

## **City Council Action Item Cover Sheet**

DATE: February 6, 2019

### **Agenda Item:**

OCPP (IGA) for Procurement

### **Question Before Council:**

Consideration of IGA

### **Person/Group Initiating Request:**

City Manager

### **Item Summary/Background:**

The OCPP was established to improve service & cost efficiencies for each entity qualified to participate in the ORCPP for goods, services, or both, using Designated Price Agreements and to access various procurement resources through Department of Administrative Services.

Upon discussion, the City Manager recommends Council move to direct the City Manager to sign the OCPP IGA for financial services.

**CITY OF YACHATS**  
**RESOLUTION NO. 2019-60**

**WHEREAS**, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of their legal functions; and

**WHEREAS**, this agreement shall be for the purpose of the City of Yachats participation in the Oregon Cooperative Procurement Program; and

**WHEREAS**, the parties agree that they have the authority to execute this Cooperative Intergovernmental Agreement pursuant the Qualified Entities section; and

**WHEREAS**, the City Council discussed the document and authorized the City Manager to sign on behalf of the City:

**NOW THEREFORE**, the City of Yachats resolves

The City Manager is authorized to sign the Intergovernmental Agreement with Oregon Cooperative Procurement Program (OCPP) on behalf of the City of Yachats; a copy of which is attached and marked as "Exhibit A".

**This Resolution is effective as of February 6, 2019.**

Attest:

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W. John Moore, Mayor

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Shannon Beaucaire, City Manager

**Department of Administrative Services (/das/Pages/index.aspx) > Procurement (/das/Procurement/Pages/Index.aspx) > About ORCPP**

## About ORCPP

Oregon Cooperative Procurement Program (ORCPP) uses an intergovernmental agreement with its partnering entities to provide its members with access to the following resources:

- Over 340 statewide price agreements to purchase goods and services
- Unlimited advertising in the Oregon Procurement Information Network (**ORPIN** (<https://orpin.oregon.gov/>))
- Thousands of archived solicitations in ORPIN, to help you build new solicitations
- Training opportunities through DAS
- **State of Washington Contracts** (<https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx>) - Entities must determine whether these contracts meet their own purchasing rules and ORS 279 requirements.
- **ORCPP Link** (<mailto:info.orcpp@oregon.gov>) - Our program managers keep you connected with emails concerning trainings, updates to price agreements, specials from **DAS Surplus** (</das/Surplus/Pages/Index.aspx>) and other resources.

## Who is eligible?

ORCPP eligible entities include:

- Units of local government - cities, counties, school districts, etc.
- Special districts - fire, water, vector control, health, etc.
- Oregon university and community colleges
- Qualified rehabilitation facilities
- American indian tribes and agencies of American indian tribes
- Certain qualifying, public benefit corporations
- State agencies not subject to **ORS 279A.050** ([https://www.oregonlegislature.gov/bills\\_laws/ors/ors279A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors279A.html)) and DAS-implemented administrative rules, such as: Oregon Lottery, Treasury, Secretary of State, etc.

## How much does it cost?

Participation in the program may include an annual fee based on your total organizational budget.

**View the fee chart** (</das/Procurement/Pages/Orcppfee.aspx>)

## For more information

E-mail: [info.orcpp@oregon.gov](mailto:info.orcpp@oregon.gov) (<mailto:info.orcpp@oregon.gov>)

## Program Coordinators

## DAS Statewide Price Agreements

### What is a DAS Statewide Price Agreement?

A DAS Statewide Price Agreement (Price Agreement) is a master agreement for the procurement of products or services at agreed upon terms for use by all state entities. Price Agreements benefit agencies by obtaining price discounts and leveraging other concessions through volume purchases. Additionally, an agency avoids administrative, procurement and contract management burdens. DAS manages these processes for certain products and services to leverage the state's buying power and reduce the need for multiple agencies to conduct solicitations and establish and manage individual contracts.

A Price Agreement comprises a group of common items or services competitively bid to set the prices contractually for a specified time period. The prices are frequently "ceiling" prices and an agency should seek to negotiate further discounts as applicable. A supplier awarded a Price Agreement contract is obligated to provide the specified products or services, at or below the contracted price and terms, to all agencies using the contract.

