

Executive Director Selection Committee Minutes -
February 5, 2019

Conference Call: 515-739-1483 #759869

Committee Members: Ryan Sandhu, Scott Gallegos, Micah Brown, Joyce Nelsen, Chris Grissom, Phil Boyle, and Kitty Davis.

Agenda

1. Announcements and Introductions

- a. Introductions were made.

2. Old Business

- a. Review ED RFP: Ryan sent his draft copy of the RFP to members on February 4th to be reviewed by members today. Ryan stated he used 3 documents to create the draft RFP; previous Call Center RFP, Scope of Work, and draft Contract for Professional Services in Attachments.
(See Attachment 1)

The following are comments, suggestions and edits to be made to RFP:

- Pg.3: remove Attachments A, B & C. Ryan will replace with link to OUNC website.
- Section 1: Presentations will be on Wednesday, May 8th in Wilsonville now.
- Section 2, a.) Provide a monthly report status of *his* or *her* activities...
- Section 2, b.) Discussion of annual report. A copy of 2014 Annual Report was emailed to members.
- Section 2, e.) Suggested to change marketing to public safety or public education and or add 'they will attend these events'.
- Section 2, d.) Ryan will change verbiage where highlighted.
- Section 2.2: Ryan asked members if they should include a specific monthly rate in this section. Was noted on pg. 11, 3.5 states consultant shall submit a monthly invoice. Should they include billable hours, but not to exceed?
- Section 4, C) Operation Team. To use Team might be problematic as members discussed to change to Operation Approach. Blend C and E.
- Section 6, (6.1) Update the date/time to show May 8, 2019 for presentation.
- Section 6.3: Ryan will consider combining C & E.

3. New Business – none

- 4. For the Good of the Order – Ryan asked members to continue reviewing the draft RFP and provide him comments/recommendations/edits prior to next board meeting on February 13, 2019. There will not be a scheduled EDSC meeting next week.

5. Next Meeting - Tuesday, February 19, 2019 at 10:00 a.m.

Minutes submitted by Kitty Davis 02.05.19

Attachment 1

REQUEST FOR PROPOSAL

For

**PROFESSIONAL SERVICES FOR THE
OREGON UTILITY NOTIFICATION CENTER**

Oregon Utility Notification Center
Board of Directors

February 2019

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Ryan Sandhu 1/22/2019 8:50 AM
Comment [1]: Do we want to includes this info?

INTRODUCTION

The Oregon Utility Notification Center Board of Directors (Board) is seeking the services of a qualified vendor to provide professional services to the Board.

The Oregon Utility Notification Center (OUNC) is an independent not-for-profit public corporation and a state agency. The OUNC is managed by a 20 member Governor appointed Board of Directors made up of industry stakeholders.

The successful proposer will assist the Board in implementing the mission of the OUNC, which is to operate and maintain a state of the art One Call system for the State of Oregon to prevent damages to underground facilities and to promote public safety related to excavation issues.

Other key pieces of the scope of work includes: grant procurement, promoting Oregon 811 and Oregon dig law (ORS 757 and OAR 952), marketing, training, and stakeholder outreach. When directed by the Board, the successful proposer will also coordinate the work of the OUNC with the Public Utility Commission (PUC) and support the Board in member recruitment.

This Request for Proposal (RFP) is will be used by the Board to evaluate vendors as to their ability to meet the scope of work and to select the highest rated proposer.

The top rated vendors through this process may be invited to present their qualifications in person to the full Board. The highest rated vendor will be asked to enter into a contract, which is to start on a date negotiated by the Board and vendor and will cover a period of four years with the possibility of a one year extension.

SECTION 1: *Submittal of Proposal*

Proposals must be received no later than **Wednesday, March 15, 2019** by 5:00 p.m. PST. In addition to the committee receiving your proposal, the vendors with the highest rated proposals may be asked to present their proposal to the Board. Vendors with the highest rated proposals will be contacted by **March 22, 2019**. Each vendor will have 45 minutes to present to the Board. Presentations will be on **Wednesday, April 10, 2019 at the Clarion Inn, 1249 Tapadera Avenue, Ontario, Oregon between 9:00am and 3:00pm.**

Proposals shall be mailed or emailed to:

Kitty Davis
Administrative & Outreach Coordinator
305 N.E. 102nd Avenue, Suite 300
Portland, OR 97220
kitty@digsafelyoregon.com

Call or email Kitty Davis with questions.

