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**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT
Vocational and Educational Services for Older Youth
(VESOY)**



Contract # 11732

This Contract is between the State of Oregon, acting by and through its **OREGON YOUTH AUTHORITY**, hereafter called "OYA" or "Agency", and **THREE RIVERS SCHOOL DISTRICT**, hereafter called "Contractor".

Agency's **Contract Administrator** for this Contract is: Larry McKinstry, RYCF Superintendent
Phone Number: 541-471-2862
Address: 2001 NE F Street, Grants Pass, Oregon 97526-4813

1. Contract Period; Contract Documents

- a. This Contract is effective on the date it has been fully executed by every party and, when required, approved by the Oregon Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Contract terminates when Agency accepts Contractor's completed performance or on **June 30, 2011**, whichever date occurs last.
- b. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, Exhibit A (the Statement of Work), Exhibit C (Consideration), and Exhibit B (Required Insurance).

2. Statement of Work. Contractor shall perform the services and deliver to Agency all documents, reports and other information as set forth in Exhibit A (the "Work") beginning **July 1, 2010** and ending **June 30, 2011**. Contractor shall perform the Work in accordance with the terms and conditions of this Contract.

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

4. Consideration. Agency shall compensate Contractor for Work performed as set forth in Exhibit C.

5. Independent Contractor; Responsibility for Taxes and Withholding

- a. Contractor shall perform all Work as an independent contractor. The Agency reserves the right (i) to determine and modify the delivery schedule for the Work, and (ii) to evaluate the quality of the Work Product, as that term is defined in Paragraph 9.a. However, the Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

- b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor, by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244, and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.
- c. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.
- d. 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 without Agency's prior written consent. In addition to any other provisions Agency may require, the form of the agreement used by Contractor must be reviewed and approved by Agency before it is executed by the parties and Contractor shall require any approved subcontractor to be bound by the following Paragraphs of this Contract as if the subcontractor were Contractor: (i) Paragraph 6, Subcontracts and Assignments; Successors and Assigns; (ii) Paragraph 9, Ownership of Work Product; (iii) Paragraph 10, Indemnity; (iv) Paragraph 14, Records Maintenance; Access; (v) Paragraph 15, Compliance with Applicable Law; (vi) Paragraph 16, Force Majeure; and (vii) Paragraph 21, Governing law; Venue; Consent to Jurisdiction. Agency's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract. Contractor is solely responsible for performance of all Contract requests, and is responsible for assuring all subcontractors perform in compliance with Contract standards. Contractor shall deliver to Agency a copy of each executed subcontract.
- b. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.
- c. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent.
- d. Contractor shall require all subcontractors to meet all applicable requirements described in the Statement of Work and shall include in the subcontract requirements for reporting, fiscal accountability, budgeting and approved expenditures including direct services and indirect expenses, and program evaluation as described in the Statement of Work.
- e. Subject to the requirements of this Paragraph 6, Contractor may subcontract for all or part of the services described in the Statement of Work with ESDs, LEAs, other public or private agencies meeting standards established by Agency, and with hospitals, clinics, private therapists and consultants licensed by the State licensing board for their profession.
- f. Contractor shall establish and implement a system to monitor provisions of all subcontracts and the subcontractor's compliance, to ensure coordination of their activities.

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 may be construed to give or provide to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by

name and expressly described as intended beneficiaries of this Contract.

8. Representations and Warranties. Contractor represents and warrants to Agency that:

- a. Contractor has the power and authority to enter into and perform this Contract;
- b. this Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
- c. 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 Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
- d. at all times during the term of this Contract Contractor shall be qualified, professionally competent, and duly licensed to perform the Work;
- e. Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

The warranties set forth in this Paragraph are in addition to, and not in lieu of, any other warranties provided and are intended to survive termination or expiration of the Contract.

9. Ownership of Work Product

a. Definitions. As used in this Contract, the following terms have the meanings set forth below:

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

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Agency pursuant to the Work.