The DAS Statewide Price Agreement program efficiently leverages the state's buying power to lower acquisition costs and strengthen terms and conditions. DAS recovers the cost to administer the program through fees that are included in Price Agreements. Administrative fees range from .5 to 2 percent of the cost of the product or service, depending on factors such as volume and usage. These fees are collected and reported by the suppliers for the contracts they are awarded. Fees are monitored throughout the year to determine if the program is generating revenue at levels needed to recover operating costs.



**Resource:** DAS maintains a webpage that lists existing statewide software license agreements.

### When to use DAS Statewide Price Agreements

Agencies must make their Buy Decision in the priority order specified in administrative rule. DAS Price Agreements are the fourth priority source and an agency may not elect to procure through a lower priority source, unless the agency determines that the procurement need cannot be met through use of a Price Agreement.

If DAS offers an applicable Price Agreement, and if it is a mandatory use agreement, the agency must use the Price Agreement to fulfill its procurement need. If the Price Agreement is not mandatory use, the decision to use an existing Price Agreement or to acquire the needed products and services from other sources is at the agency's discretion.

Agencies should use the Price Agreements where possible because this is the most efficient acquisition method. However, if an agency chooses to procure needed products and services outside of the Price Agreements available, it is



# OREGON COOPERATIVE PROCUREMENT PROGRAM

AGREEMENT No. \_\_\_\_\_

This agreement for participation in the Oregon Cooperative Procurement Program ("Agreement") is between the State of Oregon ("State") acting by and through its Department of Administrative Services, Enterprise Goods and Services Division, Procurement Services ("DAS PS") and \_\_\_\_\_ ("ORCPP Member"), each a "Party" and, together, the "Parties".

## 1 DEFINITIONS.

1.1 **"Contract"** means a legally binding contract that results between ORCPP Member's issuance of, and a contractor's acceptance of, an Ordering Instrument pursuant to a Designated Price Agreement to which the contractor is a party.

1.2 **"Designated Price Agreement"** means an agreement between DAS and one or more contractors for goods or services, or both, that are offered at a set price with either (1) no guarantee of a minimum or maximum purchase or (2) an initial order or minimum purchase of the goods or services combined with a continuing contractor obligation to provide additional goods and services, and that identifies ORCPP Members as authorized purchasers.

1.3 **"ORCPP"** means the Oregon Cooperative Procurement Program.

1.4 **"Ordering Instrument"** means a document that complies with the Designated Price Agreement and that ORCPP Member must use to order goods, services, or both, under the Designated Price Agreement. An Ordering Instrument may be referred to as, for example, "Purchase Order," "Work Order" or other name assigned by DAS PS or ORCPP Member.

1.5 **"Oregon Cooperative Procurement Program"** means the purchasing program operated by DAS PS that allows its members to purchase from Designated Price Agreements.

## 2 QUALIFIED ENTITIES.

DAS PS has established and operates the Oregon Cooperative Procurement Program to improve service and cost efficiencies for each entity qualified to participate in the ORCPP ("Qualified Entity") by authorizing the Qualified Entity through agreement with DAS PS to purchase goods, services, or both, using Designated Price Agreements and to access various procurement resources available through DAS PS.

The following entities are Qualified Entities authorized to enter into this Agreement with DAS PS:

2.1 Units of local government as defined in ORS 190.003, state contracting agencies as defined in ORS 279A.010 (1)(nn) and exempted from application of the Public Contracting Code under ORS 279A.025, semi-independent state agencies listed in ORS 182.454, special government

bodies as defined in ORS 174.117 and special districts as defined in ORS 198.010, United States governmental agencies with offices in Oregon and American Indian Tribes located in Oregon; and

2.2 The entities specified in and meeting the requirements of ORS 279.855(1), (2) and (3) and OAR 125-055-0045.

### 3 ORCPP MEMBER AS QUALIFIED ENTITY.

ORCPP Member represents that it is, and warrants that it will remain, a Qualified Entity throughout the effective period of this Agreement. ORCPP Member shall immediately provide all information that DAS PS requests to establish to DAS PS' satisfaction that ORCPP Member is a Qualified Entity. ORCPP Member represents and warrants that all information ORCPP Member provides to DAS PS to establish that ORCPP Member is a Qualified Entity is true and correct. If at any time during the term of this Agreement ORCPP Member has reason to believe, or ORCPP is notified that DAS PS has reason to believe, ORCPP Member is no longer a Qualified Entity, ORCPP Member shall immediately cease purchasing under Designated Price Agreements until ORCPP Member establishes to DAS PS' satisfaction that ORCPP Member is a Qualified Entity.