An authorized representative of the vendor shall sign the Proposal and include the name and address of the Vendor. The email shall be plainly marked "Proposal – Professional Services".

SECTION 2: *Scope of Work*

2.1 GENERAL

Consultant shall deliver the following professional services to assist the Board in carrying out its statutory mission and obligations, consistent with state and federal legal requirements:

- a. Provide a monthly status report of activities at the monthly OUNC Board of Directors meetings.
- b. Prepare a draft report for the Governor's Office of Boards and Commissions on membership, activity updates, and legislative concepts. The draft report shall be presented to the Board.
- c. Prepare a draft annual report on the performance and accomplishments of OUNC activities, and operations and services provided by the OUNC from the previous calendar year. Reporting shall comply with the provisions of ORS 192.230 to 192.250 and be presented to the Board.
- d. Review utility damage information data to develop and implement annual public relations and advertising strategies including branding, media advertising plans, website and public service announcements. Contractor shall facilitate media buying, including contract preparation, track results and provide outreach results.

OUNC agrees to reimburse Consultant for all media buying expenses that OUNC has pre-approved and Consultant incurs under this Contract.

- e. Advise and report to the Board on marketing events which include by are not limited to trade shows, industry associations, sponsorships, publicity events, damage prevention trainings, seminars and local, state, and national meetings.
- f. Advise the Board on State and Federal legislation and regulations that could affect OUNC members and the Board and shall lobby the Oregon Legislature as requested by OUNC. Track legislation that may affect OUNC and report orally and in writing to the Board on changes in legislation and regulations. Facilitate the legislative process and advise the Board on items to consider that may be relevant and may impact the operations of OUNC as related to proposed legislation, general administration of Oregon Revised Statutes, Oregon Administrative Rules, OUNC policy and procedures and bylaws.

- g. Identify and prepare grant proposals at the direction of the Board, provide progress and status reports on grant proposals, complete grant reporting requirements, and review use of grant funds to ensure compliance with grant requirements including Federal procurement regulations when required.
- h. Advise the Board on matters related to Oregon Public Meeting Law (**ORS 192.610 to 192.690**) and Government Ethics Laws (ORS Chapter 244). Identify, arrange for and facilitate training related to these topics for Board members as needed r.
- i. Monitor the OUNC's public records retention and disclosure processes and recommend records retention policies and procedures to the Board, consistent with the Oregon Public Records Law (ORS 192.410 through 192.505). Assist with implementation of recommendations as directed by the Board.
- j. Identify and recommend to the Board new members to fulfill ORS 757.547 when a position is open. Prepare and facilitate new Board member orientation. Coordinate and facilitate training for all Board members as needed.
- k. Assist the Board with established policies and procedure compliance and prepare updates to the Board Policy and Procedure Manual when required.
- l. Provide coordination services for OUNC's requests for proposals, and shall provide contract administration services and performance evaluation of call center operations. Consultant also shall provide marketing services, media buying services, and shall at regular intervals recommend content for OUNC's website to facilitate broadcast of OUNC activities publicity and messages related to its mission and legal obligations.

Consultant shall deliver all Services (including Work Product) to OUNC according to the delivery schedule developed and agreed to by the parties. Each delivery schedule developed and agreed to by the parties is deemed amended into this Contract and can be revised by written agreement of the parties.

2.2 CONTRACT PAYMENT SCHEDULE

Vendor will invoice the OUNC as specified in the section 3 of the Contract included as Appendix D.

SECTION 3: *Proposal Instructions*

3.1 GENERAL INFORMATION

- A. The vendor shall submit a definitive Proposal for the end results set forth in the Scope. Proposals shall describe the vendor’s qualifications, intended method of performing the Scope of Work, and the resources required to perform the activities. The selected vendor must have demonstrated a minimum of five years experience in the damage prevention industry, the utility notification industry, utilities, engineering, public administration or business.

