

**Contract
Between the
State of Washington
Office of Independent Investigations
and**

This Contract, OII Contract No. _____ is made and entered into by and between the State of Washington, Office of Independent Investigations, and its Human Resources service provider, The Office of Financial Management hereinafter referred to as the "AGENCY" and the below-named firm and its Subcontractors hereinafter referred to as "CONTRACTOR."

Name
Address
City, State, ZIP
Phone Number
Email Address

1. PURPOSE

The purpose of this Contract is for CONTRACTOR to provide pre-employment background investigations for the Office of Independent Investigations for positions such as Investigators, Senior Investigators, and Regional Supervisors positions.

2. SCOPE OF WORK

The CONTRACTOR will perform a variety of background screenings as requested by the Agency.

The CONTRACTOR will furnish all labor, materials, supplies, equipment, and supervision necessary for the completion of all background screening services specified.

The CONTRACTOR shall provide professional and technical services to produce candidate materials, reports in accordance with contemporary federal and state employment statutes and guidelines, principles and practices in the field of background screening services consistent with OII's statutory obligations for hiring investigators pursuant to RCW 43.101.095 and standard law enforcement hiring practices

The procedures and methods to be used by the company for background screening services must conform with all current federal and state employment statutes and guidelines governing public agency human resource administration, to include Title VII of Chapter 42 of the United States Code Equal Employment Opportunity Commission Uniform Guidelines on Employment Selection Procedures, Americans with Disabilities Act Amendment Act, Department of Labor Fair Labor Standards Act, Fair Credit Reporting Act et al.

To this end, the procedures must be free from non-job-related factors which might function as biases against any group on the basis of race, color, religion, sex, age, genetic information, national origin, disability, or any other classification protected by law.

The CONTRACTOR will certify it has no actual or potential conflicts of interest that may negatively impact the integrity of an investigation or the results of such screening.

Due to the critical need to fill positions in a timely manner, all background checks are to be completed no later than two months after receiving a request unless otherwise specified by the Agency.

Written notification to the Agency representative is required if there is a delay that may cause additional time for results.

The CONTRACTOR shall provide an investigative background screening program consisting of the following, collectively referred to as “**Services**”:

1. Employment Verification: Verify current and previous employment
2. Reference Checks: Contact personal and professional references
3. Credit Check/Prior Address History
4. U. S. Federal Court Records: Search the candidate’s background for evidence of criminal proceeding within the appropriate Federal District
5. Public records searches, including national and local criminal and civil searches, and sex offender registries
 - i. The sex offender registration search should include offense, date, any violation of registry, and photo (if available)
6. Educational Degree Validation via National Student Clearinghouse: Verify the candidate’s enrollment and/or verify degree conferred at educational institutions indicated by applicant, including major and minor courses of study, type of degree, degree earned, and state of issue
7. Professional Licensure and Credential Verification available in public data bases: Verify the candidate has been issued a professional license and credential (such as, but not limited to, healthcare, legal, CPA, etc.) as established by applicable national, state, and/or professional organization, including the current status of license, issue date, expiration date and record of disciplinary action for classifications requiring special licensing
8. Motor Vehicle Report: Verify the candidate has a valid driver’s license
9. Personal interviews, including:
 - i. one-on-one comprehensive virtual/in-person interview with the candidate.
 - ii. Telephonic/virtual interview of significant references (approx. 6-10 telephonic interviews). May conduct in-person interviews as requested by client agency, including current employer, co-workers, etc.
 - iii. Interview second tier and developed references as necessary.
10. Internet research/data mining, including social media and online presence of candidate. (See also 12(d) below.)
11. Specific inquiries into investigators must include:
 - a. Work history to determine if any sustained finding of serious misconduct and/or a pattern of sustained complaints exists, and a personal history to identify demonstrable incidents of bias or prejudice, racism, or discrimination against any protected class of individuals.
 - i. Examples of disqualifying sustained misconduct and/or personal history include, but are not limited to:
 1. Discrimination of any type, based on protected classes identified under RCW 49.60.030(1).

2. Fraud and abuse of authority including, but not limited to: Falsifying an official police record or making a false statement, ACCESS (a centralized computer enforcement service system) violations, obtaining or disclosing confidential information, and excessive use of force.
 3. Dishonorable behavior including, but not limited to: Harassment, bullying, aggressive or intimidating behavior, or threats of violence, including domestic violence.
12. The following additional areas will be reviewed for former law enforcement candidates in order for OII to meet its obligations under RCW 43.101.095, including:
 - a. All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment;
 - b. Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;
 - c. Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in the Criminal Justice Commission policy;
 - d. A review of the applicant's social media accounts;
 - e. Verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident.

