



July 5, 2022  
 Board of County Commissioners  
 Clackamas County

**Approval of a contract amendment with Oregon Tourism Commission dba Travel Oregon to receive \$300,000 for implementation of FY22/23 regional plan. Total value is \$494,210. Funding through state transient lodging tax. County General Funds are not involved.**

<b>Purpose/Outcome</b>	Provides funds for Mt. Hood & Columbia River Gorge Regional Cooperative Tourism Program
<b>Dollar Amount and Fiscal Impact</b>	\$300,000 revenue as budgeted for in FY22/23
<b>Funding Source</b>	State transient lodging tax from the Oregon Tourism Commission dba Travel Oregon
<b>Duration</b>	Expires June 30, 2023
<b>Previous Board Action/Review</b>	Board approved original contract 8/19/21
<b>Strategic Plan Alignment</b>	1. Builds and strengthens partnerships and coalitions; enhances strategic alliances 2. Supports Clackamas County’s priority to grow a vibrant economy by fostering a business-friendly environment for tourism operators.
<b>Counsel Review</b>	Date of Counsel review: 6/22/22 Andrew Naylor
<b>Procurement Review</b>	(Please check yes or no for procurement review. If the answer is “no,” please provide an explanation.) 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. No procurement was needed for this. Tourism is the service provider for this contract.
<b>Contact Person</b>	Samara Phelps, Tourism Director <a href="mailto:samara@mthoodterritory.com">samara@mthoodterritory.com</a>
<b>Contract No.</b>	N/A

**BACKGROUND:** Clackamas County serves as the Regional Destination Management Organization (RDMO) for Travel Oregon’s Regional Cooperative Tourism Program in the Mt. Hood/Gorge Region. This region includes the mountain communities of Clackamas County as well as Hood River County and portions of Wasco and east Multnomah County. This program is paid for by state transient lodging tax (TLT) funds. Travel Oregon distributes funds to the seven tourism regions based on state TLT collections in each region. This contract amendment is for FY 22/23 allocation of funds for the Mt. Hood/Gorge Region.

**RECOMMENDATION:** Staff recommends approval of this contract, and authorizes the Chair to sign on behalf of the County.

Respectfully submitted,  
  
 Samara Phelps  
 Director of Tourism

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**AMENDMENT NO. 1 TO PROFESSIONAL SERVICES CONTRACT**

This **Amendment No. 1 to Professional Services Contract** dated as of July 1, 2022, is between the State of Oregon, acting by through its Oregon Tourism Commission, doing business as Travel Oregon (“OTC”), and Clackamas County – on behalf of its Department of Tourism (“Contractor”).

The parties entered into a certain Professional Services Contract no. MHCRG2021-23CNT01\_RCTP\_TLT dated July 1, 2021, (as amended from time to time, the “Contract”), and the parties now desire to amend the Contract as provided below. All capitalized terms not otherwise defined in this Amendment have the meanings assigned to them in the Contract.

The parties agree as follows:

1. The Contract is amended to provide:
  - (a) Section 3.3 is amended and restated as follows:

The maximum not-to-exceed amount payable to Contractor under this Contract, including all payments pursuant to Section 3.1 and any allowable expenses pursuant to section 3.2, is \$494,210.00. Contractor shall not submit invoices for, and OTC is not obligated to pay, any compensation in excess of this amount. If this maximum amount is increased by Contract amendment, the amendment must be fully effective before Contractor performs any Services subject to the amendment.

- (b) The following portion of Exhibit A, Statement of Work, is amended as follows:

**PAYMENT TERMS / BUDGET SUMMARY:**

Contractor will conduct work identified in this Agreement with funds provided by OTC as follows:

	<b>2021-2022</b>	<b>BUDGET</b>
	RCTP	\$194,210
	<b>TOTAL</b>	<b>\$194,210</b>

	<b>2022-2023</b>	<b>BUDGET</b>
	RCTP	\$300,000
	<b>TOTAL</b>	<b>\$300,000</b>

**THE SIGNATURES OF THE PARTIES FOLLOW ON THE NEXT PAGE.**

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

**MT. HOOD & THE COLUMBIA RIVER  
GORGE REGIONAL TOURISM ALLIANCE**

**STATE OF OREGON acting by and through  
the OREGON TOURISM COMMISSION**

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

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

Name: Tootie Smith

Name: Todd Davidson

Title: Chair, Board of Commissioners

Title: CEO



Staff Report for Board of County Commissioners

From: Tourism & Cultural Affairs

RE: Contract with Travel Oregon for Clackamas County to implement Regional Tourism Program

