, 10, 11, 14, 15, 16, 18, and 25. Commission's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

b. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties, their respective successors, and permitted assigns, if any.

c. Contractor shall not assign, delegate or transfer any of its rights or delegate its obligations under this Contract without the Commission's prior written consent.

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

**8. Funds Available and Authorized.** Contractor understands and agrees that the State of Oregon’s payment obligations under this Contract are conditioned upon Commission’s receiving funding, appropriations, limitations, allotments, budgetary authority, or other expenditure authority sufficient to allow Commission, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. Contractor shall not be compensated for Work performed under this Contract by any agency or department of the State of Oregon other than the Commission. Nothing in this Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Commission represents that it has sufficient appropriations, limitation, and budgetary authority for the current fiscal year to finance the payments under this Contract within the Commission’s 2022-23 fiscal year budget established in compliance with ORS 576.416 through 576.445, ORS 577.295 or ORS 578.151, as applicable.

**9. Representations and Warranties.**

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

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

**10. Intellectual Property.**

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

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

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

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

**b. Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations of Work Product, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of the Commission. The Commission and Contractor agree that such Work Product is “work made for hire” of which the Commission is the author within the meaning of the United States Copyright Act. If for any

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reason the Work Product is not “work made for hire,” Contractor hereby irrevocably assigns to the Commission any and all of its rights, title, and interest in all Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Commission’s reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in the Commission. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

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

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

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

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

### 11. Indemnity.

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

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

**c. CONTROL OF DEFENSE AND SETTLEMENT.** CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OR COMMISSION OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE PRIOR APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON’S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

**12. Assignment of Antitrust Rights.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### e. Termination.

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

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

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

(B) Immediately upon written notice of termination to Contractor if Commission fails to receive funding, appropriations, limitations, allotments, budgetary authority or other expenditure authority in its budget established in accordance with the process described in ORS 576.416 through 576.445, ORS 577.295 or ORS 578.151, as applicable, for the fiscal year in which a payment is due, or if Commission does not have sufficient funds available to allow Commission, in the reasonable exercise of its administrative discretion, to pay for the Work or Work Product; or  
(C) Immediately upon written notice of termination to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that Commission's purchase of the Work or Work Products under this Contract is prohibited or Commission is prohibited from paying for such Work or Work Product from the planned funding source; or

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

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

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

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

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

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

**16. Compliance with Applicable Law.** Contractor shall comply, and cause all subcontractors to comply, with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract and performance of the Work. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated

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from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Commission's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

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

**18. Force Majeure.** Neither Commission nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism or other acts of political sabotage, or war, or any other cause which is beyond the reasonable control of the Commission or the Contractor. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

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

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

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

**22. Severability.** The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

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

### **24. Approvals.**

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

**b. Promotional or Informational Materials and Other Final Communications.** Pursuant to OAR 603-042-0015(6)-(7), Commission reserves the right to approve promotional or informational materials or other final communications prior to their dissemination, and reserves the right to refuse payment for the Work unless it has given approval prior to dissemination.

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Commission’s approval of promotional or informational materials or other final communications may be given upon assurance from Contractor that the promotional or informational materials or other final communications will include an identification statement that the material was paid for entirely or in part by Commission.

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

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

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

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

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

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

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

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

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



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

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

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

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

**(iv)** Certifies that Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>; and

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

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

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

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

**CONTRACTOR** \_\_\_\_\_

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

**STATE OF OREGON acting by and through its OREGON ALBACORE COMMISSION**

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

**APPROVED BY THE OREGON DEPARTMENT OF AGRICULTURE**

Signature		Date	
<b>Print Name</b>	Kristyn Anderson	Title	Commodity Commission Oversight Program Manager

**EXHIBIT A**

**STATEMENT OF WORK**

**I. STATEMENT OF WORK:**

- a. **Authority.** Pursuant to ORS 576.306 and ORS 576.304 (4), Commission may “[e]nter into contracts for carrying out the duties of the commission as set forth in ORS 576.051 to 576.595.”
- b. **General Information.** The Commission is entering into a contract with an independent contractor to provide Marketing/Promotion/Education services as set forth in C. Work Elements.

**c. Work Elements**

The Contractor shall:

1. Provide and maintain the office equipment and space, computer and compatible software, data back-up system, and personnel the Commission considers necessary;
2. Pay, and hold the Commission harmless from, all of the contractor's normal operational expenses, including but not limited to salaries, rents, utilities, taxes and fees (such as income, employment, license or others) and other similar expenses;
3. Maintain compliance with all governmental (local, state, or federal) laws and rules applicable to the operation of Independent Contractor's business;
4. If approved in advance by Commission, travel to assist Commission to fulfill its marketing, promotional, or educational purposes. Contractor will submit request for reimbursement of allowable travel expenses in accordance with Exhibit A, the Sample Administrative Services contract, Section 3 and Section II;
5. Update all information on the Commission’s website;
6. Establish and maintain communications and good working relationships with all Commission’s commissioners;
7. To the extent that the Commission elects, collaborate with other commodity commissions.
8. Develop and implement marketing plans to promote the sale, use, and consumption of Oregon Albacore Tuna regionally and nationally;
  - a. Plan and execute targeted promotions. Contractor must obtain prior approval from Commission for promotional activities;
  - b. Plan and execute trade show presentations. Contractor must obtain prior approval from Commission for participation in trade shows and the message presented;
9. Prepare RFPs for marketing-related projects over \$10,000;
10. Social Media – monitor and respond to issues relevant to our fisheries, engagement, and to maintain an active and robust social media presence;
11. Create and maintain working relationships with chefs and food professionals, restaurant industry, seafood retailers, and others, as well as communicate with various audiences and build relationships with influencers.
12. Distribute point-of-sale materials;
13. Write a minimum of one quarterly press release about the Marketing/Promotional/Educational activities.

- d. **Delivery Schedule** This Contract shall begin and terminate according to Section 1 of the Contract.

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

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum not-to-exceed compensation of \$ \_\_\_\_\_ set forth in Section 3 of the Contract, which includes any allowable expenses and any travel and other expense reimbursement when noted below.
- b. Commission agrees to reimburse Contractor for the following expenses: materials and supplies, printing costs, travel, mileage, freight and postage related to Commission business. Commission shall reimburse expenses only for actual cost charged to Contractor, and shall not reimburse any Contractor markups.
- c. Commission agrees to reimburse Contractor for reasonable travel expenses. The travel must be for Work performed under this Contract only. Contractor shall provide Commission with receipts for all travel expenses incurred for which Contractor seeks reimbursement. Contractor shall be reimbursed according to the rates specified in the Oregon Accounting

EXHIBIT A – OAC RFP – Sample Contract Oregon Albacore Commission

Manual based upon approved state of Oregon rates as of the date Contractor incurs the travel expense. Commission must approve in advance all travel outside Oregon for which Contractor intends to seek reimbursement under this Contract.

**EXHIBIT B**  
**REQUIRED INSURANCE**

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

INDEPENDENT CONTRACTOR CERTIFICATION

A. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

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

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

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

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

B. COMMISSION APPROVAL.

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

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

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

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