- B. The vendor must have employee(s) available with demonstrated skills in damage prevention industry.

- C. Qualifications that merely repeat requirements of the Scope of Work will be considered non-responsive to this request and will not be considered.

3.2 RIGHT OF AWARD OR REJECTION

Proposals shall specifically stipulate that all terms and conditions contained in this RFP are included in the Proposal and accepted by the vendor. It is understood that the Proposal will become a part of the public file on the matter without obligation to the Board. The Board reserves the right to reject any or all proposals for good cause, in the public best interest.

3.3 INCURRING COSTS

The Board is not liable for any costs incurred by the vendor in the preparation or presentation of the proposal.

SECTION 4: *Proposal Contents*

Each Proposal shall include, at the minimum, the following items:

- A. Cover sheet

 This is a pass/fail item included in the technical criteria in Section 6.2.

- B. Vendor’s Capabilities

 The response must include all past experience or contracts relating to damage prevention, utility notification, utilities, engineering, public administration or business with a list of clients or employers. The experience should address the following:

- Similar work, by type and location, performed within the last five years, that best characterizes work quality and cost control
- Internal procedures and/or policies related to work quality and cost control
- Management and organizational structure
- Other ongoing projects

C. Operation Team

Provide the following information related to the qualifications of the team that would be assigned to this Contract:

- The name of the person(s) authorized to represent the Vendor in any negotiations and to sign any contract that may result
- Names of key persons who will be performing the work and their responsibilities
- Current resume including qualifications and relevant individual experience
- Experience as a team on similar scopes of work.

D. Operations Understanding

Include a statement from the Vendor addressing the objectives of the Scope of Work and OUNC's mission. If the Vendor chooses to propose modifications to the Scope of Work section, those modifications shall be explained.

E. Methodology

Describe the action plan to meet the objectives outlined in the scope of work. It should include the proposed development, major tasks, timelines, and staff assignments, and proposed budget.

The vendor shall have the financial resources for the performance of the contract, or the ability to obtain such resources. The vendor shall also have adequate equipment available, such as computer and telecommunication equipment.

F. Supportive Information

Supportive material may include graphs, charts, photos, resumes, additional references, etc. This may also include familiarity with local geographical, governmental, and regulatory considerations.

G. Pricing Proposal

Vendor shall provide a proposed...

Ryan Sandhu 2/4/2019 4:34 PM
Comment [2]: How do we want to structure cost proposal?

SECTION 5: Proposal Format and Length

The Proposal must not exceed 30 pages, excluding the required cover sheet. The Proposals must be organized in accordance with the list of Proposals contents as described in Section 4.

One page is considered to be one side of a single 8 ½” x 11” page, and the minimum font size is 12 point for the text (consultants may use their discretion for other materials, e.g., graphics). Firms using a type smaller than 12 point shall be considered non-responsive.

SECTION 6: Proposal Evaluation and Vendor Acceptance

6.1 GENERAL INFORMATION

A. A Selection Committee of at least three Board members will be appointed to evaluate the Proposals received. The Committee will select the top vendors to present their proposals to the Board. Proposal presentations will be conducted for qualifying vendors on Wednesday, April 10, 2019 at the Clarion Inn, 1249 Tapadera Avenue, Ontario, Oregon between 9:00am and 3:00pm. Vendors will have an assigned 45 minute time to present their proposals to the committee.

B. The Proposals will be evaluated on the completeness and quality of content as described in Section 4 and the corresponding evaluation criteria described in this section.

6.2 TECHNICAL CRITERIA

The items listed below are pass/fail criteria. Proposals without the following information will be considered non-responsive and will not be evaluated.

- A. Completed cover sheet
- B. Firm’s background, qualifications, and general experience (also a scored criterion)
- C. Operation Team (also a scored criterion)
- D. References (also a scored criterion)

6.3 EVALUATION CRITERIA

The section identifies the evaluation criteria and their respective weighted values depicting what the Board feels is most important. Each Proposal will be limited in length and judged as a demonstration of the vendor’s capabilities and understanding of the services requested. Firms submitting more than the specified number of pages will be considered non-responsive and their statements will not be considered.