Date: 08/11/21

Members of the Board:

**Approval of contract to receive state Transient Lodging Tax funds from Travel Oregon to implement Mt. Hood/Gorge regional tourism plan for FY21/22.**

Purpose/Outcome	This contract provides Tourism \$194,210 to implement the FY21/22 portion of the Mt. Hood/Gorge 2021-2023 Regional Destination Management Plan.
Fiscal Impact	\$194,210 in revenue for Tourism in FY21/22.
Funding Source	Travel Oregon's Regional Cooperative Tourism Program
Duration	This contract expires on June 30, 2023.
Counsel Review	1. 08/10/21 2. Andrew Naylor
Staff Recommendation	Staff recommend approval of the agreement.
Contact Person	Samara Phelps, Tourism & Cultural Affairs <a href="mailto:samara@mthoodterritory.com">samara@mthoodterritory.com</a>
Attached	State of Oregon Professional Services Contract – MHCRG2021-23CNT01_RCTP_TLT

**BACKGROUND:**

Clackamas County serves as the Regional Destination Management Organization (RDMO) for Travel Oregon's Regional Cooperative Tourism Program in the Mt. Hood/Gorge Region. This region includes the mountain communities of Clackamas County as well as Hood River County and portions of Wasco and east Multnomah County. This program is paid for by state transient lodging tax (TLT) funds. Travel Oregon distributes funds to the seven tourism regions based on state TLT collections in each region. This contract is for FY 21/22 allocation of funds for the Mt. Hood/Gorge Region.

The RDMO develops and executes the biennial plans for destination management and marketing that addresses regional needs identified through stakeholder engagement. The 2021-2023 RDMO Plan serves as the scope of work for this contract and is included as Exhibit A.2.

**RECOMMENDATION:**

Staff recommend approval of the agreement.

Respectfully submitted,  
/s/ Samara Phelps, Director  
Tourism and Cultural Affairs

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## STATE OF OREGON PROFESSIONAL SERVICES CONTRACT

This contract for professional services (“**Contract**”) number **MHCRG2021-23CNT01\_RCTP\_TLT** is between the State of Oregon (“**State**”), acting by and through its Oregon Tourism Commission, doing business as Travel Oregon (“**OTC**”), and Clackamas County – on behalf of its Department of Tourism (“**Contractor**”). OTC’s Contract Administrator for this Contract is identified in section 21.

**1. Contract Term.** This Contract is effective on the earlier of **July 1, 2021**, or the date it has been signed by OTC and Contractor, and all required State approvals have been obtained. This Contract continues through **June 30, 2023**, unless earlier terminated or extended by written, fully executed amendment. Contract termination does not extinguish or prejudice OTC’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

**2. Statement of Work; Consultant and Facilitation Services; Work Product; Deliverables.** Contractor shall provide the services and deliver all associated deliverables (“**Work Product**”) described in Exhibit A, Statement of Work (“**Services**”), which is attached and incorporated into this Contract.

**3. Consideration.**

**3.1** As payment in full for Services, OTC shall pay Contractor in the amounts specified in Exhibit A.

**3.2** OTC will reimburse Contractor for reasonable and necessary travel and other expenses only if expressly provided in Exhibit A.

**3.3** The maximum not-to-exceed amount payable to Contractor under this Contract, including all payments pursuant to Section 3.1 and any allowable expenses pursuant to section 3.2, is **\$194,210.00**. Contractor shall not submit invoices for, and OTC is not obligated to pay, any compensation in excess of this amount. If this maximum amount is increased by Contract amendment, the amendment must be fully effective before Contractor performs any Services subject to the amendment.

**3.4** OTC is not obligated to pay Contractor for any Services unless such Services are complete, conform to the Contract specifications, and otherwise conform to the warranties and other terms of this Contract.

**3.5** Contractor shall submit invoices no more than twice monthly to OTC’s Contract Administrator for Services performed. Contractor shall describe in each invoice all Services performed, the dates of performance, and by whom such Services were performed, and shall itemize and explain all expenses for which Contractor claims reimbursement. Contractor shall mail invoices to OTC at the address specified in section 21.

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

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

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

**5.2** Contractor shall pay all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, OTC will not withhold from such compensation or payments any amounts 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, Successors, and Assignments.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract without OTC’s prior written consent. OTC’s consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any. Contractor shall not assign, delegate, or transfer any of its rights or obligations under this Contract without OTC’s prior written consent.

