

# REQUEST FOR QUALIFICATIONS

## Developing an Ecosystem Service Crediting Platform

Pinchot Institute for Conservation and Willamette Partnership  
in cooperation with Mid-Willamette Valley Council of Governments

Statement of Qualification Documents Due: 4:00 p.m., Wednesday, July 22, 2009

The Willamette River basin and Chesapeake Bay watershed are home to large populations of people, industries, and sensitive ecosystems. The Willamette Partnership (Partnership) and the Pinchot Institute for Conservation's Bay Bank (Bay Bank) are leading multi-stakeholder efforts to develop incentive-based tools to achieve needed ecosystem improvements faster and more cost-effectively than would be possible using existing tools alone.

The purpose of this scope is to design and develop an internet-accessible platform to gather, hold, analyze, package and archive all of the information needed to issue and register multiple types of ecosystem credits. The primary users of this platform will be project developers (e.g. Soil and Water Conservation Districts, Watershed Councils, consultants, and technically-proficient landowners). This platform will include a front-end interface with account creation/management, mapping, data-form collection, and other functions. It will also include the back-end databases that connect this interface to the document management systems, credit calculation models, and other engines needed to process information into verified credit estimates and store them.

The output of this system will be a bundle of information that can be transported seamlessly to the Partnership's and Bay Bank's credit registries. These registries are to be provided and operated by TZ1, a leading provider of such services. This bundle will include information on the mapped project site, subunit polygons within the site, easement and land protection documents, a validation of project eligibility, data sheets used in credit calculation, a verification report, and necessary agency certifications.

### Specifications for an Ecosystem Crediting Platform

It is assumed that the Bay Bank's and Partnership's crediting platform will be a product that evolves, grows, and is selected for application in other geographies and markets. The crediting platform's application(s) must meet the following general strategic and design considerations:

- **Flexible:** The Partnership and Bay Bank envision developing additional modules to the interface and core database applications. Therefore, a tool built using open-source (non-proprietary) software is required.
- **Scalable:** The applications must accommodate a growing number of participants, transactions and credit amounts.
- **Credible:** The applications should utilize database standards that are up-to-date and widely accepted by the software development industry
- **Cost Effective:** The applications must be developed and supported at a reasonable cost.
- **Compatible:** The applications must be able to share data with other market tools, calculators, and registries. The applications should make financial transactions associated with a credit's sale and transfer efficient.
- **Secure:** The data submitted to the ecosystem crediting platform and out to the registry must be secure from unauthorized manipulation.
- **Accessible:** It is expected that some training will be required to use the applications, however it must still be accessible to a wide variety of people with varied technical abilities.

### Functionality

The following functions are specific to the front and back ends of the crediting platform.

### Part I: Front-End Functions (Project Developer Interface)

This tool (likely to be an Application Programming Interface) will include a mapping interface that can quickly determine a project's eligibility and provide estimates for multiple types of credits based on preliminary restoration designs. The tool also includes a registry interface that allows credits to be verified and credit documentation to be generated or uploaded and then packaged for export to an externally hosted registry. The tool will also include the ability to set up accounts; collect and maintain complex site-specific information; collect and maintain the personal or company information of those conducting restoration and development actions; and collect fees. The tool will need to include the appropriate security features to protect account information and financial transactions. In addition to the interface features described above, these portals will allow users to upload documents, pictures, and other information. Additional detail on required functionality is provided below.

#### *1.1 Project Developer Administrative Features*

- Create user login and accounts
- View account statements (including available credits) and produce reports
- Search and view project documents;
- Provide temporary, but unique identifiers (serial numbers) for each pending offset/credit/debit in accordance with standards established by the Bay Bank's and Partnership's registries;
- Assess transaction fees and manage automated payments related to the use of the platform; and
- Archive data in a readily accessible and secure manner

#### *1.2 Project Origination*

- Generate project documents
- Upload project documents
- Import user accounts and project types from Bay Bank
- Enter information on project (i.e name, location etc)

#### *1.3 Project Validation*

This function will use a checklist of user defined attributes to determine a project's eligibility for certain markets:

- Allow users to fill out validation checklist
- Combine checklist with spatial data to give user official notice of validation from Partnership or Bay Bank. This may require an agency certification.

#### *1.4 Project Design*

This tool will allow users to evaluate site opportunities. It will:

- Be web-based and simple enough for non-expert users to operate
- Allow for early entry of baseline site conditions for better estimates.
- Allow users to gain rough credit estimates based on mapped design concepts
- View/search database of projects
- View/search publicly-accessible portions of the project document library

##### *1.4.1 Mapping*

After project design, this function will allow users to map out the project area.. It will:

- Allow a user to draw site polygon on an aerial photo.