Evaluation criteria and weighted values will be as follows (maximum number of pages for each criterion is left to the Vendor’s discretion but must not exceed the specified total):

Ryan Sandhu 2/4/2019 4:36 PM
Comment [3]: Might have to wait until May meeting.

Criteria	No of Pages	Weighted Value
A. Cover Sheet		0
B. Firms' Capabilities/References		20
C. Operation Team		10
D. Operation Understanding		15
E. Methodology		25
F. Supportive Information		5
G. Pricing Proposal		25
Total Not to Exceed	30	100

SECTION 7: *Inquires*

All questions shall be submitted electronically, no later than **March 1, 2019** to: kitty@digsafelyoregon.com

As appropriate, questions and answers will be provided electronically to all vendors who received the RFP no later than **March 8, 2019**.

SECTION 8: *General Information*

The top vendors will be invited to present Proposals for operating the Center on **April 10, 2019**.

The successful vendors must have Workers Compensation Insurance covering work in Oregon. The successful vendors must also submit documents addressing insurance, non-collusion, tax law, debarment and conflict of interest as part of the personal service contract.

| Partnering between the ultimately successful Vendor and the Board is encouraged.

Ryan Sandhu 2/4/2019 4:40 PM
Comment [4]: Update dates once ready to make public

CenturyLink Employ..., 1/28/2016 2:51 PM
Deleted: -

STATE OF OREGON PROFESSIONAL SERVICES CONTRACT

This contract for professional consulting services ("**Contract**") is between the State of Oregon ("**State**"), acting by and through the Oregon Utility Notification Center and its board of directors ("**OUNC**"), and *To Be Determined*, an Oregon corporation ("**Consultant**"). OUNC's Contract Administrator for this Contract is identified in section 19.

1. Contract Term. This Contract is effective on June *TBD*, 2019 and continues through June *TBD* 2024, unless earlier terminated or extended. The parties may extend the term of this Contract for one year extensions, or for a two year extension, for a total term not to exceed seven (7) years (through June *TBD*, 2026). Contract termination does not extinguish or prejudice OUNC's right to enforce this Contract with respect to any default by Consultant that has not been cured.

2. Statement of Work; Key Persons.

2.1. Statement of Work. Consultant shall provide the consulting services and deliver all associated deliverables ("Work Product") described in Exhibit A, Statement of Work, which is attached and incorporated into this Contract. All services and Work Product together are "Services."

2.2. Key Persons. Consultant and OUNC agree that Consultant's employee, *TBD*, is the individual whose special qualifications and involvement in Consultant's performance of Services form part of the basis of agreement between the parties for this Contract, and is the individual through whom Consultant shall provide to OUNC the expertise, experience, judgment, and personal attention required to perform Services ("Key Person"). Neither Consultant nor Key Person shall delegate performance of Services Key Person is required to perform under this Contract to others without first obtaining OUNC's written consent. Further, Consultant shall not, without first obtaining OUNC's prior written consent, re-assign or transfer Key Person to other duties or positions so that the Key Person is no longer available to provide OUNC with that Key Person's expertise, experience, judgment, and personal attention. If Consultant requests OUNC to approve a re-assignment or transfer of Key Person, or add one or more Key Persons to this Contract, OUNC shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement or additional Key Person. Any individual who OUNC approves as a replacement or additional Key Person is deemed a Key Person under this Contract.

3. Consideration.

3.1. As payment in full for Services, OUNC shall pay Consultant *To Be Determined* per month for the first twelve (12) months of the Contract. For each subsequent twelve (12) month period, OUNC shall pay Consultant the monthly amount payable for the immediately preceding twelve (12) months plus three percent (3%) of that monthly amount.

3.2 OUNC will not reimburse Consultant for any expenses Contractor incurs under this Contract unless specified elsewhere in this Contract.