- b. Original Works.** All Work Product created by Contractor, including derivative works and compilations, and whether or not the Work Product is considered a work made for hire or an employment to invent, is the exclusive property of Agency. Original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. To the extent any original Work Product created by Contractor is not "work made for hire" or is protected by any other intellectual property law or doctrine, Contractor hereby irrevocably assigns to Agency all of its rights, title, and interest in the original Work Product created by Contractor, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest these rights in Agency. Contractor forever waives all rights relating to original Work Product created by Contractor, including 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.

If Work Product created by Contractor is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If Work Product created by Contractor is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work

Product, and to authorize others to do the same on Agency's behalf.

- c. Contractor Intellectual Property.** If Work Product includes Contractor Intellectual Property Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Agency's behalf.
- d. Third Party Works.** If Work Product includes Third Party Intellectual Property, Contractor shall secure on Agency's behalf and in the name of Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.
- e. Survival.** The terms of this Paragraph are intended to survive the expiration or termination of the Contract.

10. Indemnity

- a.** To the extent permitted by applicable law, Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including attorneys fees, resulting from, arising out of, or relating to negligence or intentional misconduct of Contractor or its officers, employees, subcontractors, or agents under this Contract.
- b.** Except in the instance where a subcontractor is an agency of the State of Oregon, Contractor shall include in all contracts with subcontractors a provision requiring the subcontractor to defend, save, hold harmless and indemnify the State of Oregon, the Oregon Youth Authority and Contractor, together with the officers, employees and agents of those entities, against all claims, suits, actions, losses, liabilities, costs and expenses of any nature resulting from, arising out of, or relating to negligence or intentional misconduct of the subcontractor or its officers, employees, subcontractors or agents under the Contract. If the subcontractor is an agency of the State of Oregon, Contractor shall include in the subcontract a provision in substantially the following form:
Subcontractor is an agency of the State of Oregon and as such is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300). Any tort liability claim, suit, or loss resulting from or arising out of the subcontractor's performance of and activities under this contract must be allocated, as between the state agencies (subcontractor and the Oregon Youth Authority), in accordance with law by the Risk Management Division of the Department of Administrative Services for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Subcontractor shall notify the Risk Management Division and the Department of Education if it receives notice or knowledge of any claims arising out of the performance of, or the activities under this contract.
- c.** Without limiting the generality of subparagraphs (a) and (b), Contractor shall defend, indemnify, and hold Agency, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the Work, the Work Product or any other tangible or intangible items delivered to Agency by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or Agency's use of them, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party.
- d.** Agency shall provide prompt written notice to Contractor of any infringement claim.

- e. Contractor shall have control of the defense and settlement of any claim that is subject to the above subparagraphs; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement if the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
- f. The indemnities given in this Paragraph are intended to survive the termination or expiration of the Contract.

11. Insurance. Prior to performing the Work, Contractor shall obtain the insurance specified on **Exhibit B** and Contractor shall maintain this insurance throughout the term of the Contract.

12. Default; Remedies; Termination.

- a. **Default by Contractor.** Contractor is in default under this Contract if:
- (i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
 - (ii) Contractor no longer holds a license or certificate required for Contractor to perform the Work, or the school in which Contractor performs the Work is deemed to be a "non-standard" school as that term is defined in OAR 581-022-0102, and Contractor has not obtained such license or certificate or cured the circumstances which caused the school to be deemed "non-standard" within 14 calendar days after Agency's notice or any longer period Agency may specify in the notice; or
 - (iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work within the time specified or any extension, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and the breach, default or failure is not cured within 14 calendar days after Agency's notice, or any longer period Agency may specify in the notice; or
 - (iv) Agency notifies Contractor in writing Contractor's subcontractor is not in compliance with State of Oregon or federal statutes, regulations or guidelines relating to performance of the Contract, and the subcontractor fails to correct the deficiencies as directed within 14 calendar days after Agency's notice, or any longer period Agency may specify in the notice.
- b. **Agency's Remedies for Contractor's Default.** If Contractor is in default under paragraph 12.a, Agency may pursue any or all of the following remedies:
- (i) termination of this Contract under paragraph 12.e(ii);
 - (ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
 - (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
 - (iv) exercise its right of setoff; or
 - (v) any other legal remedy available to Agency.
- These remedies are cumulative to the extent they are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under paragraph 12.a, then Contractor will be entitled to the same remedies as if this Contract was terminated pursuant to paragraph 12.e(i).