- Spatially explicit polygons will be user defined (i.e “free hand drawn”) or selected based on underlying Tax lot data layers.
- Allow a user to draw “sub-unit” polygons on an aerial photo
- Be able to draw subunits at a fixed zoom scale for accuracy with 100% coverage within the project area with no overlap of subunits.
- Be simple enough for non-expert users to operate.
- Allow the user to attribute the drawn map units with predefined restoration design concepts and actions
- Allow project developer to interact and adjust the map units to evaluate baseline and post-action scenarios before they are fixed for transmittal to the TZ1 Registry.
- Be able to export one or more .kml files to the TZ1 Registry with the spatial data linked to the document and database records.

### *1.5 Credit Calculation*

This tool will allow land managers to use restoration-site design information to generate credit calculations. It will:

- Package detailed planning information, export it to databases located in a computing cloud for credit calculation and then import the calculation results back to individual accounts
- Be web-based and designed for users with some training to operate.
- For each set, users will harvest spatial data, and input data from paper field forms.
- That data will interact with a credit calculation model built for each market to generate a credit estimate.
- The baseline and post-action credit estimates will be combined with a trading ratio to develop a final credit estimate to submit for verification.

### *1.6 Verification and Certification*

Once a credit estimate has been prepared, the entire package of validation, land protection documents, credit estimates, etc, are ready for verification. At this point the tool will allow:

- The Partnership or Bay Bank to assign a verifier to the applicant
- Project developers to submit their application package for verification
- Project developers to discover the status of their project’s verification and certification (see 2.3 for verifier and certifier interface)
- Project developers to accept the verifier’s report before the credit package moves to agency certification.

### *1.7 Export to Registry*

This application will allow project developers to deliver the outputs from the tool to an externally hosted registry to allow for credit issuance. The actual registry is in development and outside this scope of work. This application will:

- Export account information to a credit registry and allow users to link seamlessly with the registry accounts associated with their restoration site accounts.
- The exported package will include .kmls of the project area and sub unit polygons, form-entered attribute data for those polygons, and project documentation in the form of .pdfs, excel spreadsheets, and word documents,
- Export credit calculation results and all related documentation to a credit registry
- Provide notification to users of registration status
- Be simple enough for non-expert users to operate.

## Part II: Back-End Functions (Data-bases)

To support the functionality of the user interface, and allow for the participation of multiple parties in the credit generation and issuance processes, multiple databases will need to be developed, maintained and connected.

This will necessitate that information transfer protocols be established that allow for the secure and reliable transfer of data between the user interface, credit calculators, registries, market administrators and regulators.

### *2.1 Backend Administrative functions (Market Coordinator, Verifier, Agency, and Certifier Interface)*

The backend administration functions are designed to track, verify, certify, and manage projects in the Ecosystem Service Crediting Platform.

### *2.2 Project management*

Portals for market coordinators, the Bay Bank and Willamette Partnership, to:

- Manage accounts, including approving new accounts, viewing log-in histories, suspending or closing accounts and resetting passwords;
- View account statements and produce reports on account activities, project types and locations, transactions, and others as needed
- Query accounts, documents, etc

### *2.3 Electronic Transfer Standards and Protocols*

Standards and protocols will be provided by the Willamette Partnership and Bay Bank for the import and export of information between multiple market participants.

### *2.4 Project Review*

This tool will require a portal for verifiers and certifiers to track and approve projects. Functions needed include:

- A log-in portal to access project information
- Fields to input the status of the verification (i.e pending verification, verified, failed verification, etc) and upload their verification report, which may include verification of the credit estimate in its current form, or a revised credit estimate.
- A log-in portal for agencies to certify the credits and issue a notice that credits are ready to be issued.
- Comment field to allow agencies and verifiers to communicate with project developers

### *2.5 Document Storage*

The amount of account information associated with each project will be significant. Secure, redundant and easily-accessible electronic storage methods must be developed for:

- Project information such as spatial data, design documents, photos, historical maps, technical geophysical data, and other types of data.
- Ability to keep some of this information private and some public.
- Land protection documents such as easements, contracts, etc...
- Eligibility information: validation notices, agency approvals (i.e. bank instrument), permits, etc...
- Credit estimates information such as datasheets, credit estimate reports
- Verification information such as verification reports, agency certifications/notices, acceptance notices from registries, etc...
- Ability to transfer documents to the TZ1 Registry and maintain an audit trail.
- Ability to import information and data from the Bay Bank website