3. Deliverables

For each candidate, the screening process will result in a Background Investigation and Report provided to the Agency. CONTRACTOR may provide a debrief to the Agency as well.

Each Candidate Report Summary will include at least:

1. A summary report to the agency
2. A summary of interviews
3. Records check reports
4. Personal History Statement
5. Personal History Questionnaire Report
6. Supporting Documents, Certificates

CONTRACTOR is considered a third-party credit reporting agency under the Fair Credit Reporting Act (FCRA), which limits CONTRACTOR's ability to report about any adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years of an individual whose anticipated annual salary is below \$75,000 (salary and anticipated overtime) currently, or as updated by FCRA in the future.

CONTRACTOR will contact the Agency at any point during a candidate's background investigation when potentially disqualifying information is obtained.

4. Request to Perform Investigation Process

The Agency will submit a request for a Background Investigation and Report to the CONTRACTOR to initiate Services. In the event OII agrees to end the investigation upon receipt of the disqualifying information, it will only pay for work performed by the CONTRACTOR to the point of the disqualification and upon receipt of the final report documenting work performed and agency's decision to disqualify.

The CONTRACTOR will secure prior approval for in-person, on-site services or for travel outside of the State of Washington.

The Agency will provide CONTRACTOR with any relevant information on each candidate, which may include a copy of the Agency's employment application completed by the candidate, contact information, waivers, or any special requests.

5. Standard of Care Performing the Services

CONTRACTOR warrants that (a) it and each of its employees, consultants, and subcontractors, if any, that it uses to provide and perform Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the services in accordance with this Contract; and (b) the Services will be performed for and delivered to in a good, diligent, professional manner in accordance with industry standards. CONTRACTOR will maintain its status as a licensed Private Investigative Agency in the State of Washington.

The CONTRACTOR expressly agrees and warrants that the CONTRACTOR has acquired all tests and written materials utilized in accordance with the appropriate copyright agreements and laws and that it has a valid right to use and administer any written materials and tests in accordance with such agreements and laws.

6. Candidate Use of Web Portal

Potential Agency candidates will be sent by the Agency to the CONTRACTOR's online web portal for data collection. On the CONTRACTOR's website, the potential candidate will complete a Personal History Statement; Personal History Questionnaire notarizes signatures; and necessary waiver and notification forms.

The data collected by the CONTRACTOR from the candidate is Confidential Information. "Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW, that is sensitive in nature or private, that is submitted by a candidate to the CONTRACTOR or protected by other federal or state laws. Confidential Information is considered Category 3 or 4 based on the sensitivity of the data pursuant to the Security policy and standards promulgated by the Office of the State of Washington Chief Information Officer (OCIO) and included in OCIO Standard No. 141.10.

CONTRACTOR may collect Confidential Information and associated computer-generated data for the sole purpose of providing the Services in this Agreement. No additional use of the Confidential Information is permitted. Confidential Information will not be published, used, repurposed to a non-public safety agency, or disclosed for purposes not directly related to this Contract.

7. Data Protection and Confidentiality

The CONTRACTOR must ensure privacy and confidentiality of the Confidential Information associated with background screening Services to the extent required by all Federal and State law(s) and warrants it is complying with industry-standard security standards.

CONTRACTOR must protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification, or loss. This duty requires the CONTRACTOR to employ reasonable security measures, which include restricting access to the Confidential Information by:

- a. Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

- b. Physically securing any computers, documents, or other media containing the Confidential Information.

8. Data Breach

The compromise or potential compromise of Confidential Information on PST's data site that may be a breach that requires notice to affected individuals under RCW 42.56.590, RCW 19.255.010, or any other applicable breach notification law or rule must be reported to the Contract Manager within one (1) business day of knowledge of incident.