- c. Default by Agency.** Agency is in default under this Contract if:
- (i) Agency fails to pay Contractor any amount due under the Contract and Agency fails to cure its failure within 30 calendar days after Contractor's notice or any longer period Contractor may specify in its notice; or
 - (ii) Agency commits any material breach or default of any covenant, warranty or obligation under this Contract, and the breach or default is not cured within 30 calendar days after Contractor's notice or any longer period Contractor may specify in the notice.

d. Contractor's Remedies for Agency's Default. If Agency terminates the Contract under paragraph 12.e(i) or if Agency is in default under paragraph 12.c, and whether or not Contractor elects to exercise its right to terminate the Contract under Paragraph 12.e(iii), Contractor's sole monetary remedy is:

- (i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462; and
- (ii) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) Agency has against Contractor.

In no event is Agency liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Paragraph 12.d, Contractor shall pay immediately any excess to Agency upon written demand provided in accordance with Paragraph 19.

e. Termination

- (i) **Agency's Right to Terminate at its Discretion.** At its sole discretion, Agency may terminate this Contract:
 - (A) Upon ninety (90) days' prior written notice by Agency to Contractor;
 - (B) Immediately upon written notice if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products;
 - (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Work or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Work or Work Product from the planned funding source; or
- (ii) **Agency's Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice to Contractor as provided in Paragraph 12.a, or at any later date Agency may establish in the notice, upon failure to Contractor to cure a default arising under Paragraph 12.a.
- (iii) **Contractor's Right to Terminate at its Discretion.** At its sole discretion, Contractor may terminate this Contract upon ninety (90) days' prior written notice by Contractor to Agency.
- (iv) **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract following written notice to Agency as provided in Paragraph 12.c, or at such later date as Contractor may establish in the notice, upon the failure of Agency to cure a default arising under Paragraph 12.c.
- (v) **Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Work or Work Products, computers, software, desks, chairs, books, and other classroom furnishings for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. In addition to other conditions that the parties may agree upon, Contractor's duty to return property includes boxing up items and generally leaving Agency property in good order for retrieval by Agency. 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

Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

13. Limitation of Liabilities. Except for liability arising under or related to Paragraphs 12(e)(ii) (Agency's Right to Terminate for Cause) or 8(a) (Contractor's Representations and Warranties), neither party is liable for: (i) any indirect, incidental, consequential or special damages under this 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 financial 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 shall provide to Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives access to the 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 financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six years, or any longer period that 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 this Contract. Without limiting the generality of the foregoing, Contractor shall comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract:

- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
- b. Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended;
- c. the Americans with Disabilities Act of 1990, as amended;
- d. Executive Order 11246, as amended;
- e. the Health Insurance Portability and Accountability Act of 1996;
- f. the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- g. the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- h. ORS Chapter 659, as amended;
- i. ORS 279B.220, 279B.235 and 279B.230;
- j. all regulations and administrative rules established pursuant to the foregoing laws; and
- k. all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

These laws, regulations and executive orders are incorporated by reference to the extent they are applicable to the Contract and required by law to be incorporated. Contractor shall use recycled paper (as defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(ii)) to the maximum extent economically feasible in the performance of this Contract.