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

**8. Funds Available and Authorized; Payments.** Contractor will not be compensated by any other agency or department of the State for Services performed under this Contract. OTC certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within OTC’s current biennial appropriation or limitation. Contractor understands and agrees that OTC’s payment of amounts under this Contract is contingent on OTC receiving appropriations, limitations, allotments, or other expenditure authority sufficient to allow OTC, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

## **9. Representations and Warranties.**

**9.1 Contractor’s Representations and Warranties.** Contractor represents and warrants that:

**9.1.1** Contractor has the power and authority to enter into and perform this Contract;

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

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

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

**9.1.5** Contractor has all rights necessary in the Work Product to grant the rights to the Work Product required under this Contract and OTC's use of the Work Product shall not infringe the copyright or other intellectual property or proprietary rights of any third party;

**9.1.6** To the best of Contractor's knowledge, the photographic images and OTC's authorized use of the images hereunder will not give rise to a claim by any persons depicted in the photographic images or by any third party of defamation, invasion of privacy, appropriation of likeness, unreasonable intrusion, public disclosure of private facts and holding up to a false light in the public eye;

**9.1.7** All releases, permissions, and consents required in relation to the depiction of persons featured in the photographic images have been obtained for the purposes of OTC's authorized use of the Work Product under this Contract;

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

## **10. Ownership of Work Product.**

**10.1 Ownership by OTC.** Unless otherwise provided in the Statement of Work, all Work Product is the exclusive property of OTC. Contractor hereby irrevocably assigns to OTC all of its rights, title, and interest in and to any and all of such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor forever waives any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**10.2 Ownership by Contractor.** If the Statement of Work provides that the copyright is owned by the Contractor, all Work Product is the exclusive property of the Contractor. Contractor hereby grants to OTC a perpetual, non-exclusive license to use, reproduce, display, publish and create derivative works of the Work Product. Unless otherwise provided in the Statement of Work, OTC's use of the Work Product includes the right for OTC to sublicense these photographic images to other Oregon state and local government agencies and to industry partners who comprise the news media, tour operators, meeting planners and other authorized third parties ("Sublicensees").

## **11. Contribution.**

**11.1** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against OTC or Contractor with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the

investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

**11.2** With respect to a Third Party Claim for which OTC is jointly liable with Contractor (or would be if joined in the Third Party Claim ), OTC shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Contractor in such proportion as is appropriate to reflect the relative fault of the OTC on the one hand and of the Contractor on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OTC on the one hand and of Contractor on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OTC's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if OTC had sole liability in the proceeding.

**11.3** With respect to a Third Party Claim for which Contractor is jointly liable with OTC (or would be if joined in the Third Party Claim), Contractor shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OTC in such proportion as is appropriate to reflect the relative fault of Contractor on the one hand and of OTC on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Contractor on the one hand and of OTC on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Contractor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

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

**13. Termination.**

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

**13.2 Termination by OTC for Cause.** In addition to any other rights and remedies OTC may have under this Contract, OTC may terminate this Contract, in whole or in part, immediately upon written notice to Contractor, or at such later date as OTC may establish in such notice, upon the occurrence of any of the following events:

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

**13.2.2** Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Contract is prohibited, or OTC is prohibited from paying



for such Services from the planned funding source;

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

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

**13.3 Termination by Contractor.** Contractor may terminate this Contract upon occurrence of the following

**13.3.1** : If OTC fails to pay Contractor any amount pursuant to the terms of this Contract, and OTC fails to cure such failure within thirty (30) days after Contractor's notice of termination for nonpayment, or such longer period as Contractor may specify in such notice;

**13.3.2** For its convenience upon sixty (60) days written notice to OTC;

**13.3.3** Immediately if Contractor fails to receive funding or other expenditure authority at levels sufficient for Contractor to continue to perform under this Agreement.

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

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

Contractor agrees that any Work Product created by Contractor and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract is deemed "Confidential Information" of OTC. Confidential Information does not include information which is or becomes (other than by disclosure by Contractor) publicly known.

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

Notwithstanding anything to the contrary, Contractor's obligations under this Agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law. While Contractor will make good faith efforts to perform under this

Agreement, Contractor's disclosure of Confidential Information, in whole or in part, will not be a breach of the Agreement if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If Contractor is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, Contractor shall notify OTC within a reasonable period of time of the request. OTC is exclusively responsible for defending OTC's position concerning the confidentiality of the requested information. Contractor is not required to assist OTC in opposing disclosure of Confidential Information.