### 4 EFFECTIVE DATE, TERM AND TERMINATION.

This Agreement is effective on the latest signature date ("Effective Date").

4.1 This Agreement remains in effect until terminated by either Party by delivery of a written termination notice to the other Party's Authorized Representative or their designee, at least forty-five (45) days prior to the termination date specified in the written notice.

4.2 DAS PS may terminate this Agreement for non-payment of the annual fee as outlined in section 9 of this Agreement.

### 5 AUTHORIZED REPRESENTATIVES.

#### 5.1 DAS PS Authorized Program Managers:

Name and Title (print/type):

Kelly Stevens-Malnar, Statewide Outreach Coordinator – Phone:

503-378-3976 Adam Helvey, Statewide Outreach Coordinator – Phone:

503-373-2106 Address: 1225 Ferry Street SE, Salem OR 97301-4285

Fax: 503-373-1626

Email: info.orcpp@oregon.gov

## 5.2 ORCPP Member Authorized Representative:

Name (print/type): \_\_\_\_\_ Title: \_\_\_\_\_

Entity Name: \_\_\_\_\_

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

Work Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### Accounts Payable Contact:

Name (print/type): \_\_\_\_\_

Work Phone: \_\_\_\_\_ Email: \_\_\_\_\_

- 5.3 A Party may designate a new Authorized Representative at any time by written notice to the other Party.

## 6 ORCPP MEMBER BENEFITS AND REQUIREMENTS.

6.1 Designated Price Agreements. ORCPP Member may purchase goods, services, or both, from any Designated Price Agreement identified by DAS PS according to the terms of this Agreement. Designated Price Agreements may expire or terminate, and DAS PS does not promise or guarantee the effectiveness of any particular Designated Price Agreement at the time ORCPP Member desires to make a purchase.

6.1.1 Designated Price Agreements Use Restrictions. ORCPP Member shall accept the terms and conditions of a Designated Price Agreement without modification, including use of a specific Ordering Instrument as described in the applicable Designated Price Agreement. Only DAS has the authority to change, modify, or amend Designated Price Agreements.

6.1.2 Ordering Instruments. All Ordering Instruments must incorporate the applicable Designated Price Agreement by reference and include the following statement:

"THIS PURCHASE IS PLACED AGAINST STATE OF OREGON PRICE AGREEMENT # \_\_\_\_\_. THE GENERAL TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T's & C's) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T's & C's EXPRESS OR IMPLIED."

6.1.3 Contracts. DAS PS is not a party to nor does DAS PS assume any liability under Contracts.

6.2 Use of Oregon Procurement Information Network. The Oregon Procurement Information Network ("ORPIN") is an internet-based, on-line system that is the State's official publication forum for procurement notices and advertisements. ORPIN provides registered suppliers with access to procurement information issued by the State and ORCPP Members. Registered suppliers can express interest, download documents and respond to procurement opportunities posted on ORPIN.

ORCPP Member is granted unlimited use of ORPIN, subject to the ORPIN terms of use, to upload, issue and advertise ORCPP Member's solicitation documents and procurement notices, subject to the following:

6.2.1 ORCPP Member assumes full and complete responsibility and liability for the content, substance and accuracy of all information contained in any ORCPP Member documents uploaded and displayed on the ORPIN system;

6.2.2 ORCPP Member is authorized to use future enhancements to the ORPIN system, such as electronic bidding and solicitation document types, as they become available on ORPIN; and

6.2.3 ORCPP Member shall not distribute or share its active, ORPIN user login credentials or access information with outside entities or individuals who are not ORCPP Members.

6.3 Training. ORCPP Member and its employees are eligible to register for and attend any DAS PS-sponsored and scheduled procurement-related training and certification programs at the same cost as State agency participants. Registration information for DAS PS procurement classes and workshops is available by logging into iLearn at <http://iLearn.oregon.gov>.

