



REQUEST FOR PROPOSALS #2017-09

FOR

FUEL FOR CLACKAMAS COUNTY FLEET SERVICES

BOARD OF COUNTY COMMISSIONERS

JIM BERNARD, Chair

SONYA FISCHER, Commissioner

KEN HUMBERSTON, Commissioner

PAUL SAVAS, Commissioner

MARTHA SCHRADER, Commissioner

**Donald Krupp
County Administrator**

**George Marlton
Procurement Division Director**

**Guy Melton
Procurement & Contract Analyst, Sr.**

PROPOSAL CLOSING DATE, TIME AND LOCATION

DATE: March 21, 2017

TIME: 4:00 PM, Pacific Time

**PLACE: Clackamas County Procurement
Clackamas County Public Services Building
2051 Kaen Road, Oregon City, OR 97045**

SCHEDULE

Request for Proposal Issued.....	February 21, 2017
Protest of Specifications Deadline.....	February 28, 2017, 5:00 PM, Pacific Time
Deadline to Submit Clarifying Questions.....	March 7, 2017, 5:00 PM, Pacific Time
Request for Proposal Closing Date and Time.....	March 21, 2017, 4:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award
Anticipated contract start date.....	July 1, 2017

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SECTION 1 NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County through its Board of County Commissioners will receive sealed proposals per specifications until **4:00 PM, March 21, 2017** (“Closing”), to provide: **Fuel for Clackamas County Fleet Services**. No Proposals will be received or considered after that time.

The resulting contract from this RFP will have an initial term of one (1) year through June 30, 2018, with an option for four (4) additional one (1) year renewals thereafter, subject to the mutual agreement of the parties.

Proposal packets are available from 7:00 AM to 6:00 PM Monday through Thursday at Clackamas County Procurement Services, Clackamas County Public Services Building, 2051 Kaen Road, Oregon City, OR 97045, telephone (503) 742-5444 or may be obtained at <http://www.clackamas.us/bids/>. Sealed proposals are to be sent to Clackamas County Procurement Services at the above Kaen Road address.

Contact Information

Technical Specifications: John Stockham, (503) 650-3222, johnsto@co.clackamas.or.us

Procurement Process Questions: Guy Melton, (503) 742-5453, gmelton@co.clackamas.or.us

The Board of County Commissioners reserves the right to reject any and all proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the proposal or proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose proposal shall be best for the public good.

Dated: February 21, 2017

George Marlton, Procurement Division Director

SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

2.1 Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

2.2 Requests for Clarification and Requests for Change: Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Services Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. County will provide reasonable notice of its decision to all Proposers that have provided an address to the Procurement Services Division for this procurement. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

2.3 Protests of the RFP/Specifications: Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Services Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

2.4 Addenda: If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check the Bids and Contract Information page at <http://www.clackamas.us/bids/> for any published Addenda or response to clarifying questions.

2.5 Submission of Proposals: All proposals must be submitted in a sealed envelope bearing on the outside, the name and address of the proposer, the project title, and Closing date/time. Deliveries to be sent to:

**Clackamas County
Procurement Services Division
2051 Kaen Road,
Oregon City, OR 97045**

All proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders, conditions, or qualifications may be rejected as irregular. All proposals shall be signed in ink in the blank spaces provided herein (Section 4). If a proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

2.6 Post-Selection Review and Protest of Award: County will name the apparent successful Proposer in a “Notice of Intent to Award” letter. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers will be notified in writing of the selection of the apparent successful Proposer(s) and shall be given seven (7) calendar days from the date on the “Notice of Intent to Award” letter to review the file at the Procurement Services Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by hand-delivery or mail to the address for the Procurement Services Division as listed in Section 1 of this RFP.

Only actual proposers may protest if they believe they have been adversely affected because the proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected proposer with a right to submit a written protest, a proposer must be next in line for award, i.e. the protester must claim that all higher rated proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

2.7 Acceptance of Contractual Requirements: Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

2.8 Public Records: Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.501(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

“This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.500(1). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

2.9 Investigation of References: County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful

performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

2.10 RFP Proposal Preparation Costs and Other Costs: Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

2.11 Clarification and Clarity: County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

2.12 Right to Reject Proposals: County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

2.13 Cancellation: County reserves the right to cancel or postpone this RFP at any time or to award no contract.

2.14 Proposal Terms: All Proposals, including any price quotations, will be valid and firm through a period of ninety (90) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

2.15 Oral Presentations: At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Services Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

2.16 Usage: It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

2.17 Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms listed in Exhibit A – Sample Contract, attached hereto and made a part hereof. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of the Instructions to Proposers Section of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

2.18 Review for Responsiveness: Upon receipt of all Proposals, the Procurement Services Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified

on the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

2.19 RFP Incorporated into Contract: This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

2.20 Communication Blackout Period: Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee about the RFP until the apparent successful Proposer is selected, and all protests, if any, have been resolved.