### *2.6 Credit Calculation Models*

The Bay Bank and Partnership are planning for all credit calculation functions to be hosted and managed by a public third-party (e.g. USDA's Natural Resource and Conservation Service). Therefore, the back-end database must interface seamlessly with multiple remote credit calculation tools, allowing for the export and import of information that remains anchored to particular accounts, restoration or development actions and specific map-units). We foresee this requiring:

- Automated versions of existing Excel credit calculation models that can accept form and spatial data from the user interface to produce a bundle of data to export to the credit calculator that generates credit estimates.
- An API or equivalent that allows concurrent users to access the credit calculators “cloud” at the same time.
- An information exchange model that efficiently and consistently allows for different and multiple technologies to interact.
- Early discussions with potential federal hosts of credit calculation models have indicated they are looking at using a “Cloud computing” environment ([http://en.wikipedia.org/wiki/Cloud\\_computing](http://en.wikipedia.org/wiki/Cloud_computing)) to ensure flexibility, scalability, and rapid adaptation in their own systems.

The Bay Bank and Partnership understand there may be alternative ways to construct this platform. They welcome Statements of Qualifications with alternative designs, approaches, and comments.

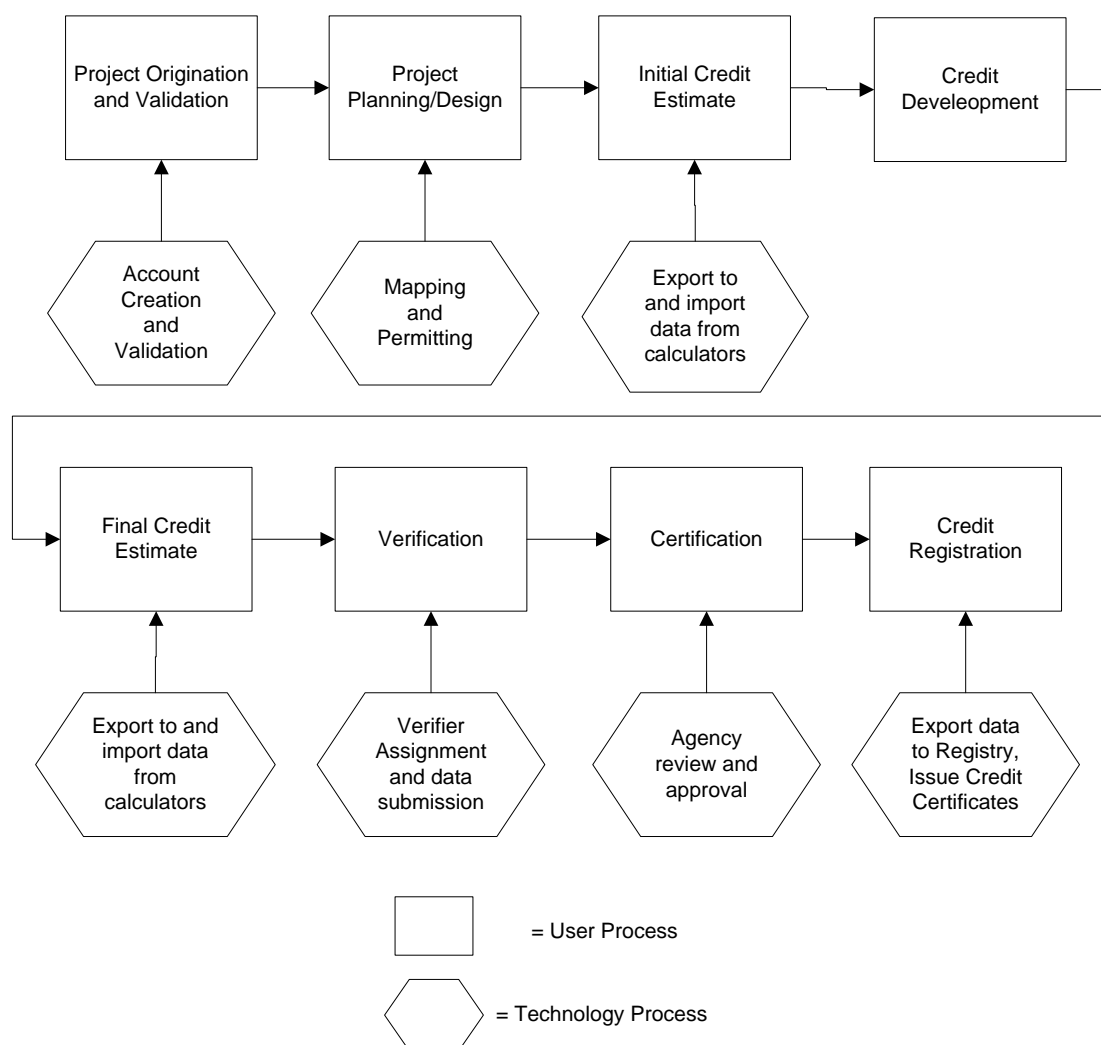
### **Budget**

The Bay Bank and Partnership expect the development costs for the technology in this scope of work to fall within the range of \$75,000 to \$130,000. Ongoing operation, development and maintenance of the technology for a two-year period are expected to cost around \$20,000.

### **Process Outline**

The following figure illustrates the rough processes through which users might use technology included in this scope of work to generate ecosystem service contracts through the Bay Bank and Willamette Partnership crediting platform:

## Credit Development and Registration Costs V.1 05/11/09



### Submitting a Statement of Qualifications

Interested consultants must submit Statements of Qualifications (SOQs) via email to: Joni Shaffer at [jshaffer@willamettepartnership.org](mailto:jshaffer@willamettepartnership.org) in a single printer-ready Adobe PDF document. Alternatively mailed SOQs will be accepted at: Joni Shaffer, Clean Water Services c/o Willamette Partnership, 2550 SW Hillsboro Hwy, Hillsboro, OR 97123. **SOQs are due by 4:00 p.m., Wednesday, July 22, 2009.** Late SOQs will not be considered.

The selected consultant(s) will enter into a Contract for Professional Services with the Willamette Partnership to provide professional consulting services in support of the Bay Bank and Willamette Partnership. The term of the Contract will be twelve (12) months with the option to renew.

SOQ requirements are contained in the Request for Qualifications (RFQ). Copies of the RFQ may be obtained at the Willamette Partnership's fiscal agent – the Mid-Willamette Valley Council of Governments Office (105 High Street SE, Salem, Oregon 97301), on the Willamette Partnership's Website at [www.willamettepartnership.org](http://www.willamettepartnership.org), on the Bay Bank's website at [www.thebaybank.org](http://www.thebaybank.org) or by calling the Willamette Partnership at (503) 681-5112.