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

17. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Paragraphs: (i) Paragraph 1, Contract Period; Contract Documents; (ii) Paragraph 8, Representations and Warranties; (iii) Paragraph 9, Ownership of

Work Product; (iv) Paragraph 10, Indemnity; (v) Paragraph 11, Insurance; (vi) Paragraph 12, Default; Remedies; Termination; (vii) Paragraph 14, Records Maintenance; Access; (viii) Paragraph 13, Limitation of Liabilities; (ix) Paragraph 17, Survival; (x) Paragraph 22, Governing Law; Venue; Consent to Jurisdiction.

18. Time is of the Essence. Time is of the essence in the performance of all of Contractor's obligations under this Contract.

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

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

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

22. Governing Law; Venue; Consent to Jurisdiction. This Contract is to 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 (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon, unless the Claim must be brought in a federal forum, in which case it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Paragraph be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of these courts.

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

24. Amendments. Agency may amend this Contract to the extent provided in the solicitation document, if any, from which this Contract arose, and to the extent permitted by applicable statutes and administrative

rules. No amendment to this Contract is effective unless it is in writing signed by the parties and all approvals required by applicable law have been obtained.

25. Contract Administrator. Contractor shall assign a Contract Administrator to this Contract and notify Agency in writing of the assigned person and contact information. Contractor shall also notify Agency in writing if a change of the Contract Administrator occurs.

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

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO ISSUANCE OF ALL NECESSARY STATE APPROVALS

I hereby certify and affirm I am eligible and authorized to sign this Contract on behalf of the Contractor.

By: _____ Date: _____

Title: _____

Mailing Address: _____

Facsimile: _____

Approved as to Legal Sufficiency by the **Attorney General's Office:** (Required if total amount owing under the Contract, including amendments, exceeds \$150,000)

By: N/A Date: _____
Assistant Attorney General

AGENCY: STATE OF OREGON, acting by and through its Oregon Youth Authority

By: _____ Date: _____
Manager of Budget and Contracts

Mailing Address: 530 Center St. NE, Suite 200
Salem, Oregon 97301-3740

Facsimile: (503) 373-7921

Reviewed by **OYA Contracts Specialist:**

By: _____ Date: _____

EXHIBIT A

STATEMENT OF WORK

It is the philosophy of the Agency all employees, customers, clients, contractors and visitors to the work site enjoy a work environment free from harassing behavior, regardless of whether it raises to the level of illegal harassment. Employees at all levels of the Agency are expected to conduct themselves in a business-like and professional manner and refrain from conduct that to a reasonable person would be offensive, intimidating, hostile, or abusive.

The Agency expects the Contractor will adhere to the same with regards to Agency employees.

During the course of Contractor's performance of the Work under this Contract, as more specifically set forth below, Agency's Contract Administrator for this Contract (to receive all inquiries, notices, materials, invoices, etc from Contractor) is Larry McKinstry. Should a change in the Agency's Contract Administrator become necessary, Agency will notify Contractor of such change. Such change shall be effective without the necessity of executing a formal amendment to this Contract.

I. General Statement of Work

1. Contractor shall provide or cause to be provided an educational/vocational program ("Educational Program") for youth offenders who are housed at the OYA Rogue Valley Youth Correctional Facility ("Facility") who have obtained a high school diploma or are 21 years and older ("Student" or "Students").
2. Contractor shall provide to OYA for use in ongoing case management:
 - a. Method to track services for Students engaged in educational services.
 - b. Information on Students receiving other means of revenue to purchase educational or vocational services (College grants).
 - c. Grades/diplomas or certificates at the end of regular grading periods.
3. Contractor shall provide an education program that will meet the individual education needs of the Students as follows:
 - a. Provide for regular and systematic educational opportunities throughout the standard corrections education year of 220 days.
 - b. Provide opportunities for post high school education, intensive transitional services and also opportunities for job training, job skills development, and opportunities for employment.
 - c. Contractor shall ensure the schedule does not contain more than 10 consecutive weekdays without classroom instruction for all Students unless agreed upon by Facility Superintendent and school Principal.
4. Student instruction shall be provided at all OYA close custody facilities, in areas provided for instruction and in such other areas as deemed appropriate by the OYA Superintendent and education administrator.
 - a. Classroom or individual instruction of Students will take place only in such areas as designated or agreed upon by the Superintendent of the respective close custody facilities.
 - b. Students from one facility will not be transported to another site for classroom or individual instruction without the prior agreement of the respective superintendents or camp director(s).
 - c. The education program at each close custody facility will be limited to residents of that facility. Exceptions may be made with the approval of the institution superintendent.
 - d. Contractor will maintain exclusive authority over the assignment of their educational staff and

allocation of other educational resources.