- a. If the CONTRACTOR does not have full details about the incident, it will report what information it has and provide full details within 15 business days of discovery. To the extent possible, these initial reports must include at least:
 - i. The nature of the unauthorized use or disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;
 - ii. A description of the types of information involved;
 - iii. The investigative and remedial actions the Receiving Party or its Subcontractor took or will take to prevent and mitigate harmful effects and protect against recurrence;
 - iv. Any details necessary for a determination of whether the incident is a breach that requires notification under RCW 19.255.010, RCW 42.56.590, or any other applicable breach notification law or rule.
 - v. Any other information [Agency] reasonably requests.
- b. The CONTRACTOR must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or the Agency.
- c. If notification to individuals must, in the sole judgement of the Agency, must be made CONTRACTOR will further cooperate and facilitate notification to required parties, which may include notification to affected individuals, the media, the Attorney General's Office, or other authorities based on applicable law.
- d. At the Agency's discretion, CONTRACTOR may be required to directly fulfill notification requirements, or if the Agency elects to perform the notifications, Receiving Party must reimburse the Agency for all associated costs.
- e. CONTRACTOR is responsible for all costs incurred in connection with a security incident, privacy breach, or potential compromise of Data, including:
 - i. Computer forensics assistance to assess the impact of a Data Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws;
 - ii. Notification and call center services for individuals affected by a security incident or privacy Breach, including fraud prevention, credit monitoring, and identify theft assistance; and
 - iii. Regulatory defense, fines, and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).
- f. CONTRACTOR's obligations regarding breach notification survive the termination of this Contract and continue for as long as CONTRACTOR maintains the any Confidential Information and for any breach or potential breach, at any time.

9. Data Deletion

The CONTRACTOR shall maintain complete written records of its files pertaining to candidates for two years following the background check, in accordance with the Fair Credit Reporting Act statute of limitations. Unless otherwise required by law, CONTRACTOR will delete Confidential Information, including reports and Deliverables as soon as the purpose of providing the Service has been fulfilled but no later than 60 days after confirmation that the Agency has downloaded and obtained all records and Deliverables.

10. Access to Online Results

Results of all background checks will be sent via a secure method available on the CONTRACTOR's online portal to the appropriate Agency representative as soon as available.

The Agency will have secured viewing for real-time access to information (such as, but not limited to, status of requests and historical access of previously collected information on the CONTRACTOR provided portal).

CONTRACTOR acknowledges that the Deliverables will be shared by the Agency as needed, including but not limited to other disclosure the Agency deems necessary.

11. Certifications

11.1 Consumer Reports: The Agency is aware that the Fair Credit Reporting Act applies to background checks conducted by third-party investigators. Therefore, in accordance with the Fair Credit Reporting Act, the Client makes the following certifications to the CONTRACTOR:

- a. The Agency certifies that it seeks the information contained in the background check provided by the CONTRACTOR for employment purposes.
- b. The Agency further certifies that the Agency will not use the background check for any purpose except for employment purposes.
- c. The Agency also certifies that before taking an adverse action based in whole or in part on the background check, the Agency shall provide to the candidate a copy of the background check report and a description in writing of the rights of the candidate under the Fair Credit Reporting Act, as written by the Federal Trade Commission. The CONTRACTOR will provide a copy of the candidate's rights under the Fair Credit Reporting Act at the time the background check is provided to the Agency.
- d. The Agency is further required to certify that prior to procuring a background check from the CONTRACTOR, the Agency will (a) make a clear and conspicuous disclosure in writing to the candidate for employment in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and (b) obtain from the candidate for employment an authorization in writing that the Agency may procure a background check. However, the CONTRACTOR shall act as the Agency's agent to make this disclosure and obtain the candidate's authorization. The disclosure and authorization will be made and obtained during the candidate's application process with the CONTRACTOR.

11.2 Investigative Consumer Reports: The Agency is aware that an "investigative consumer report" means a background check in which information on the candidate's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the candidate or with others with whom he or she acquires or who may have knowledge concerning any such items of information. If the Agency has requested such

interviews to take place, the Agency makes all of the certifications contained in Section 11.1 above and the following additional certifications:

- a. The Agency certifies that it will comply with Section 606(b) of the Fair Credit Reporting Act, which provides that the Agency shall, upon written request made by the candidate within a reasonable period of time after the receipt of the disclosure made pursuant to Section 11.2.b below, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure must be made in writing, mailed, or otherwise delivered to the candidate not later than five days after the date on which the request is received.
- b. The Agency is further required to certify that it has clearly and accurately disclosed to the candidate that an investigative consumer report, including information as to their character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and that such disclosure has been or will be delivered to the candidate not later than three days after the date on which the report was first requested.
- c. The Agency further certifies that the disclosure will include a statement informing the consumer of their right to request the additional disclosures provided under Section 606(b) of the Fair Credit Reporting Act. However, the CONTRACTOR shall act as Agency's agent for the purposes of making this disclosure. The disclosure will be made during the candidate's application process with the CONTRACTOR.