3.3 The maximum amount payable to Consultant under this Contract for all payments pursuant to Section 3.1 is nine hundred forty-nine thousand five hundred dollars (\$949,500) plus the total amount of increase resulting from increases in the monthly amount payable under to section 3.1, and the amount of media buying expenses authorized for reimbursement under section I. of Exhibit A. Consultant shall not submit invoices for, and OUNC is not obligated to pay, any compensation in excess of this amount. If this maximum amount is increased by Contract amendment, the amendment must be fully effective before Consultant performs any Services subject to the amendment.

3.4 OUNC is not obligated to pay Consultant for any Services unless such Services conform to the warranties and other terms of this Contract.

3.5 Consultant shall submit monthly invoices to OUNC's Contract Administrator for Services Performed. Consultant shall describe in each invoice all Services performed, the dates of performance, and by whom such Services were performed, and shall itemize and explain all authorized expenses for which Consultant claims reimbursement. Consultant shall mail invoices to OUNC at the address specified in section 19.

3.6 OUNC shall pay Consultant one thousand dollars (\$1000) as a late fee for invoices that are not paid in full within five (5) days following their due date and interest at 5% per month on invoice amounts that are not paid in full within thirty (30) days following their due date.

4. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, Exhibit A, Statement of Work, and Exhibit B, Insurance Requirements. Exhibit A and Exhibit B are attached and incorporated into this Contract.

5. Independent Contractor; Responsibility for Taxes and Withholding.

5.1. Consultant performs all Services as an independent contractor. Consultant is not an "officer," "employee," or "agent" of the State, as those terms are used in ORS 30.265. Consultant is responsible for determining the appropriate means and manner of performing the Services.

5.2. If Consultant is currently performing work for the State or the federal government, then by signature to this Contract, Consultant represents and warrants to OUNC that:

Consultant's performance of Services under this Contract creates 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 Consultant currently performs work would prohibit Consultant's performance of Services under this Contract.

5.3. Consultant shall pay all federal and state taxes applicable to compensation or payments paid to Consultant under this Contract and, unless Consultant is subject to backup withholding, OUNC will not withhold from such compensation or payments any amounts to cover Consultant's federal or state tax obligations. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under this Contract, except as a self-employed individual.

6. Subcontracts, Successors, and Assignments. Consultant shall not enter into any subcontracts for any of the Services required by this Contract without OUNC's prior written consent. OUNC's consent to any subcontract does not relieve Consultant of any of its duties or obligations under this Contract. 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. Consultant shall not assign, delegate or transfer any of its rights or obligations under this Contract without OUNC's prior written consent.

7. No Third Party Beneficiaries. OUNC and Consultant 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 is 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 Payments. Consultant will not be compensated by any other agency or department of the State for Service performed under this Contract. OUNC certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within OUNC's appropriation or limitation.

9. Representations and Warranties.

9.1. Consultant's Representations and Warranties. Consultant represents and warrants to OUNC that:

9.1.1. Consultant has the power and authority to enter into and perform this Contract;

9.1.2. This Contract, when executed and delivered, is a valid and binding obligation of Consultant enforceable according to its terms;

9.1.3. Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Consultant will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and according to standards

prevalent in Consultant's industry, trade or profession; and

9.1.4. Consultant is and will be at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform the Services.

9.2. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

10. Ownership of Work Product; Confidentiality.

10.1. Ownership of Work Product. All Work Product is the exclusive property of OUNC. Consultant hereby irrevocably assigns to OUNC all of its rights, title, and interest in and to any and all of such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Consultant forever waives any and all rights relating to such 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. OUNC forever waives any and all rights relating to such Work Product developed independently from Statement of Services.

10.2. Confidentiality. Consultant acknowledges that Consultant and its employees or agents may, in the course of performing Services under this Contract, be exposed to or acquire communication that is confidential, privileged communication not intended to be disclosed to third parties.

Consultant agrees that any Work Product created by Consultant and all information of any form obtained by Consultant or its employees or agents in the performance of this Contract is deemed

"Confidential Information" of OUNC. Confidential Information does not include information which is or becomes (other than by disclosure by Consultant) publicly known.