- e. Contractor shall abide by all policy, rules, standards, and regulations set forth by OYA in the viewing, maintenance, and use of data held in the Juvenile Justice Information System (JJIS). Contractor shall ensure that its staff designated for access privileges have signed confidentiality forms. Contractor shall maintain such forms and shall provide copies of the signed forms to OYA. Contractor shall make its staff available for training and other requirements as called for by the JJIS Project Management team.
- f. Contractor shall insure JJIS information will remain separate from and not be incorporated into individual Student records or the records system of the Contractor that provides education services within OYA facilities.
- g. Contractor shall make Students available for various Youth Corrections programming requirements, including but not limited to case planning, temporary leave, legal processes, and such medical services which cannot be provided after school hours.
- h. In the school buildings and all other areas of campus, Contractor educational staff shall comply with all OYA requirements regarding safety and security.
 - i. Contractor shall require and make its staff, practicum students, subcontractors, and volunteers available for safety and security training required by OSHA and OYA. The Contractor shall reimburse OYA for the cost of training over and above that scheduled for OYA personnel.
 - ii. Contractor education staffs are not required to restrain students but shall follow OYA procedures in securing OYA intervention with students who are out of control.
 - iii. Contractor shall ensure that any person having direct contact with OYA youth offenders under this Contract has passed a criminal history check and meets the OYA's criminal history records check standards as set forth in OAR 416-800-0000 to 416-800-0060 before the person provides unsupervised services under this Contract.

Any person that has not yet passed a criminal history check must be supervised by a person who has passed such a test and does meet such standards when having direct contact with OYA youth offenders under this Contract. Any person who has failed a criminal history check as set forth in OAR 416-800-0000 to 416-800-0060 is prohibited from serving as a contracted service provider.

- i. Contractor shall, within the dictates of applicable statutes and regulations, notify OYA of any potential employee or current employee who will be or is assigned responsibility in Youth Corrections who is the subject of a criminal investigation or who has a criminal record or who is a current or past client of OYA's. Contractor shall obtain OYA's approval for the employment or continued employment of that individual.
- j. The performance of the Contractor staff in areas of Student interaction, safety, and discipline shall meet the standards of OYA. Failure to meet such standards will require corrective action by Contractor administration in accordance with the Contractor's collective bargaining agreement as appropriate.
- k. Contractor shall notify in writing the Superintendent of any facility or equipment needs or deficiencies relating to safety, security, or general use of the facilities for educational purposes.
- l. Contractor shall reimburse OYA for its share of services or products when those items are provided onsite by OYA. This includes such items as copy machine use.
- m. All supplemental media materials used with Students shall conform to Contractor standards and policies and will only be used as part of the approved school curriculum.
- n. Contractor shall inform OYA Treatment Managers in writing prior to any learning activities dealing with violence, suicide, or sexual content. Upon request by the treatment manager, any

student will be excused from such learning activities if the Treatment Manager determines the activity may harm the student or adversely affect the student's treatment.