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

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

**17. Limitation of Liabilities.** OTC AND CONTRACTOR ARE NOT LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES UNDER THIS CONTRACT OR (ii) ANY DAMAGE OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

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

**19. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 1, 7, 8, 9, 10, 11, 13, 14, 15, 19, 24, and 25.

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

**21. Notice.** Except as otherwise provided in this Contract, any notices between the parties that relate to this Contract must be given in writing and delivered by one of the following methods: United States Postal Service

(postage prepaid), express courier, facsimile, email or personal delivery to the other party at the physical address, facsimile number or email address set forth below or to such other addresses or numbers as either party may hereafter designate in writing. Any notice mailed or couriered is effective three (3) calendar days after the postmark date or the date that the notice is submitted to the courier for delivery, respectively. Any notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of a successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. Any notice delivered by email is effective on the day the email was received by the recipient, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against OTC, Contractor must confirm by telephone call to OTC's Contract Administrator that OTC received any notice transmitted by facsimile or email. Any notice given by personal delivery is effective immediately if delivery is made to the individuals identified below.

IF TO OTC:	IF TO CONTRACTOR:
<p>Todd Davidson, CEO</p> <p>Oregon Tourism Commission 319 SW Washington Street, Suite 700 Portland, OR 97204</p> <p>(971) 717-6205 (voice) (971) 717-6215 (fax)</p> <p>Email: <a href="mailto:accounting@traveloregon.com">accounting@traveloregon.com</a></p>	<p>Samara Phelps, Executive Director</p> <p>Clackamas County Department of Tourism 2051 Kaen Rd Oregon City, OR 97045</p> <p>(971) 334-9479</p> <p>Email: <a href="mailto:samara@mthoodterritory.com">samara@mthoodterritory.com</a></p>

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

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

**24. Choice of Law; Designation of Forum; Federal Forum.**

**24.1. Choice of Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

**24.2. Designation of Forum.** Any claim, action, suit or proceeding (collectively, “Claim”) between OTC (or any other agency or department of the State) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the State of Oregon for Marion County. Contractor hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

**24.3. Federal Forum.** Notwithstanding section 24.2, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

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

**26. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys’ fees and expenses.

**27. Contractor Data and Certification.**

**27.1. Contractor Tax Identification Information.** Contractor shall provide Contractor’s Social Security number or Contractor’s federal tax ID number and the additional information set forth in federal form W-9 and through other tax identification means as may be required by state and federal law. This information is requested pursuant to ORS 305.385. Social Security Numbers provided pursuant to this section will be used for the administration of state, federal and local tax laws.

**27.2.** In addition, OTC seeks voluntary reporting on the information set forth below. This reporting along with information provided by other contractors, may be provided to the Oregon Governor’s Office per Section 26.6 in an effort to better measure state agency equity and diversity in awarding contracts. Reporting on the information below, while voluntary, is requested.

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

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

Does your business have an adopted Equity, Diversity, or Inclusion statement?  
 Yes  No

If yes, in the lines below, please provide statement or business position on Equity, Diversity and Inclusion:

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Business Designation (check one):

Corporation  Partnership  Limited Partnership  Limited Liability Company

Limited Liability Partnership  Sole Proprietorship  Other: \_\_\_\_\_

COBID / WMWESB / Other Status (optional):

Minority/Woman Owned Business  Veteran Owned Business  Disadvantaged Business Enterprise

Emerging Small Business  B-Corp

**27.3 Certification.** The Contractor certifies under penalty of perjury that: (a) the number shown above is Contractor’s correct taxpayer identification and the other information provided is correct; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) the individual is authorized to act on behalf of Contractor, has authority and knowledge regarding Contractor’s payment of taxes, and to the best of the individual’s knowledge, Contractor is not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes and Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

**27.4 Anti-discrimination certification.** Pursuant to ORS 279A.110, the Contractor shall not, in the awarding of subcontracts, discriminate against a disadvantage business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business.

**27.5 Certification under ORS 200.055.** Respecting certification as a disadvantage business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Contractor shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications, required by ORS 279A.107.