Consultant agrees to hold such Confidential Information in strict confidence and to not copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such information for any purposes whatsoever other than the provision of Services to OUNC. Consultant agrees to advise each of its employees and agents of their obligations to keep such information confidential.

11. Indemnity.

11.1. CONSULTANT'S INDEMNITY. CONSULTANT SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON, OUNC, 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 THE ALLEGED NEGLIGENT OR WILLFUL ACTS, OMISSIONS, OR ANY BREACH OF THIS

CONTRACT BY THE CONSULTANT OR ITS OFFICERS, EMPLOYEES, SUBCONSULTANTS, OR AGENTS UNDER THIS CONTRACT.

11.2. CONTROL OF DEFENSE AND SETTLEMENT. CONSULTANT SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTION 11.1; HOWEVER, NEITHER CONSULTANT NOR ANY ATTORNEY ENGAGED BY CONSULTANT 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 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 CONSULTANT SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IF THE STATE OF OREGON DETERMINES THAT CONSULTANT 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.

11.3. STATE'S INDEMNITY. SUBJECT TO THE LIMITATIONS OF ARTICLE XI, § 7 OF THE OREGON CONSTITUTION AND THE OREGON TORT CLAIMS ACT (ORS 30.260 THROUGH 30.300), THE STATE SHALL INDEMNIFY, WITHIN THE LIMITS OF AND SUBJECT TO THE RESTRICTIONS IN THE TORT CLAIMS ACT, THE CONSULTANT AGAINST ANY LIABILITY FOR PERSONAL INJURY OR DAMAGE TO LIFE OR PROPERTY ARISING FROM THE STATE'S NEGLIGENT ACTIVITY UNDER THIS CONTRACT PROVIDED, HOWEVER, THE STATE SHALL NOT BE REQUIRED TO INDEMNIFY CONSULTANT FOR ANY SUCH LIABILITY ARISING OUT OF THE WRONGFUL ACTS OF CONSULTANT, ITS OFFICERS, EMPLOYEES OR AGENTS.

12. Insurance. Consultant shall maintain the insurance coverage specified in Exhibit B, Insurance.

13. Termination.

13.1. Termination by OUNC for Convenience. At its sole discretion, OUNC may terminate this Contract for its convenience upon sixty (60) days written notice to Consultant.

13.2. Termination by OUNC for Cause. In addition to any other rights and remedies OUNC may have under this Contract, OUNC may terminate this Contract, in whole or in part, immediately upon written notice to Consultant, or at such later date as OUNC may establish

in such notice, upon the occurrence of any of the following events:

13.2.1. Funding from federal, state, or other sources is not obtained and continued at levels sufficient to pay for Consultant's Services;

13.2.2. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Contract is prohibited or OUNC is prohibited from paying for such Services from the planned funding source;

13.2.3. Consultant no longer holds a license or certificate that is required for it to perform the Services; or

13.2.4. Consultant commits any material breach or default of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the requirements and warranties provided herein, or so fails to pursue the Services as to endanger Consultant's performance under this Contract according to its terms, and such breach, default or failure is not cured within ten (10) business days after delivery of OUNC's notice or such longer period as OUNC may specify in such notice.

13.3. Termination by Consultant. Consultant may terminate this Contract if OUNC fails to pay Consultant any amount pursuant to the terms of this Contract, and OUNC fails to cure such failure within thirty (30) days after Consultant's notice of termination for nonpayment, or such longer period as Consultant may specify in such notice.

13.4. Contract termination pursuant to this section 13 shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. However, upon receiving a notice of termination under this section 13, Consultant shall immediately cease all activities under this Contract, unless expressly directed otherwise by OUNC in the notice of termination. Further, upon termination, Consultant shall deliver to OUNC all documents, information, works-in-progress, Work Product, and other property that is or would be deliverables had this Contract been completed.

14. Records Maintenance; Access. Consultant shall maintain all financial records relating to this Contract according to generally accepted accounting principles. In addition, Consultant shall maintain any other records pertinent to this Contract in such a manner as to clearly document Consultant's performance. Consultant acknowledges and agrees that OUNC, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Consultant that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings 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.