- o. Contractor, as mandatory reporters of child abuse, shall carry out OYA policy with regard to reporting to the Oregon Department of Human Services, shall report suspected abuse to the school administrator, and report it to the Facility Superintendent or Camp Director.
- p. Contractor shall make reasonable effort to prevent unmonitored communications by students utilizing computer systems, programs, and devices. If unmonitored communication by students utilizing computer systems, programs, and devices occurs, Contractor shall notify OYA immediately.
- q. Contractor shall make reasonable effort to prevent the posting of Students' personal information on the internet (excluding OYA approved systems) from either the Student or the staff network.
- r. Contractor shall make reasonable efforts related to internet monitoring, recording, and blocking capability such as software control for all Student access to the internet. All sites dealing with the following categories are considered unacceptable:
 - i. Adult/Sexually Explicit;
 - ii. Advertisements and Pop-ups;
 - iii. Alcohol and Tobacco;
 - iv. Blogs and Forums;
 - v. Chat rooms;
 - vi. Criminal Activity;
 - vii. Downloads;
 - viii. Gambling;
 - ix. Games;
 - x. Glamour and Intimate Apparel;
 - xi. Hacking;
 - xii. Illegal Drugs;
 - xiii. Intolerance and Hate;
 - xiv. Personals and Dating;
 - xv. Phishing and Fraud;
 - xvi. Proxies and Peer-to-Peer;
 - xvii. Spyware;
 - xviii. Tasteless and Offensive;
 - xix. Violence;
 - xx. Weapons; and
 - xxi. Web-based E-mail.

- 5. Contractor shall submit a Student specific Service Plan prior to service delivery. The Agency will provide feedback on the Service Plan to the Contractor within 45 days of the submission. The Contractor must reply within 45 calendar days of receipt of feedback on the plan. Contractor's reply must address all information requested by the Agency. The Service Plan must be submitted in a format provided by the Agency, and address services provided to Students housed in the closed custody Facility. The Service Plan shall include:

- i. A description of how the Education Program will deliver services to the Student, including a description of the organizational structure, staffing patterns, course offerings, and the school calendar and schedule;
 - ii. Documentation of accreditation of the Education Program at the Facility, when applicable;
 - iii. In-service and staff professional development activities planned, when applicable;
 - iv. Participation in transition planning for Students leaving the OYA closed custody facility and returning to the community; and
 - v. A description of how the Education Program addresses Agency's mission for Youth Corrections Education, including:
 - a. delivery of individual educational/vocational services in correlation with OYA's treatment plan;
 - b. access to and participation in Career Information System for vocational assessment;
 - c. strategies implemented to ensure collaboration with appropriate partners, including OYA Field Services, LEAs, Education Service Districts, and other state and community agencies;
 - d. strategies to ensure educational/vocational services are delivered in a safe, secure, and healthy environment;
 - e. provision of services that reduce risk factors which contribute to recidivism; and
 - f. provision of services which support successful community living.
6. Contractor shall submit a budget with each Student specific Service Plan in a format provided by the Agency.
 7. Contractor shall submit an outcome report within 30 days of the completion of services for each Student which demonstrates accomplishment of the service delivery goals outlined in the Student specific Service Plan. The Agency will provide feedback on the outcome report to the Contractor within 45 days of the submission. The Contractor must reply within 45 calendar days of receipt of feedback on the outcome report.
 8. Any equipment having an initial estimated useful life beyond a single year that is purchased by Contractor using funds paid to Contractor under this Contract is the property of the Agency.

II. Dispute Resolution Process

OYA and Contractor shall encourage their respective staffs to resolve disputes through honest and open communication between the individuals having the dispute. In the event resolution between the affected individuals is not forthcoming, the dispute should be brought by the parties through the following levels of management.

1. The issue(s) shall be brought before the OYA facility superintendent and the Contractor principal (or education site supervisor where there is no principal). If resolution is not reached;
2. The issue(s) shall be brought before the OYA Facilities Operations Assistant Director and the ODE Educational Administrator. If resolution is not reached;
3. The issue(s) shall be brought before the OYA Deputy Director and the ODE Deputy Superintendent. If resolution is not reached;
4. OYA will secure the services of a mediator to assist in resolution of the issue. It is agreed that the parties shall submit to non-binding mediation prior to the commencement of litigation. In such an event, the parties agree to participate in good faith in a process in which the mediator assists and facilitates the parties in reaching a mutually acceptable resolution of the controversy. The mediator has no authority to force settlement on the parties. The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement

each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the parties. The parties shall continue efforts to reach a mutually agreeable solution to their differences through mediation for at least sixty days after a mediator is selected if no agreement is reached in less time. By mutual agreement, the parties may extend the time for mediation as long as they deem appropriate. Mediation shall take place in Salem, Oregon, unless the parties mutually agree to another location. The parties agree to comply with any Oregon statutes and administrative rules governing the confidentiality of mediation, if any.