12. PERIOD OF PERFORMANCE

The period of performance under this contract will be the date of execution through March 31, 2026, or a date mutually agreed upon by the AGENCY and CONTRACTOR. AGENCY reserves the option to amend the contract for three (3) additional terms of three (3) years if required.

13. COMPENSATION

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed Four Hundred Thousand Dollars (\$400,000.00) including all travel and per diem expenses. Payable at rate(s) outlined in Exhibit B, Pricing.

Under the Fair Credit Reporting Act, candidates are entitled to dispute any item's completeness or accuracy in their file. If this occurs, the CONTRACTOR will conduct a reasonable reinvestigation at no charge to the Agency if the CONTRACTOR initially reported the disputed information.

Expenses: CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the AGENCY as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed Fifteen Thousand Dollars (\$15,000.00), which amount is included in the contract total above. Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current state travel reimbursement rates. (State Administrative & Accounting Manual Section 10.90 <http://www.ofm.wa.gov/policy/10.90.htm>) CONTRACTOR is authorized to charge actual meal costs per SAAM 10.40.20a.

14. STATEWIDE VENDOR REGISTRATION

CONTRACTOR is required to be registered in the Statewide Vendor Payment system, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>, prior to submitting a request for payment under this Contract. No payment shall be made until the registration is completed.

15. BILLING PROCEDURE AND PAYMENT

AGENCY will pay CONTRACTOR upon acceptance of services and Deliverables provided and receipt and approval of a properly completed invoice, which shall be submitted to the Contract Manager. CONTRACTOR will be paid for the services in arrears after acceptance of the Deliverable.

The invoice shall describe and document, to the AGENCY'S satisfaction, a description of the work performed, the candidate's name and the fees, an example of which is set forth in Exhibit B. The invoice shall include reference to OII Contract No. _____.

Payment shall be considered timely if made by the AGENCY within thirty (30) calendar days after receipt of the properly completed invoice. Payment shall be sent to the address designated by the CONTRACTOR.

16. CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

CONTRACTOR Contract Manager Information:	AGENCY Contract Manager Information:
Name Address City, State, ZIP Phone Number Email Address	Name Address City, State, ZIP Phone Number Email Address

17. CONTRACT AMENDMENTS

With the exception of administrative changes, the contract may be changed, modified or amended only by written agreement executed by both parties. In the case of administrative changes, both parties agree that changes can be memorialized by letter.

18. ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

19. ORDER OF PRECEDENCE

In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- This basic contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B- Pricing

20. ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

21. APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

CONTRACTOR

OFFICE OF INDEPENDENT INVESTIGATIONS

Signature

Signature

Title

Date

Title

Date

Contractor Information:

Did you retire from a Department of Retirement Systems (DRS) covered employer under the Early Retirement Factors (ERF) 2008? ☐ Yes ☐ No

SUPPLIER DIVERSITY QUESTIONNAIRE

OFM is committed to increasing opportunities for small and diverse business to contract with the State.

SMALL BUSINESS

Is your business registered in WEBS (Washington Electronic Business Solution) as a Small Business? ☐ Yes ☐ No

If not registered in WEBS, are you a *Small Business, per RCW 39.26.010(22a)* (see below)? ☐ Yes ☐ No

*go to [WEBS \(wa.gov\)](http://WEBS.wa.gov) to register or email joe.norwood@des.wa.gov for assistance

Small Business means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:

(a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:

(I) Fifty or fewer employees; or

(II) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

DIVERSE BUSINESS

Is your business certified with the Washington State Office of Minority & Women's Business Enterprise (OMWBE)? If yes, provide your Certification number: _____

If not certified, is your business at least 51% owned by a minority, woman, or socially and economically disadvantaged individual? ☐ Yes ☐ No

*go to [Certification | Office of Minority and Women's Business Enterprises \(wa.gov\)](http://Certification | Office of Minority and Women's Business Enterprises (wa.gov)) to apply for certification or email timolina@omwbe.wa.gov for assistance

Is your business certified with the Department of Veteran's Affairs (DVA)? If yes, provide your Certification number: Washington State Certified Veteran Owned Business number- 28B107A3

If not certified with DVA, is your business at least 51% owned and controlled by a Veteran of any branch of the United States armed forces? ☐ Yes ☐ No