Consultants that obtain the RFQ from these Websites need to contact the Willamette Partnership for possible Addenda that have been issued.

The Bay Bank and Willamette Partnership may reject any SOQ not in compliance with all prescribed procedures and requirements, and may reject, for good cause, any or all SOQs upon a finding that it is in the public interest to do so.

## **CONSULTANT QUALIFICATIONS**

The Bay Bank and Willamette Partnership, in cooperation with The Mid-Willamette Valley Council of Governments (MWVCOG), is seeking the services of consultants with substantial experience in developing and implementing open-source, web-based user interface technology for calculating ecosystem services and the ecological benefits of restoration, relational databases that can store and transfer spatial, attribute, and document data, and business strategies for ongoing expansion and maintenance of these systems. The selected consultants must have local capability in Portland, OR including staff and equipment, to perform the services and will have demonstrated experience successfully performing this level of work as a regular part of their business.

### **SCOPE OF WORK**

The selected consultant(s) will enter into a separate Contract with the Willamette Partnership. Consultants will be eligible for selection to provide services as needed. When a need for these services arises, the Bay Bank and Willamette Partnership will select a consultant, develop a detailed Scope of Work for the particular services to be performed, and enter into a Contract for that project. Additional tasks will be structured as contingencies. The contract amount may range from \$75,000 to \$130,000. The Bay bank and Willamette Partnership will make the project-specific selection by considering such factors as: experience in and understanding of the specific technology needs relevant to the project; familiarity with the project; availability; and cost. In some cases, the Bay Bank and Willamette Partnership may select more than one consultant, require that the consultants submit proposals for that project, and select the proposal that is most advantageous to the Bay Bank and Willamette Partnership. Although the purpose of this RFQ is to establish lists of qualified consultants, the Bay Bank and Willamette Partnership may elect to have work performed by other consultants. The timelines attached to the tasks below are targets, and can be adjusted, so long as the Bay Bank and Partnership can meet grant deliverable deadlines for August 2010.

#### **Task 1: Establish necessary software requirements, work-flow and design documents by October 1, 2009**

Consultant shall convene a half or full-day design workshop with the Bay Bank and Partnership staff to detail software requirements, work flow, and required functions. Consultant shall prepare a web architecture diagram and necessary design documents for review and approval by the Bay Bank and Partnership. This may include mock-ups of web-pages or interactive demonstration of web-sites.