15. Compliance with Applicable Law. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract.

16. Force Majeure. State and Consultant are not liable for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of the State or Consultant, respectively. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

17. 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, 7, 8, 9, 10, 11, 13, 14, 17, 22, and 23.

18. Time is of the Essence. Consultant agrees that time is of the essence under this Contract.

19. Notice. Except as otherwise expressly provided in this Contract, any notices between the parties that relate to this Contract must be given in writing, personal delivery, express courier, facsimile, or United States Postal Service, postage prepaid, to Consultant or the OUNC Contract Administrator at the address or number set forth below, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any notice so addressed and mailed is effective five (5) days after the postmark date. Any notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of a 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 OUNC, Consultant must confirm by telephone call to OUNC's Contract Administrator, OUNC's receipt of any notice transmitted by facsimile. Any notice given by personal delivery is effective immediately if delivery is made to the following individuals:

IF TO OUNC:	IF TO CONSULTANT
_____ Contract Administrator Address: (503) xxxxxxxxx (503) xxxxxxxxx Email:	Name: Address: () (voice) () (fax) Email:

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

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

22. Choice of Law; Mediation; Designation of Forum; Federal Forum.

22.1. Choice of Law. 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, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

22.2. Mediation. Should any dispute arise between the parties concerning this Contract which is not resolved by mutual agreement, the parties agree that the dispute will be submitted to mediation as a condition precedent to any party commencing litigation. In such an event, the parties agree to participate in good faith in a process in which a mediator assists and facilitates the parties in reaching a mutually acceptable resolution of the controversy. The mediator has no authority to force a settlement on the parties. The mediator is to be selected by mutual agreement of the parties, but in the absence of such agreement, each party shall select a temporary mediator and those mediators will jointly select the permanent mediator. All cost of mediation are to be borne equally by the parties; provided, however, OUNC is not required to pay mediation costs unless it is able to enter a personal services contract with the mediator in a form and amount reasonably so stating to Agency. The schedule and time allowed for mediation must be acceptable to both parties. The parties shall comply with the statutes and administrative rules governing the confidentiality of mediation, including OAR 410-006-0011, when attempting to mediate a dispute under this Contract.

22.3. Designation of Forum. Any claim, action, suit or proceeding (collectively, "Claim") between OUNC (or any other agency or department of the State) and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the State of Oregon for Marion County. Consultant 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.

22.4. Federal Forum. Notwithstanding section 22.3, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim

brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

23. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, regarding this Contract that are not specified in this Contract. No waiver, consent, modification or change of terms of this Contract binds all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given. The failure of OUNC to enforce any provision of this Contract does not constitute a waiver by OUNC of that or any other provision.

24. Consultant Data and Certification.

24.1. Consultant Tax Identification Information. Consultant shall provide Consultant's Social Security number or Consultant's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385. 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

Business Designation (check one):

Corporation Partnership Limited Partnership Limited Liability Company
 Limited Liability Partnership Sole Proprietorship Other: _____

Federal Tax ID#: _____ or SSN#: _____
Oregon State Tax ID#: _____

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

24.2 Certification. The individual signing on behalf of Consultant certifies under penalty of perjury that: (a) the number shown above is Consultant's correct taxpayer identification and the other information provided is correct; (b) Consultant is not subject

to backup withholding because (i) Consultant is exempt from backup withholding, (ii) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; (c) the individual is authorized to act on behalf of Consultant, has authority and knowledge regarding Consultant's payment of taxes, and to the best of the individual's knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes and Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305,620.