*email heidia@dva.wa.gov for assistance with registering with DVA

SUBCONTRACTORS

Will you be utilizing subcontractors that are certified with OMWBE? ☐ Yes ☐ No

*If your subcontractor is interested in OMWBE certification please direct them to [Certification | Office of Minority and Women's Business Enterprises \(wa.gov\)](http://Certification | Office of Minority and Women's Business Enterprises (wa.gov)) to apply for certification or email timolina@omwbe.wa.gov for assistance

EXHIBIT A -

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- a. "AGENCY" shall mean the Office of Independent Investigations, any division, section, office, unit, or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- b. "CONTRACTOR" shall mean that firm, provider, organization, individual, or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- c. "DIRECTOR" shall mean the Director of the Washington State Office of Independent Investigations, and/or the delegate authorized in writing to act on the Director's behalf.
- d. "SUBCONTRACTOR" shall mean one, not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

2. ACCESS TO DATA

In compliance with RCW 39.26.180(2), the CONTRACTOR shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CONTRACTOR'S reports, including computer models and methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

4. AMENDMENTS

With the exception of administrative changes, this contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. In the case of administrative changes, both parties agree that changes can be memorialized by letter.

5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the DIRECTOR that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the AGENCY provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DIRECTOR makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

11. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of a breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

12. DEBARMENT: CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

a. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

- 2) Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - 4) Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- b. Where the Contractor is unable to certify any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.
 - c. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by AGENCY.
 - d. The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- 1) The lower tier contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - 2) Where the lower tier contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.
- e. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact AGENCY for assistance in obtaining a copy of these regulations.

13. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

14. DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with DIRECTOR.

- a. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name, address, and contract number; and
 - Be mailed to the DIRECTOR and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
- b. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.
- c. The DIRECTOR shall review the written statements and reply in writing to both parties within 10 working days. The DIRECTOR may extend this period if necessary, by notifying the parties.
- d. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

15. DUPLICATE PAYMENT

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

16. GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

17. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State, and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents, or employees.

To the extent allowed by law, the Agency/State shall indemnify, defend, and hold harmless the Contractor, its officers, agents, and employees from any and all cost, claim or liability arising from or out of the alleged negligent or tortious act of the Agency/State in the provision of services hereunder.

18. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

19. INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

20. LICENSING, ACCREDITATION AND REGISTRATION

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards necessary for the performance of this contract.

22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the CONTRACTOR'S noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

23. NONDISCRIMINATION

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

25. PUBLICITY

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

27. REGISTRATION WITH DEPARTMENT OF REVENUE

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this

30. SITE SECURITY

While on AGENCY premises, CONTRACTOR, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

31. SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to the AGENCY for any breach in the performance of the CONTRACTOR'S duties. This clause does not include contracts of employment between the CONTRACTOR and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this agreement are carried forward to any subcontracts.

CONTRACTOR and its SUBCONTRACTORS agree not to release, divulge, publish, transfer, sell, or

otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

32. TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

33. TERMINATION DUE TO CHANGE IN FUNDING

If the funds AGENCY relied upon to establish this Contract are withdrawn or reduced, or if additional or modified conditions are placed on such funding, AGENCY may immediately terminate or suspend this Contract by providing written notice to the Contractor. The termination shall be effective no later than the end of the week within which notice was provided.

34. TERMINATION FOR CAUSE

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault, or negligence.

The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

35. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

36. TERMINATION PROCEDURES

Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the CONTRACTOR and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property unless the termination is for default, in which case the DIRECTOR shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the CONTRACTOR such sum as the DIRECTOR determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the DIRECTOR, the CONTRACTOR shall:

- a. Stop work under the contract on the date and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- c. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the DIRECTOR, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DIRECTOR to the extent DIRECTOR may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the DIRECTOR any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;

- f. Complete performance of such part of the work as shall not have been terminated by the DIRECTOR; and
- g. Take such action as may be necessary, or as the DIRECTOR may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

40. WAGE THEFT CERTIFICATION

CONTRACTOR certifies by signing this agreement that, to the best of its knowledge and belief, they have not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), any provision of RCW chapters [49.46](#), [49.48](#), or [49.52](#) within three (3) years prior to the date of the above-referenced procurement solicitation date.

41. INSURANCE

The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

- a. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- b. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

- c. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the State of Washington, its agents and employees as additional insureds under the insurance policy/ies.

All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

**Exhibit B
PRICING**

TO BE DEVELOPED BASED ON THE RFP PROPOSAL FROM APPARENT SUCCESSFUL BIDDER (ASB).

This attachment must only include costs/expenses contained in ASB's RFP Proposal.

SAMPLE