#### **Task 2: Develop beta versions of user interface and databases by February 28, 2010**

Consultant shall prepare operational beta versions for testing by user groups. The Beta version will include both interface and database functions.

#### **Task 3: Conduct testing of platform by March 30, 2010**

Bay Bank and Partnership shall recruit and organize participation in testing. Consultant shall review comments and testing results.

#### **Task 4: Revise and develop version 1 of an operational crediting platform by June 1, 2010**

Consultant shall revise the beta versions to develop operational systems.

#### **Task 5: Complete final round of approval testing by July 30, 2010**

BayBank and Partnership shall conduct a final round of testing for approval purposes, and Consultant shall make revisions based on findings of the testing.

**Task 6: Host and maintain version 1 of the crediting platform for three years through August 2013**

Consultant shall host the website, necessary software, databases, and data necessary to maintain the crediting platform through its first three years of operation.

**Optional Extensions**

The purpose of this section is to articulate needed work that may or may not be possible given current time and budget constraints, and to allow for contingencies.

**Optional Task A: Develop a credit marketing function within the credit platform**

Consultant shall provide a scope and budget estimate for additional development work that would increase the functionality of the platform, and provide a budget for two years of maintenance for the platform. This would specifically include an estimate for building a data feed from the TZ1 registry into a place on the crediting platform where users could see listed credits pending issuance and for sale, and search these credits spatially and through form fields.

**Optional Task B: Develop strategy documents for extension of the technology to other regions**

It is anticipated that this crediting platform will have applications and use outside of the Willamette and Chesapeake regions. The Consultant shall prepare a scope and budget to develop the strategies needed to support expansion to these new regions.

**PROPOSAL INSTRUCTIONS**

A. Submittal of SOQs

Email is the preferred method of submission. By email, submit a single, printer-ready Adobe PDF to Joni Shaffer at [jshaffer@willamettepartnership.org](mailto:jshaffer@willamettepartnership.org).

Alternatively, SOQs will be accepted by mail. Please submit three copies of your SOQ in a single, sealed envelope labeled “Willamette Partnership: Counting on the Environment” to:

Joni Shaffer  
Clean Water Services c/o  
Willamette Partnership  
2550 SW Hillsboro Hwy  
Hillsboro, OR 97123

B. Deadline

**SOQs are due by 4:00 p.m., Wednesday, July 22, 2009.** Late SOQs will not be considered. Postmarks are not acceptable as evidence of timely delivery. The Willamette Partnership will not accept SOQs submitted by fax.

C. Master Contract for Professional Services

A copy of the Master Contract is included as Exhibit A. Review the Contract before submitting your SOQ. Submission of an SOQ constitutes acceptance of the terms of the Contract. The terms of the Contract are not negotiable.

D. SOQ Contents

In order to maintain the fairness and integrity of the selection process, it is important that SOQs conform to the requirements of this section. Do not include any information that is not specifically requested. You may include a cover letter, but no information in the cover letter will be used in assessing the SOQ.

The SOQ will consist of sections titled Introduction, Capability, Experience, Approach, Costs, and Appendix, as described in detail below. SOQs will be limited to 10 pages of material (excluding the materials in the Appendix).

Use 8 ½ x 11 paper, printed double sided in a minimum 12 point font, with one-inch margins. Separate the requested material into titled sections. All page counts are for double sided paper (Each sheet of paper is two pages; blank pages do not count.). Elaborate artwork, expensive paper or bindings, and expensive visual or other presentations are neither necessary nor desired.

Instructions for completing SOQs are as follows:

1. Introduction

- a. Indicate the name, address, email address and telephone numbers (voice and fax) of your company.
- b. Provide the name, email address and telephone number of the contact person for your SOQ.
- c. State that your SOQ will be valid for a period of ninety days.

2. Capability (20% weight)

Describe your company's capability to perform the services and demonstrate your ability to deliver products on schedule and budget. Include the number of employees who are available to perform the work, their qualifications, and level of expertise, and their immediate availability to perform work. Describe any specialized tools/technologies your company owns that would be used in performing the work. Provide the resumes for key staff who will have responsibility for performing the work. It is expected that key staff shall work on this project throughout the life of the contract. (The resumes should be included in the Appendix.) List any licenses, certifications or accreditations your company or staff holds that are relevant to the services to be performed. The Willamette Partnership and Bay Bank will use the information required in this paragraph to evaluate the "Capability" selection criterion.