6.4 Data and Procurement Participation. From time to time, DAS PS may request ORCPP Member to provide historical or projected usage and spend data for certain solicitations for goods or services to help achieve maximum volume discounts for the benefit of all State agencies and ORCPP Members. DAS PS also may request ORCPP Member to participate on a procurement sourcing team or evaluation committee that will result in a Designated Price Agreement and use by State agencies and ORCPP Member(s). ORCPP Member agrees to provide information and participate pursuant to DAS PS request, to the extent reasonably possible.

## 7 DAS PS OBLIGATIONS.

7.1 DAS PS agrees to:

7.1.1 Provide a Program Manager that will respond to ORCPP Member questions regarding ORCPP membership and resources;

7.1.2 Maintain a list of Designated Price Agreements available for ORCPP Member reference on the DAS Procurement Services and Policy website. To access the Designated Price Agreement list, go to <http://www.oregon.gov/DAS/EGS/ps/Pages/index.aspx> and click on the Oregon Cooperative Procurement Program icon;

7.1.3 Educate contractors under Designated Price Agreements on the process to confirm that ORCPP Member is an "Authorized Purchaser" as defined in the Designated Price Agreements and on the process for transacting with ORCPP Member under the Contract;

7.1.4 Provide program education and outreach to ORCPP Member through trade shows, statewide events and the ORCPP listserv;

7.1.5 Manage ORPIN access and user permissions for ORCPP Member and its authorized users;

7.1.6 Provide ORCPP Member with Contract spend and usage reports and other ORCPP information upon ORCPP Member's request.

7.2 DAS PS' performance under this Agreement is conditioned upon ORCPP Member's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230 and 279B.235 (if applicable to this Agreement), which are incorporated by reference herein. ORCPP Member shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

## 8 MEMBERSHIP FEE.

ORCPP Member shall pay DAS PS an annual membership fee for the period July 1 through June 30 of each year this Agreement is effective, based on the entity type, annual budget and corresponding fee, as specified in Exhibit A, Standard ORCPP Membership Fee Schedule.

8.1 The initial membership fee when this Agreement takes effect anytime from July 1 through December 31 is 100% of the annual fee. The initial fee when this Agreement takes effect anytime from January 1 through April 30 is 50% of the annual fee. The initial fee is waived when this Agreement takes effect anytime from May 1 through June 30.

8.2 From time to time, DAS PS may request, and ORCPP Member shall provide, ORCPP Member's budget information to determine the applicable annual membership fee. If DAS PS determines that the annual membership fee has changed based upon ORCPP Member's then-current budget, DAS PS will notify ORCPP Member in writing of the new annual membership fee, and ORCPP Member shall pay that amount when the next annual fee is due.

## 9 INVOICES AND PAYMENT.

DAS PS will invoice ORCPP Member each year in July for the next annual membership fee. ORCPP Member shall remit payment to DAS within 45 days of receipt of the invoice by one of the following methods:

9.1 Credit Card. The preferred method of payment for the ORCPP annual fee is to be paid by credit card. The payment portal can be found at the below web address.  
<https://apps.oregon.gov/DAS/Procurement/EPS>

9.2 Electronic Funds Transfer. ORCPP Member shall coordinate with DAS PS on the process and documentation required to set up an account and remit payment electronically if this is the payment method of choice.

9.3 Check. Payments made by check must include the Agreement number from page 1 and be issued to the Oregon Department of Administrative Services and sent to:

DAS Shared Financial Services  
Attention: Cashier  
155 Cottage Street NE  
Salem, OR 97301

DAS PS may terminate this Agreement for non-payment if the annual fee is not received within ninety (90) days of the issue date of the invoice.

## 10 INDEMNIFICATION.

10.1 Non-State Agency ORCPP Member as Qualified Entity under Section 2.1. Subject to limitations of ORCPP Member's organic law if ORCPP Member is a unit of local government as defined in ORS 190.003, a United States governmental agency with offices in Oregon or American Indian Tribes located in Oregon, ORCPP Member shall save, defend, hold harmless and indemnify, the State and its divisions, officers, employees and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or related to (1) the acts and omissions of the ORCPP Member, or its officers, employees and agents under this Agreement or (2) services or benefits DAS PS provides under this Agreement pursuant to a representation of ORCPP Member's Qualified Entity status and State's reliance thereon.