**27.6 Notice to Governor’s Advocate.** OTC may provide notice to the Governor’s Advocate for MWESBs reporting requirements. Public contracts with a value of \$10,000 or more may be provided to

the Governor's Advocate regarding:

- a. Bid or proposal solicitations; and
- b. Contract awards

**28. Stop-Work Order.** OTC may, at any time, by written notice to Contractor, require Contractor to stop all, or any part, of the work required by this Contract for a period of up to 180 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the stop-work order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop-work-order notice. Within a period of 180 days after issuance of the notice, or within any extension of that period to which the parties have agreed, OTC shall either:

- a. Cancel or modify the stop-work order by a supplemental written notice; or
- b. Terminate the work as permitted by either the Convenience or Cause provisions of Section 13.


If the stop-work order is canceled, OTC may, in its sole discretion and after receiving and evaluating a request by Contractor, agree to adjust the Contract term or price by a duly executed amendment.

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.

**CLACKAMAS COUNTY on behalf of its  
Department of Tourism**

**STATE OF OREGON acting by and through  
the OREGON TOURISM COMMISSION**

Signature:   
Tootie Smith,  
Chair, Board of Commissioners

Signature:   
Todd Davidson, CEO

Date: 8/19/2021

08/26/2021  
Date: \_\_\_\_\_

## EXHIBIT A

### STATEMENT OF WORK

Contractor will provide OTC with a regional tourism strategy (RCTP Plan) using OTC provided templates, when provided, that outlines regional priority initiatives and intended future activities through investment of state funds. Initiatives and activities may include but are not limited to; branding, marketing, increasing domestic and international visitors, improving, or expanding tourism product, supporting tourism business and economic development, destination management and improving visitor experiences in the region. Contractor will use state lodging tax funds provided by OTC to implement an approved RCTP Plan for the utilization of funds provided in this Agreement and in accordance with the Guidelines attached as Exhibit A.1.

Contractor's implementation of the RCTP Plan will be in accordance with priorities and goals, success measures, and departmental strategies set forth in Contractor's response to OTC, a copy of which is attached hereto as Exhibit A.2 and incorporated by this reference herein.

#### **PAYMENT TERMS / BUDGET SUMMARY:**

Contractor will conduct work identified in this Agreement with funds provided by OTC as follows:

	<b>2021-2022</b>	<b>BUDGET</b>
	RCTP	\$194,210.00
	<b>TOTAL</b>	<b>\$194,210.00</b>

	<b>2022-2023 *</b>	<b>BUDGET</b>
	RCTP	\$194,210.00
	<b>TOTAL</b>	<b>\$194,210.00</b>

\*2022-2023 budget provided is estimate only. Contract will be amended to reflect actual amounts of RCTP funding based on actual 2021 calendar pro rata share of transient lodging tax.

#### **SCHEDULE**

Contract anticipates the following schedule for each year of this agreement:

- July 1: Contract for services executed by OTC and sent to Contractor
- Contractor will execute agreement and return along with an invoice requesting payment to [accounting@traveloregon.com](mailto:accounting@traveloregon.com) . RDMO may invoice for total annual amount if RCTP Plan has been approved or for **\$25,000** if RCTP Plan approval is pending. Invoice must include contract # and reference "2021-22" or "2022-23"
- Mid-year progress report due on date provided by OTC, but not sooner than January 31
- OTC to provide Contract amendment to Contractor reflecting prior calendar year pro rata share no later than March 31
- July 31: Annual year-end reports for use of all direct regional investment money due

OTC will use a digital signing process via the website Right Signature to obtain fully executed contracts. In no case will the payment for all services exceed the maximum, not-to-exceed amount of this agreement unless an amendment to this agreement is signed by all parties authorizing additional payment. Terms for all payments are net 30 from receipt and acceptance of invoice.

- All invoices must be emailed to [accounting@traveloregon.com](mailto:accounting@traveloregon.com)
- All invoices must include reference to **Purchase Order #2021-012** and include reference to this contract: **MHCRG2021-23CNT01\_RCTP\_TLT**.
- The following details must be included on all invoices:
  - Identification work performed or services rendered and related to the Statement of Work established in this contract.

No payments will be made without a detailed invoice including the requirements outlined in the payment terms or prior to receipt of Contractor providing an up to date IRS W-9 Form. To protect yourself and your business, we urge contractors not to email any confidential information. OTC will only accept sensitive information necessary for our records through a secure and confidential site such as "Share File". Alternatively, signature pages and sensitive information may be mailed to OTC at address provided in Section 21, Notice.