3. Experience (35% weight)

Describe your company's direct project experience and contribution of specific employee's in performing the services you are proposing. Describe similar services your company has performed for five customers in the past five years and include the names, email addresses and telephone numbers for contact persons for each of these customers. Work performed on projects similar to those of the Willamette Partnership and Bay Bank will be the most useful criteria in evaluating your experience. Willamette Partnership and Bay Bank will use the information required in this paragraph to evaluate the "Experience" selection criterion.

4. Approach (35% weight)

Describe your company's conceptual approach to providing the proposed services. Specifically, how does your company propose to build from existing technologies to meet the specifications described in the Scope of Work above on the timelines the Willamette Partnership and Bay Bank have proposed. Describe how projects will be managed, including your approach to working closely with Willamette Partnership staff. The Willamette Partnership and Bay Bank will use the information required in this paragraph to evaluate the "Approach" selection criterion.

5. Cost (10% weight)  
Submit the following price information, which will be incorporated into the Contract:
  - a. Rough estimates for overall budget by required tasks described in the Scope of Work.
  - b. Unit costs, including hourly labor rates of staff, equipment charges, and test fees, for the proposed services.
  - c. A description of your policy for billing for travel to work sites, trip charges, mileage rates, labor rates during travel, and any minimum charges for site visits.
  - d. A description of how overhead, support, and administrative charges are billed as part of the services.
  - e. A description of how managerial costs (Principal in Charge, Project Manager, etc.) are billed as part of the services.

The Willamette Partnership and Bay Bank will use the information required in this paragraph to evaluate the “Cost” selection criterion.

6. Appendix
  - a. Complete the Noncollusion Affidavit and include it in the Appendix to your SOQ.
  - b. Submit a statement certifying that your company has not discriminated and will not discriminate, in violation of ORS 279A.110(1), against any minority, women or emerging small business enterprise in obtaining any required subcontract.
  - c. If there are any requirements or provisions contained in this RFQ that you believe are unfair or prejudicial or limit competition, please explain your position.
  - d. Include resumes for the project lead and key staff who will be responsible for performing, managing and delivering the proposed services.

## **SOQ CONDITIONS**

### **A. Communication Procedures**

The requirements of this section are intended to ensure the fair and equal treatment of all participating consultants. Until the Contract(s) are awarded by the Willamette Partnership, consultants are prohibited from contacting the Willamette Partnership and Bay Bank Board of Directors, or its employees for marketing or solicitation purposes regarding this project. Disregard of this prohibition will result in the disqualification of the consultant.

The Willamette Partnership will respond to emailed questions concerning the preparation of SOQs for the first two weeks after the date of advertisement. Questions concerning the SOQ requirements or the consultant selection process should be addressed to Mac Martin, at martinm@cleanwaterservices.org

### **B. RFQ not a Basis for Obligations**

This RFQ does not constitute an offer to contract and does not commit the Willamette Partnership or Bay Bank to the award of a contract to anyone, or to pay any costs incurred in the preparation and submission of SOQs. The Willamette Partnership and Bay Bank reserve the right to reject any or all SOQs that do not conform to the requirements stated herein.

### **C. Willamette Partnership’s Right to Cancel, Delay or Suspend**

The Willamette Partnership or Bay Bank may cancel this procurement or reject any or all SOQs if the Willamette Partnership or Bay Bank determines that it is in the best interest of the Willamette Partnership or Bay Bank to do so. The Willamette Partnership or Bay Bank may delay or suspend this procurement if the Willamette Partnership determines that it is in the best interest of the Willamette Partnership or Bay Bank to do so. The Willamette Partnership and Bay Bank will not be liable to any consultant for any loss or expense caused by or resulting from the cancellation, delay or suspension of a solicitation, proposal, or award.

D. Addenda

The Willamette Partnership will notify companies that have been sent this RFQ of any addenda. Notification of any addenda may be by telephone, mail, email or fax. Any addenda will also be posted to the Willamette Partnership's website, [willamettepartnership.org](http://willamettepartnership.org), and the Bay Banks website, [www.thebaybank.org](http://www.thebaybank.org). Note that the Partnership has no record of companies that download the RFQ from these websites. Companies that do so are responsible for determining whether addenda have been issued. If you have downloaded this RFQ from the website and would like to be on the plan holder's list for notification of addenda, please contact the Willamette Partnership at (503) 681-5112.