2.21 Prohibition on Commissions and Subcontractors: County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

2.22 Ownership of Proposals: All proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

2.23 Clerical Errors in Awards: County reserves the right to correct inaccurate awards resulting from its clerical errors.

2.24 Rejection of Qualified Proposals: Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

2.25 Collusion: By responding, the Proposer states that the proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

2.26 Evaluation Committee: Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

2.27 Commencement of Work: The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

2.28 Best and Final Offer: County may request best and final offers from those Proposers determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial proposal received. Therefore, each proposal should contain the Proposer's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this RFP.

2.29 Nondiscrimination: The successful proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on

the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

2.30 Intergovernmental Cooperative Procurement Statement: Pursuant to ORS 279A and LCRB, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any proposer, by written notification included with their proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.

SECTION 3 SCOPE OF WORK

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals.

3.1 INTRODUCTION / BACKGROUND

Clackamas County is seeking proposals from qualified contractors to supply fuel for the County's fleet of vehicles. The fleet consists of passenger cars, light trucks, heavy trucks and police vehicles. Fuel used includes unleaded, premium unleaded and biodiesel. Most of the travel is within the county but vehicles in the fleet may travel anywhere in the state of Oregon and southwest Washington, so multiple locations are required. Diesel/Biodiesel fuel must be available by high capacity dispensers and fuel sites must be available at a location within 5 miles of 902 Abernethy Road in Oregon City.

The majority of users will be Clackamas County employees and the Clackamas County Sheriff's Office.

3.2 EMERGENCY REQUIREMENTS

Proposers acknowledge that the county has critical public safety and public service functions that require the use of motorized transportation assets. The successful deployment and use of these assets in an emergency require that a dependable supply of fuel is available. In the event of fuel shortages, power outages and/or impending fuel shortages, the Contractor understands and agrees that the needs of these critical County services must take priority over their private sector customer base. The contractor agrees to work closely with the County staff to insure that the available fuel is reserved and dispensed for these critical services that will best serve the community's collective needs. The Contractor shall be required to establish and maintain a system of preparation and communication to ensure staff is available and ready to respond to emergency situations that require immediate control of fueling resources in the event of a significant emergency involving County operations.

3.3 REPORTING SYSTEM

The County utilizes the FASTER Fleet Management software program to track its fleet expenses. Data from the proposed system will be imported into the FASTER system using the following criteria:

In order to perform the data conversion, the FASTER Fleet Management system imports records from a plain text, or ASCII, format file. The file must be set up with one transaction record per line. The format and the one transaction per line requirements are the only file-specific requirements.

The ASCII file must contain the following items:

- Date of transaction
- Time of transaction
- Equipment # - This number must match the equipment numbers within the FASTER database or you must have an FVC (Fuel Vehicle Conversion Code) conversion table set up to convert the equipment number to one that matches the equipment number within the FASTER database.
- Employee Number/Driver – This number must match a valid EMP (Employee Code) within the FASTER database or you must have a FEC (Fuel System Employee Conversion Code) conversion table set up to convert the employee number to one that matches the employee number within the FASTER database.

- Site/Location Number – To reduce tank inventory in the FASTER database, each site must have tanks defined as a table code. Each transaction must be identified by site. The FASTER Fleet Management system uses a FSC (Fuel Site Conversion Code) to convert sites from the transaction file into the Operational Costs applet.
- Product Code – This code defines the type of fuel that was dispensed. The FASTER Fleet Management system uses a FPS (Fuel Product Conversion Code) to convert fuel types into the database.
- Quantity
- Odometer Reading
- Pump/Hose number – Pumps/Hose numbers are attached to tanks in the Tank Inventory applet. This is used by the software to reduce the inventory for the tank.
- Cost – If the cost is going to come from the automated fuel system, this field must be included

3.3.1 CONTRACTOR REPORTING SYSTEM

The Contractor shall provide an online reporting system with up to date fuel transaction and inquiry functions.

3.4 FUEL STATISTICS FOR 2015/2016 FISCAL YEAR:

	Unleaded	Diesel
# of Vehicles	706	141
# of Gallons purchased	421,029	181,693

3.5 STATE AND FEDERAL TAX EXEMPTION

The Contractor shall provide to all agencies the forms necessary to process State and Federal exemption claims (if applicable). The Contractor shall provide any assistance required by the agencies to complete and file the forms with the proper agency.