#### **Travel and Other Expenses.**

Travel and related other expenses are not authorized under this Agreement as separate Contractor compensation with prior written approval by OTC and only if accompanied by substantiation of travel and related expenses.



## EXHIBIT A.1

### Guidelines

#### **Contractor has been designated by OTC as Regional Destination Management Organization and will:**

- a. Develop and submit an RCTP Plan using OTC provided spreadsheets and templates, when provided, for OTC review and approval. The Plan will include budgets and other detail with particularity related to proposed investment. RCTP money will not be distributed until the Plan is approved by OTC. Approved Plan and other documentation will be kept on file with OTC and hereby incorporated into this agreement as Exhibit C.
- b. Comply with all RCTP guidelines, including requirements to convene stakeholder meetings to solicit RCTP Plan input and report out on approved RCTP Plan.
- c. Expend RCTP money in accordance with the approved RCTP Plan. Retain all invoices, expense documentation, receipts, marketing materials and other documentation related to implementation of the Plan.
- d. Maintain all above-mentioned documentation for a period of three (3) years and make such documentation available to OTC, the Oregon Secretary of State's office and their authorized agents or auditors upon request.
- e. Provide mid-year and/or year-end progress and financial reports to OTC by the OTC established deadlines. Contractor will request, in writing, any needed extensions or clarification at least 1 week prior to the due dates of each report.
- f. Serve as a regional industry resource to OTC on matters of importance to Oregon's tourism industry, including providing local and regional policy information as needed and developing coalitions or community grassroots networks to disseminate information on matters of importance to Oregon's tourism industry as appropriate.
- g. Convene meetings with local industry members as well as with regional leadership teams and other public and private partners to foster alignment with statewide and regional tourism strategy intended to optimize the economic impacts of tourism in the region.
- h. Designate an RDMO RCTP representative to serve as primary RDMO point of contact and who will actively participate in OTC initiated statewide and regional meetings whenever possible.
- i. Work as a communication resource to OTC to deliver OTC provided industry information, including distribution and response to "call-outs" for sales and development efforts, to local and regional industry members and key stakeholders. Contractor will from time to time, as requested, and when possible, solicit industry and stakeholder feedback or input on OTC initiatives or other industry initiatives and provide information to OTC.
- j. Expend the state dollars provided through this agreement in a manner consistent with the approved RCTP Plan and budget. RCTP Plan modifications, including budget modifications of more than \$5,000.00, must be approved in writing in advance. Contractor may not use RCTP funds to retire any debt or to cover any costs incurred prior to the effective date of this agreement.
- k. If any funds remain unspent as of June 30, 2023, Contractor may carry forward the unspent funds into future biennium contracts only if the unspent funds are deposited into the region's grant/strategic investment fund. Otherwise, all unspent funds must be returned to OTC.

## EXHIBIT A.2

### 2021-2023 RDMO PLAN

#### **REGION:**

Mt. Hood and the Columbia River Gorge

#### **MISSION:**

The Mt. Hood and Columbia River Gorge Regional Tourism Alliance seeks to use responsible visitor management to build awareness for the region as a multi-day and year-round travel destination that benefits all communities. Our mission is to continuously and creatively address the challenges that come with being a mature destination that is surrounded by small communities and neighbors Oregon's largest metro area.

#### **RCTP PRIORITIES & GOALS:**

What are the goals for the RCTP program in your region for 2021-2023?

The Mt. Hood and Columbia River Gorge RDMO reviewed and synthesized all our stakeholder feedback and came up with these 5 priority areas to focus on for the FY21-23 biennium. Each priority has an associated goal.

Priority 1: Care for Community.

Goal: Create and support ways in which our communities can engage with, advocate for, and understand the benefits from the tourism economy.

Priority 2: Destination and Visitor Management.

Goal: Leverage and support tools and programs that address high-use/low-use issues, seasonality, and economic impact needs in the region.

Priority 3: Improve Visitor Experiences.

Goal: Access funding and partnerships that support regional partners with improving existing visitor experiences in the region.

Priority 4: Leverage Resource through partnerships.

Goal: Expand the work the RDMO can accomplish to meet our goals through partnerships with Travel Oregon, other RDMOs, DMOs, associations, and other stakeholders.

Priority 5: Regional Alignment.

Goal: Maintain and support a strong sense of alignment between Mt. Hood and the Columbia River Gorge in visitor communications.

#### **OVERALL SUCCESS MEASURES:**

How is success of your organization measured at a macro level? Please describe your measures and goals for overall organizational and regional success.