E. Confidential or Proprietary Information

Following the award of a contract, responses to this SOQ are subject to release as public information unless the response or specific information contained therein is identified as exempt from public disclosure. Consultant is advised to consult with legal counsel regarding disclosure issues. If a consultant believes that any portion of its SOQ contains any information that is considered a trade secret or otherwise is exempt from disclosure under Oregon Public Records Law, consultant must include the following on each page containing such information:

“This data is exempt from disclosure under Oregon Public Records Law pursuant to ORS 192, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS 192.410

Identifying the SOQ, in whole, as exempt from disclosure is not acceptable. Consultant is cautioned that cost information submitted in response to a RFQ is generally not considered a trade secret under Oregon Public Records Law. By submitting an SOQ, you are certifying that you have designated any data that is considered a trade secret or confidential information and should be exempt from disclosure. Undesignated data may be released to any person submitting a public records request through 192.505

F. Anticipated Solicitation Schedule

The Willamette Partnership anticipates selecting the consultants within one week of the date on which SOQs are due. All consultants that submit SOQs will be notified of the selection of the consultants.

## CONSULTANT SELECTION PROCEDURE

A consultant selection committee will review and score the SOQs using the following selection criteria to determine which consultants are qualified.

|    | <u>Selection Criterion</u> | <u>Weight</u> |
|----|----------------------------|---------------|
| 1. | Capability                 | 20%           |
| 2. | Experience                 | 35%           |
| 3. | Approach                   | 35%           |
| 4. | Cost                       | 10%           |
|    | SOQ SCORE                  | 100%          |

The consultants earning the highest SOQ scores will be eligible for the award of a Contract. Award of the Contract will be subject to the approval of the Willamette Partnership's Executive Director and Board of Directors.

The Willamette Partnership may request additional information and materials from consultants to aid in scoring the SOQs. The Willamette Partnership may also invite consultants for interviews or presentations. If interviews or presentations are not required, the SOQ score will be the overall score. If interviews or presentations are required, the SOQ will be weighted 70% and the interview or presentation weighted 30% to arrive at an overall score. The consultants receiving the highest overall scores will be eligible for award of a Contract. Award of the Contracts will be subject to the approval of the Willamette Partnership's Executive Director and Board of Directors.

## EXHIBIT A: PROFESSIONAL SERVICES CONTRACT

This Contract is between the \_\_\_\_\_, acting by and through its \_\_\_\_\_, hereafter called Agency, and \_\_\_\_\_, hereafter called Contractor. Agency's Contract Administrator for this Contract is \_\_\_\_\_.

**1. Effective Date and Duration.** This Contract shall become effective on the date this Contract has been signed by every party hereto. Unless terminated or extended, this Contract shall expire when Agency accepts Contractor's performance, or on \_\_\_\_\_, \_\_\_\_\_, whichever date occurs first. Expiration shall not extinguish or prejudice Agency's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

**2. Statement of Work.** The statement of work (the "Work"), including the delivery schedule for such Work, is contained in Exhibit A (*to be developed collaboratively between the agency and contractor upon selection*) attached and incorporated by reference into this Contract. Contractor agrees to perform the Work in accordance with the terms and conditions of this Contract.

### **3. Consideration**

- a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$\_\_\_\_\_.
- b. Interim payments to Contractor shall be made only in accordance with the schedule and requirements in Exhibit A.

**4. Contract Documents.** This Contract consists of the following documents which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibits A, B, and C and other requirements as set forth in attached Exhibits \_\_\_ and \_\_\_. All attached Exhibits are hereby incorporated by reference.

### **5. Independent Contractor; Responsibility for Taxes and Withholding**

- a. Contractor shall perform all required Work as an independent contractor. Although the Agency reserves the right (i) to determine the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.
- c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

### **6. Subcontracts and Assignment; Successors and Assigns**

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, except by amendment to this Contract. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 6, 10, 11, 15, and 17 of this Contract as if the subcontractor were the Contractor. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

**7. No Third Party Beneficiaries.** Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any

benefit or right, 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. Payments.** While interim payments will be made in accordance with Exhibit A, payments are contingent upon delivery of the specified work products completed in accordance with the terms of this contract, including the statement of Work in Exhibit A.

**9. Representations and Warranties.**

- a. **Contractor's Representations and Warranties.** Contractor represents to Agency that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms, (3) the Work under this Contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of that profession under similar conditions and circumstances, (4) Contractor shall, at all times during the term of this Contract be duly licensed to perform the Work, and if there is no licensing requirement for the profession or work, be duly qualified and professionally competent, and (5) any software products delivered under this Contract that process date or date related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century.
- b. **Representations and Warranties cumulative.** The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and warranties provided.