3.6 MATERIAL SAFETY DATA SHEET(S)

At the time that the Contractor signs the contract, a Material Safety Data Sheet for each product will be provided by the Contractor and made part of this contract. As new or updated MSDS become available, the Contractor will forward copies to be placed on file meeting the requirements of OAR 437-155-25.

3.7 OSHA REQUIREMENTS

The Contractor shall comply with conditions of the Federal Occupational Safety and Health Act of 1972 (OSHA), and the standards and relations issued there under, and certify that all items furnished and purchased under this order conform and comply with said standards and regulations. The Contractor further agrees to indemnify and hold harmless each purchaser from all damages assessed a purchaser as a result of the Contractor's failure to comply with the acts and standards there under and for the failure of the items furnished under this order to so comply.

3.8 ENVIRONMENTAL CONDITIONS

Each site shall be well lit, clean and be in an open area as to provide a safe environment for 24 hour use by County agencies. All approved sites shall have functional fire extinguishers that meet State, and/or local Fire Marshall requirements, shall have posted emergency telephone numbers for use in case of problems, and shall provide locally owned pay telephones and/or emergency telephones.

3.9 CARDLOCK

The Contractor shall provide a secure card system with the ability to identify the vehicle being fueled and the driver obtaining the fuel. The card(s) shall be clearly labeled with any identifying information. The Contractor shall provide new cards and replace any lost or unusable cards in a timely manner. The Contractor shall immediately notify their contact at Clackamas County Fleet Services if any problems arise with the cardlock system along with an estimate of when a remedy is expected and will keep Clackamas County Fleet Services updated as information becomes available.

3.10 GIFT CARDS

The Contractor shall provide gift cards in any quantity and denomination requested in a timely manner. The Contractor shall provide a list of serial numbers and denominations of cards with each batch of gift cards upon delivery. Gift cards shall not have expiration dates. The Contractor shall not reduce the value of the gift cards for non-use and shall not charge fees of any kind to cardholders. A record of individual gift card transaction, including date, time and location of usage, shall be made available by the Contractor upon request.

3.11 FUELS

The Contractor shall have a system for the purchase of unleaded and diesel fuels which meet the following requirements:

- All motor fuels shall be free from impurities including, but not limited to, water, dirt, harmful oils, fibrous materials and other petroleum products or contaminants
- In case of damage directly traceable to contaminated fuel at a site, the Contractor shall bare the full responsibility for the costs incurred for labor and repairs and/or labor and replacement of necessary components required.
- Fuel storage tanks shall comply with current and future Federal and State regulations.
- Regular unleaded gasoline shall have a minimum octane rating of 87 with 10% ethanol.
- Mid-grade unleaded gasoline shall have a minimum octane rating of 89 with 10% ethanol.
- Premium unleaded gasoline shall have a minimum octane rating of 91 and unblended.
- Diesel shall have a minimum cetane rating of 45.
- Diesel fuel #2 ASTM shall be sulfur free. Diesel fuel shall be winterized for the months of October through March to a cloud point not higher than 6°C above the tenth percentile minimum ambient temperature for the area in which the fuel is sold.

Each fuel site should include, at minimum, one of the higher octane rated fuels (mid-grade or premium), regular unleaded and diesel #2 fuel.

3.12 DIESEL EXHAUST FLUID

The contractor shall have a system for the purchase of Diesel Exhaust Fluid (DEF) which meets the following requirements:

- All DEF shall be free from impurities including, but not limited to, water, dirt, harmful oils, fibrous materials and petroleum products or contaminants
- In case of damage directly traceable to contaminated fuel at a site, the Contractor shall bare the full responsibility for the costs incurred for labor and repairs and/or labor and replacement of necessary components required.
- DEF storage tanks shall comply with current and future Federal and State regulations.

- DEF must be available by a bulk dispenser and available at a location within 5 miles of 902 Abernethy Road in Oregon City. Reporting requirement as detailed in Section 3.3 Reporting Systems shall apply to all DEF sales.

3.13 TERM OF CONTRACT

The term of the contract shall be from the effective date through **June 30, 2018** with the option for four (4) additional one (1) year renewals thereafter, subject to the mutual agreement of the parties.