III. Administrative Investigations

Contractor shall collaborate with OYA and shall share with OYA any administrative investigation materials related to investigations of Contractor's staff at OYA facilities. Contractor shall provide the OYA Professional Standards Office and the OYA Assistant Director of Facilities with reasonable access to Contractor's investigation materials and permit the OYA's review of the resolution and findings of Contractor's administrative investigations.

IV. Disaster Preparedness

Contractor shall, within 30 days of the effective date of this Contract, submit to Agency a disaster preparedness and Business Continuity Plan (BCP) in a format prescribed by Agency. If Contractor substantively changes the BCP, Contractor shall provide the Agency with a copy of the amendment BCP within 30 days from the effective date of the changes.

**EXHIBIT B
INSURANCE**

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

(Agency must check boxes for #2, #3, and #4 as to whether insurance is required.)

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

2. Required by Agency Not required by Agency.

Professional Liability/Errors & Omissions Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Professional Liability/ Errors & Omissions insurance covering any damages caused by an error, omission or any negligent acts of Contractor, its subcontractors, agents, officers, or employees under this Contract. Combined single limit per occurrence must not be less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each claim, incident or occurrence, with an annual aggregate of \$1,000,000 or \$2,000,000.

3. Required by Agency Not required by Agency.

General Liability Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance must include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this contract and be provided on an occurrence basis. Combined single limit per occurrence must not be less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 for each job site or location. Each annual aggregate limit must not be less than \$1,000,000.

4. Required by Agency Not required by Agency.

Automobile Liability Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the General Liability Insurance. Combined single limit per occurrence must not be less than Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, \$1,000,000, \$2,000,000, \$3,000,000 or \$4,000,000.

5. Notice of cancellation or change. There must be no cancellation, material change, or potential exhaustion of aggregate limits or non-renewal of the insurance coverage(s) without 60 calendar days' prior written notice from Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and grounds for immediate termination of this Contract by Agency.

6. Certificates of insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish acceptable insurance certificates to the **Oregon Youth Authority** prior to commencing the Work. The certificates must specify all of the parties who are endorsed on the policy as Additional Insured (or Loss Payees). Insurance coverage required under this Contract must be obtained from insurance companies acceptable to Agency. Contractor shall pay for all deductibles, self-insured retention and self-insurance included hereunder.

7. Additional Insured. The liability insurance coverages except Workers Compensation and Professional Liability, Errors & Omissions policies, required for performance of the contract must include the State of Oregon, Agency and their divisions, officers and employees as "Additional Insured" but only with respect to Contractor's activities to be performed under this contract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