**10. Ownership of Work Product.**

- a. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of Agency. Agency and Contractor intend that such Work Product be deemed "work made for hire" of which Agency shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire", Contractor hereby irrevocably assigns to Agency all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as Agency may reasonably request in order to fully vest such rights in Agency. Contractor forever waives any and all rights relating to the 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.
- b. In the event Agency alters the work products in any manner, or uses them for a purpose or project other than that specifically identified and intended by this Contract without written verification or adaptation by the Contractor as appropriate, such alteration or use will be at the Agency's sole risk, and Contractor shall be released, indemnified and held harmless by Agency, to the extent permitted by applicable Oregon law, including, but not limited to constitutional debt limitation provisions and the Oregon Tort Claims Act.
- c. Contractor, despite other conditions of this provision, shall have the right to utilize the work product on its brochures or other literature that it may utilize for its sales and, in addition, unless specifically otherwise exempted, the Contractor may use standard line drawings, specifications and calculations on other, unrelated projects.

**11. Indemnity.**

- a. **Claims for Other than Professional Liability.** Contractor shall defend, save and hold harmless the Agency, its elected officials, officers, agents and employees from all claims, suits or actions of whatsoever nature, including intentional acts resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement.
- b. **Claims for Professional Liability.** Contractor shall defend, save and hold harmless the Agency, its elected officials, officers, agents and employees from all claims, suits or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and subcontractors, agents or employees in performance of professional services under this agreement.
- c. **Agency's Actions.** This section does not include indemnification by Contractor of the Agency for the Agency's activities, whether related to the contract or otherwise.

**12. Termination**

- a. **Parties' Right to Terminate For Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.

- b. Agency's Right To Terminate For Convenience.** Agency may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. Agency's Right to Terminate For Cause.** Agency may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
  - (i) Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
  - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or Agency is prohibited from paying for such Work from the planned funding source;
  - (iii) Contractor no longer holds any license or certificate that is required to perform the Work; or
  - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Agency's notice, or such longer period as Agency may specify in such notice.
- d. Contractor's Right to Terminate for Cause.** (i) If Agency fails to pay Contractor pursuant to the terms of this Contract, Contractor may terminate this Contract by giving notice to the Agency, and Agency fails to cure within 15 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice. Agency shall pay Contractor for all work performed in accordance with the terms of the Contract prior to termination date, if Contractor is not otherwise in default. (ii) Contractor may terminate this Contract, for reasons other than nonpayment, if Agency commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Contractor's performance under this Contract, and such breach, default or failure is not cured within 10 business days after delivery of Contractor's notice, or such longer period as Contractor may specify in such notice.
- e. Remedies**
  - (i) In the event of termination pursuant to Sections 13.a, 13.b, 13.c(i), 13.c(ii) or 13.d, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Agency upon demand.
  - (ii) In the event of termination pursuant to Section 13.c(iii) or 13.c(iv), Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 13.c(iii) or 13.c(iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 13.b.
- f. Contractor's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to Agency all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work.

**13. Limitation of Liabilities.** EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTIONS 9(a), 13(d)(ii), or 13(e)(ii), NEITHER PARTY SHALL BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THE CONTRACT OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

**14. Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, 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.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Agency's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

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

**17. Force Majeure.** Neither Agency nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**18. 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, 9, 10, 11, 13, 14, 15, 19 and 26.

**19. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.

**20. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 21. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Agency, such facsimile transmission must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

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

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

**23. Disclosure of Social Security Number.** Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385, OAR 122-80-410(3) and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

**24. Governing Law; Venue; Consent to Jurisdiction.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the County for the State of Oregon where the project is located; provided, however, if a Claim must be brought in a federal

forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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

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CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT

CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**CONTRACTOR DATA AND CERTIFICATION**

**Name (tax filing):** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Facsimile:** \_\_\_\_\_ **Contact:** \_\_\_\_\_

**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#:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Above payment information must be provided prior to Contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

**Certification:** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including those in OAR 150-305.385(6)-(B). For purposes of this certificate, 'Oregon tax laws' means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self Employment Tax); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the above Contractor data is true and accurate.

**CONTRACTOR**

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

**AGENCY**

\_\_\_\_\_  
Approved as to Legal Sufficiency \_\_\_\_\_ Date

\_\_\_\_\_  
Approved by \_\_\_\_\_ Date



shall be treated as fraudulent concealment from Mid-Willamette Valley Council of Governments or the Willamette Partnership of the true facts relating to the submission of proposals for this contract.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature and Title

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
This Commission Expires: \_\_\_\_\_