At a macro level, our organizational success is measured by stakeholder satisfaction, economic impact in our communities, and progress towards our priorities. Key measurements for macro level success include:

- the biannual stakeholder survey and partner feedback at stakeholder meetings where we have the opportunity to check in on the relevancy and effectiveness of our work on an on-going basis
- annual Dean Runyan economic impact reports

Additionally, in this biennium, our organizational success rests in our ability to help support our region's communities through a thoughtful tourism recovery from the COVID-19 pandemic.

## **STAKEHOLDER FEEDBACK:**

Summarize how your plan is informed by stakeholder feedback. What are the most important objectives as indicated by your stakeholders? How will you respond to those needs?

The Mt. Hood and Columbia River Gorge regional FY21-23 plan was informed by an October 2020 Stakeholder Survey, March 2021 Stakeholder Engagement Session, and a number of discussions and check points with our region's DMOs, networks, and public and private entities throughout the last 12 months.

The key objectives indicated by stakeholders are reflected in our biennial priorities and goals, but we have listed a few of the below with examples of how they are being addressed in the plan.

### **Destination and visitor management issues: congestion, transportation, trash, etc.**

As a mature destination with world class outdoor recreation assets, our region normally experiences high use issues in our public lands and along transportation corridors. This management issue has only been exasperated by the increase in outdoor recreation use due to the COVID-19 pandemic. Stakeholders concerns from the survey center around congestion on trails, in parking lots, and along transportation corridors (including Hwy 26 and the Historic Columbia River Highway), and trash on trails and in communities. We are responding to these needs in a variety of ways, including:

- Direct investments in stewardship programs in high use areas, including Trail Ambassadors on Mt. Hood and in the Gorge and River Ambassadors along the Clackamas River.
- Funding to boost Take Care Out There messaging during peak issue seasons.
- Providing the services of our grant contractor to key partners seeking funding for management solutions.
- Staff participation in region-wide transportation and recreation groups and committees.
- PR investments to target messaging away from congested areas and towards our lesser visited communities.
- Re-printing of the Infinity Loop map which highlights lesser visited areas, with a tactic of driving visitor flow away from high-use areas.

### **Marketing and promotion**

As with many destinations across the state, the COVID-19 pandemic and 2020 wildfire season significantly impacted the tourism and hospitality industry in our region resulting in layoffs, decreased revenues, and some business closures. That is why it is not surprising that a focus on marketing and promotion was the top long-term priority stakeholders indicated for our region. Previous investments in marketing in our region have been centered on getting key messages into PR and boosting the catalogue of visual assets for our regional partners. This biennium, however, due to the feedback from stakeholders, we are planning to fund a marketing campaign targeted at supporting our tourism businesses. The timing and key messages of the marketing campaign are still to be determined as we track recovery trends and needs from the pandemic. Additionally, we are taking advantage of the opportunity to partner with Travel Oregon's PR agency this biennium to leverage their contractors and investments to help streamline and maximize our messaging efforts.

### **Local support and funding for tourism businesses**

By a large margin, "help advocating for effective policies and funding to support tourism businesses/organizations" was the resource that 59% of stakeholders in the region identified as the best way to support them through the COVID-19 recovery. Additionally, grants and funding resources was the highest 1<sup>st</sup> priority of stakeholders in short term recovery needs and local sentiment towards tourism has been a growing topic for the past year. We are addressing these concerns in a couple of ways. First, through our Care for Community priority we are working towards gaining a better understanding of community sentiment towards tourism in the region and identifying ways to address this in our program of work. This

includes a resident survey we will be conducting as well as a robust public relations strategy for our region with the help of Travel Oregon. Additionally, we have hired a grant contractor who will be a resource to our tourism stakeholders to help lift their ability to identify and apply for funding resources to support their business needs.

## **DEPARTMENTAL STRATEGY OVERVIEW 21-23**

### **GLOBAL MARKETING STRATEGY:**

Our marketing tactics revolve around two of our main priorities for the region: destination and visitor management, and leveraging regional partnerships, particularly through investment opportunities with Travel Oregon. Our marketing and PR messages will be nimble and adapt to the evolving needs of our region. This includes supporting local communities and businesses as they recover from the COVID-19 pandemic and 2020 wildfires as well as addressing land management concerns and opportunities. With the use of Recovery and Stability funds this biennium, many of our marketing and communications tactics will have the ability to focus on in-state audiences in a way we have not been able to do before.