10.2 ORCPP Member as Qualified Entity under Section 2.2. If ORCPP Member is an entity specified in and meeting the requirements of ORS 279.855(1), (2) and (3) and OAR 125-055-0045, ORCPP Member shall save, defend, hold harmless and indemnify, the State and its divisions, officers, employees and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or related to (1) the acts or omissions of the ORCPP Member, or its officers, employees and agents under this Agreement and (2) services or benefits DAS PS provides under this Agreement pursuant to a representation of ORCPP Member's Qualified Entity status and State's reliance thereon.

10.3 Defense Obligation. With respect to any obligation to defend described in sections 10.1 and 10.2, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State, its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) important governmental interests are at stake; or (iii) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and/or that of its officers, employees, or agents under (i) and (ii) above.

## 11 SUCCESSORS AND ASSIGNMENT.

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Neither Party shall assign or transfer its interest in this Agreement without the prior written consent of the other. Any such attempted assignment or transfer shall be void.

## 12 MERGER; AMENDMENT; WAIVER.

This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent or modification of the Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent or modification, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Agreement shall not constitute a waiver by the State of that or any other provision.

### 13 LIMITATION OF LIABILITY.

ORCPP Member acknowledges and agrees that the State shall not be liable for any damages, including direct, indirect, incidental or consequential damages sustained by ORCPP Member, which arise out of or are in any way related to goods or services obtained from contractors under any Contract entered by ORCPP Member pursuant to this Agreement. State makes no representation or warranty regarding the suitability, durability, merchantability or fitness for a particular purpose of any goods or services purchased under any Contract.

### 14 COMPLIANCE WITH APPLICABLE LAW.

ORCPP Member shall comply with all federal, state and local laws, rules, regulations, and ordinances applicable to this Agreement or to ORCPP Member's obligations under this Agreement.

### 15 GOVERNING LAW; VENUE.

15.1 Governing 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 Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

15.2 Designation of Forum. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each Party 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.

15.3 Federal Forum. Notwithstanding Section 15.2, 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.

### 16 TAX CERTIFICATION.

By signature on this Agreement for ORCPP Member, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of the ORCPP Member and that ORCPP Member is, to the best of the undersigned's knowledge, not in violation of any applicable Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

### 17 SIGNATURES.

Each Party to this Agreement, and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance obligations have been fully

authorized and approved, and that no further approvals or consents are required to bind such Party.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON** acting by and through its  
Department of Administrative Services,  
EGS-Procurement Services

**ORCPP Member** acting by and through its

\_\_\_\_\_  
(name of entity)

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

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

(Additional signature lines may be added as necessary)

## EXHIBIT A

## Standard ORCPP Membership Fee Schedules

**Fee Schedule 1** is the ORCPP membership fee for a Qualified Entity other than a special district as defined in ORS 198.010, and is based on the entity's adopted organizational annual budget.

**Fee Schedule 2** is the ORCPP membership fee for special districts such as; irrigation districts, rural fire protection districts, water districts, utility districts, and other special districts as defined in ORS 198.010 with an adopted organizational annual budget under \$3,000,000.

**1. Fee Schedule 1: Qualified Entity**

(Provide a one-page summary of the entity's adopted annual budget with signed Agreement)

ORCPP Member (initial and date)	DAS PS (initial and date)	Organizational Budget MORE than	Organizational Budget LESS than	Annual Membership Fee
		\$ 0.00	\$ 3,000,000	\$0.00
		\$ 3,000,000	\$ 7,500,000	\$ 500.00
		\$ 7,500,001	\$ 21,000,000	\$ 900.00
		\$ 21,000,001	\$ 30,000,000	\$ 1,000.00
		\$ 30,000,001	\$ 68,000,000	\$ 2,000.00
		\$ 68,000,001	\$ 90,000,000	\$ 3,000.00
		\$ 90,000,001	\$ 150,000,000	\$ 4,000.00
		\$ 150,000,001	and over	\$ 5,000.00
		* Oregon K-12 Schools, Charter Schools, ESDs, qualifying Oregon Child Nutrition Sponsors, and qualifying, Early Learning Service Providers, and Qualified Rehabilitation Facilities		\$ 0.00