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

Consultant:

By: _____ Date: _____

Name: _____

Title: _____

**State of Oregon acting by and through the:
Oregon Utility Notification Center**

By: _____ Date: _____

Name: _____

Title: _____

EXHIBIT A

SCOPE OF WORK

Consultant shall deliver the following professional services to assist the Board in carrying out its statutory mission and obligations, consistent with state and federal legal requirements:

- a. Provide a monthly status report of activities at the monthly OUNC Board of Directors meetings.
- b. Prepare a draft report for the Governor's Office of Boards and Commissions on membership, activity updates, and legislative concepts. The draft report shall be presented to the Board.
- c. Prepare a draft annual report on the performance and accomplishments of OUNC activities, and operations and services provided by the OUNC from the previous calendar year. Reporting shall comply with the provisions of ORS 192.230 to 192.250 and be presented to the Board.
- d. Review utility damage information data to develop and implement annual public relations and advertising strategies including branding, media advertising plans, website and public service announcements. Contractor shall facilitate media buying, including contract preparation, track results and provide outreach results.

OUNC agrees to reimburse Consultant for all media buying expenses that OUNC has pre-approved and Consultant incurs under this Contract.

- e. Advise and report to the Board on marketing events which include by are not limited to trade shows, industry associations, sponsorships, publicity events, damage prevention trainings, seminars and local, state, and national meetings.
- f. Advise the Board on State and Federal legislation and regulations that could affect OUNC members and the Board and shall lobby the Oregon Legislature as requested by OUNC. Track legislation that may affect OUNC and report orally and in writing to the Board on changes in legislation and regulations. Facilitate the legislative process and advise the Board on items to consider that may be relevant and may impact the operations of OUNC as related to proposed legislation, general administration of Oregon Revised Statutes, Oregon Administrative Rules, OUNC policy and procedures and bylaws.
- g. Identify and prepare grant proposals at the direction of the Board, provide progress and status reports on grant proposals, complete grant reporting requirements, and review use of grant funds to ensure compliance with grant requirements including Federal procurement regulations when required.
- h. Advise the Board on matters related to Oregon Public Meeting Law (**ORS 192.610 to 192.690**) and Government Ethics Laws (ORS Chapter 244). Identify, arrange for and facilitate training related to these topics for Board members as needed r.

- i. Monitor the OUNC's public records retention and disclosure processes and recommend records retention policies and procedures to the Board, consistent with the Oregon Public Records Law (ORS 192.410 through 192.505). Assist with implementation of recommendations as directed by the Board.
- j. Identify and recommend to the Board new members to fulfill ORS 757.547 when a position is open. Prepare and facilitate new Board member orientation. Coordinate and facilitate training for all Board members as needed.
- k. Assist the Board with established policies and procedure compliance and prepare updates to the Board Policy and Procedure Manual when required.
- l. Provide coordination services for OUNC's requests for proposals, and shall provide contract administration services and performance evaluation of call center operations. Consultant also shall provide marketing services, media buying services, and shall at regular intervals recommend content for OUNC's website to facilitate broadcast of OUNC activities publicity and messages related to its mission and legal obligations.

Consultant shall deliver all Services (including Work Product) to OUNC according to the delivery schedule developed and agreed to by the parties. Each delivery schedule developed and agreed to by the parties is deemed amended into this Contract and can be revised by written agreement of the parties.

EXHIBIT B

INSURANCE REQUIREMENTS

During the term of this Contract, Consultant must maintain in force at its own expense, each insurance noted below:

(OUNC must check boxes for #2, #3, & #4 as to whether insurance is required or not.)

1. **Required by OUNC of Consultants with one or more workers, as defined by ORS 656.027.**
Workers' Compensation: All employers, including Consultant, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Consultant shall require and ensure that each of its sub-consultants complies with these requirements.

2. **Required by OUNC** **Not required by OUNC**
Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000 \$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.

3. **Required by OUNC** **Not required by OUNC**
General Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000 \$500,000 \$1,000,000 \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the State of Oregon, Department of Justice and their divisions, officers and employees are Additional Insureds, but only with respect to the Consultant's Services to be provided under this Contract.

4. **Required by OUNC** **Not required by OUNC**
Automobile Liability insurance with a combined single limit, or the equivalent, of not less than
 Oregon Financial Responsibility Law (ORS 806.060) \$200,000
 \$500,000 \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Consultant or its insurer(s) to

OUNC.

6. **Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Consultant shall furnish acceptable insurance certificates to OUNC prior to commencing the work. 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 Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions or self-insurance.