EXHIBIT C CONSIDERATION

I. Compensation and Expense Reimbursement

1. Agency shall pay Contractor for completing the services described in Exhibit A according to the terms of this Exhibit C. Subject to the provisions set forth in Paragraphs 3 and 4 of the Contract, the maximum, not-to-exceed amount payable to Contractor for the Work is **\$7,000.00** ("Maximum Compensation"). This stated Maximum Compensation is not a firm, fixed amount unconditionally guaranteed to be provided to Contractor but is the not-to-exceed amount expected to be available for allowable payments to Contractor for performing the Work. The Maximum Compensation shall include all payments to which the Contractor is entitled for performance of the Work. This statement of the Maximum Compensation amount does not obligate Agency to pay Contractor the stated amount if Contractor does not perform those portions of the Work associated with the approved line items indicated later in this Exhibit C. In no event shall Agency pay Contractor more than the stated Maximum Compensation amount for the Work, unless additional quantities of that Work are required and will result in increased costs, and the amount and quantities have been increased by a written amendment to this Contract which has been signed by all Parties and for which all necessary State of Oregon approvals have been obtained. Under no circumstances shall the Agency pay for any Work performed after **June 30, 2011**.
2. Contractor shall use none of the Maximum Compensation for compensation of its chief administrative officer (i.e., superintendent). Contractor shall be paid for the items listed below. The following list is not an exclusive list of the items for which Contractor is entitled to receive payment:
 - A. Compensation of employees for time devoted and identified specifically to the performance of the Contract.
 - B. Cost of materials acquired, consumed, or expended specifically for the purpose of the Contract.
 - C. Equipment and other approved capital outlay.
 - D. Flow-through funds directly related to Contractor's subcontracts under this Contract.
 - E. Travel expenses incurred specifically to carry out the Contract and in accordance with State of Oregon rates set forth in the Oregon Accounting Manual as of the date Contractor incurred the travel or other expenses.
 - F. Pro-rated costs for the Contractor's contract administrator for time devoted and identified specifically for the performance and administration of the Contract.
 - G. Allowable Indirect Costs which are included in the Maximum Compensation under the Contract. The indirect amount is computed at a rate up to the Contractor's rate approved by the Agency annually upon information reported on the Oregon Department of Education Form 3118. Contractor shall provide a copy of Form 3118 to OYA.

II. Payment Schedule

1. The Agency will make payments to the Contractor upon Contractor's submission of detailed invoices to the Agency. Contractor shall submit invoices quarterly, or upon completion of the individual Student services, whichever occurs first. Contractor shall submit with the invoice, on forms designated by OYA, a written detail expenditure report on the Contractor's actual expenditures during the prior calendar quarter that are consistent with the Service Plan.
2. Agency reserves the right and intends, if necessary, to develop mutually acceptable Amendments to this Contract if there are significant changes including, but not limited to: Delivery service requirements; Increases or Decreases in the number of Students being served; Increases or Decreases in the level of service required or provided; Actual Expenditures as compared with Budgeted Expenditures as reported in the Quarterly and Final Expenditure Reports; or other such similar circumstances which cause the Agency to reasonably consider changes in the Contract Amount.

3. The Maximum Compensation amount, set forth in this Exhibit C, is limited to the Contractor's performance of the Work through **June 30, 2011**. Such expenditures cannot exceed the Maximum Compensation total, unless this Contract is formally amended and all required State of Oregon approvals are obtained.

III. FURTHER COMPENSATION /CONSIDERATION TERMS AND CONDITIONS

1. The Contractor's entitlement to compensation, and to reimbursement of expenses, is otherwise subject to the following provisions, in addition to the provisions of Paragraph 4, Consideration, of this Contract:
 - A. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the Maximum Compensation, including any travel and other expense reimbursement when noted below.
 - B. Contractor shall not be entitled to, and Agency will not pay, any amount in excess of the Maximum Compensation. If the Maximum Compensation or any component thereof is increased by amendment of this Contract, the amendment must be fully executed, and all required State of Oregon approvals must be obtained, before Contractor performs work subject to the amendment. This Contract cannot be amended after it has expired or been terminated.
 - C. Contractor shall submit a Final Expenditure Report by the date set forth in paragraph IV Documents Required, of this Exhibit C. The Final Expenditure Report shall describe all work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed during the entire performance period of the individual Student plan. The Final Expenditure Report also shall include the total amount billed by Contractor during the entire individual Student service period.
 - D. Contractor shall provide expanded budget reports, budget narratives, or both, to the Agency upon request.

IV. Documents Required

In addition to any reports or other documentation required to be submitted to Agency, Contractor shall submit a written final expenditure report to Agency, in a format prescribed by Agency, no later than 30 days past the end of the reporting period for the period July 1, 2010 through June 30, 2011.