### **DESTINATION DEVELOPMENT STRATEGY:**

Stewardship, safety, and community are the three main focus areas for our Destination Development tactics this biennium. Through direct investments in Trail and River Ambassador programs, along with promotion of Take Care Out There messaging, our region is prioritizing care for our public outdoor recreation areas. We will also be undertaking a significant investment in centering community in all the work that we do. To kick this work off, we are going to launch a region-wide resident survey to better understand the issues facing our communities and how they connect those to the tourism industry so that we can start to build a roadmap for future positive impact.

### **GLOBAL SALES STRATEGY:**

As the world is only just starting to dip its toes back into international travel, the Mt. Hood and Columbia River Gorge region will focus on attending just a few key targeted international consumer and trade shows that align with our priorities and budget. We continue to value the benefits that international visitors bring to our region with longer stays and larger economic spending than in-state visitors. That is why in addition to our couple of investments we will be relying on the support of our partnership with Travel Oregon's Global Sales team to help lift our region in the spaces we cannot directly invest in and leverage leads they develop and capture for our regional partners.

### **STRATEGIC PARTNERSHIPS STRATEGY:**

Strategic Partnerships are invaluable to the Mt. Hood and Columbia River Gorge region. You can see that in our tactics across the biennial plan with many tactic partnerships with Travel Oregon. Our specific investments in the Strategic Partnerships category were selected to both leverage opportunities with Travel Oregon and to support our partnerships with local and regional stakeholders. This includes supporting local partners with grant writing resources, training scholarships, guest service training, and supporting the RDMO and local DMOs with membership dues to key industry associations.

### **STAFFING & ADMINISTRATION STRATEGY:**

The Mt. Hood and Columbia River Gorge RDMO will accomplish the proposed body of work with salary and benefits of a .75 FTE staff person. This role is supported by tactic specific contractors for content, FAM

coordination, and grant writing. The staff role will administer the body of work laid out in this plan as well as fulfill the role and duties expected of an RDMO, with support from the Mt. Hood and Columbia River Gorge Regional Tourism Alliance partners and other regional stakeholders.

## EXHIBIT B

### INSURANCE REQUIREMENTS

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

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

1.  **Required by OTC of Contractors with one or more workers, as defined by ORS 656.027. Workers' Compensation:** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.
  
2.  **Required by OTC**  **Not required by OTC.**  
**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than  \$200,000  \$500,000  \$1,000,000  \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional Services to be provided under this Contract.
  
3.  **Required by OTC**  **Not required by OTC.**  
**General Liability** insurance with a combined single limit, or the equivalent, of not less than  \$500,000  \$1,000,000  \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the State of Oregon, Department of Justice and their divisions, officers and employees are Additional Insureds but only with respect to the Contractor's Services to be provided under this Contract.
  
4.  **Required by OTC**  **Not required by OTC.**  
**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than  Oregon Financial Responsibility Law (ORS 806.060)  \$200,000  \$500,000  \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
  
5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to OTC;
  
6. **Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to OTC prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, or self-insurance.

the Governor's Advocate regarding:

- a. Bid or proposal solicitations; and
- b. Contract awards

**28. Stop-Work Order.** OTC may, at any time, by written notice to Contractor, require Contractor to stop all, or any part, of the work required by this Contract for a period of up to 180 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the stop-work order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop-work-order notice. Within a period of 180 days after issuance of the notice, or within any extension of that period to which the parties have agreed, OTC shall either:

- a. Cancel or modify the stop-work order by a supplemental written notice; or
- b. Terminate the work as permitted by either the Convenience or Cause provisions of Section 13.


If the stop-work order is canceled, OTC may, in its sole discretion and after receiving and evaluating a request by Contractor, agree to adjust the Contract term or price by a duly executed amendment.

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.

**CLACKAMAS COUNTY on behalf of its  
Department of Tourism**

**STATE OF OREGON acting by and through  
the OREGON TOURISM COMMISSION**

Signature:   
Tootie Smith,  
Chair, Board of Commissioners

Signature:   
Todd Davidson, CEO

Date: 08/19/2021

08/26/2021

Date: \_\_\_\_\_

## COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to \_\_\_\_\_
- Other \_\_\_\_\_

Originating County Department: \_\_\_\_\_

Other party to contract/agreement: \_\_\_\_\_

Description:

After recording please return to: \_\_\_\_\_

County Admin

Procurement

If applicable, complete the following:

Board Agenda Date/Item Number: \_\_\_\_\_