SECTION 4

EVALUATION and SELECTION CRITERIA

An evaluation committee will review all proposals. Proposals may be subjected to a two-phase evaluation process. In Phase One, the proposals will be evaluated based on responses to the criteria stated in Section 4. Points will be awarded based upon the Proposal Response in the format listed below. The Contractor may be selected based upon the results of Phase One. Phase Two, if deemed necessary by the evaluation committee, will consist of the highest scoring Proposers invited to an oral evaluation with the evaluation committee. The same criteria used to evaluate the written responses will be used to evaluate the finalist during the oral evaluation. No additions, deletions, or substitutions may be made to Proposals during the oral evaluations that cannot be viewed as clarification. Each evaluator will independently assign a score to each evaluation criteria during the oral interview. The scores resulting from the interview and the written evaluation will be summed resulting in a final score. The award will be given to the highest scoring Proposal based on response to the following criteria:

	<u>Criteria</u>	<u>Possible Points</u>
4.0	Cover Letter	Not Scored
4.1	System Description (see Section 5.3)	20
4.2	Interface (see Section 5.4)	20
4.3	Experience (see Section 5.5)	5
4.4	Fuel Availability (see Section 5.6)	20
4.5	Fuel Site Locations (see Section 5.7)	15
4.6	Cost per Gallon (see Section 5.8)	20
4.7	Proposal Response Form (see Section 5.9)	<u>Not Scored</u>
TOTAL POINTS POSSIBLE		100

Once a selection has been made, the County will enter into contract negotiations. During negotiation the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring proposer, discussions shall be terminated and negotiations will begin with the next highest scoring proposer. The County reserves the right to reject any and all proposals. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the proposal or proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose proposal shall be best for the public good.

SECTION 5 PROPOSAL CONTENTS

5.1. Vendors must observe submission instructions and be advised as follows:

5.1.1. One (1) original (clearly indicated) and three (3) copies of the Proposal, and an electronic copy (on compact disk or jump drive) of the complete Proposal must be received by the Closing date and time indicated in Section 1 of the RFP. The sealed envelope or package must have the vendor name, name of the project, and date/time of the Closing clearly indicated on outside of the package.

5.1.2. Mailing address including Hand Delivery, UPS and FEDEX:

Clackamas County Procurement
Clackamas County Public Services Building
2051 Kaen Road
Oregon City, OR 97045

5.1.3. County reserves the right to solicit additional information or proposal clarification from the proposers, or any one proposer, should the County deem such information necessary.

Provide the following information in the order in which it appears below:

5.2 Cover Letter (Not Scored)

5.3 Online Reporting System Description (20 Possible Points)

Provide a narrative detailing the proposed on-line reporting system. Detail operational functionality of the system. Identify the training that will be necessary to implement the system (system administrator and a user). Provide an implementation plan with specific milestones from the date of contract execution. Product literature may be submitted as reference material.

5.4 Interface (20 Possible Points)

Describe how your reporting system will interface with the County's "FASTER" system. Proposers shall supply a CD containing a fuel usage report that can be down-loaded into the County maintenance program for the purpose of tracking fuel cost, usage, mileage necessary for the county equipment preventative maintenance program. Note: A copy of fuel report shall be included with proposal for review of clarity.

5.5 Experience (5 Possible Points)

Describe experience in servicing fleet clients with requirements similar to the Clackamas County. Provide at least three references with requirements that are similar to the County's; include contact name, telephone number and when the services were provided.

5.6 Fuel Availability (20 Possible Points)

- Detail how your proposed solution will meet the County's day to day operational requirements.
- Detail how the proposed system will meet the County's emergency requirements.
- Detail provisions for emergency power during adverse weather conditions and emergencies. Identify sites with emergency backup power supplies that will be available.

The contractor shall be required to establish and maintain a system of preparation and communication to ensure staff is available and ready to respond to emergency situations that require the immediate control of fueling resources in the event of a significant emergency involving County and/or Cities operations.

5.7 Fuel Site Locations (15 Possible Points)

- Identify fueling sites available. List the hours of operation.
- Identify fueling sites with high-volume diesel pumps.
- List other products available at each site.

5.8 Cost Per Gallon - excluding “*rack” price (20 Possible Points)

- a) The cost per gallon shall include all costs to provide fueling services to the County. *(Oil industry Standard pricing Report): Dealer mark-up, terminal fees, transfer cost, total cost to County over the rack price.
- b) Use of non-awarded franchise site charges.
- c) Volume discount (total gallons purchased per month).
- d) Discount for payment 30 days from date invoice received.

5.9 Completed Proposal Response - see next page (Not Scored)

PROPOSAL RESPONSE

RFP 2017-09: FUEL for CLACKAMAS COUNTY FLEET SERVICES

Submitted by: _____
(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Contractor, by signature below, hereby represents as follows:

- (a) That no Commissioner, officer, agency or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its Commissioners, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - 1. The prices in the proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other proposer or with any competitor;
 - 2. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the Proposer prior to the proposal deadline, either directly or indirectly, to any other proposer or competitor;
 - 3. No attempt has been made nor will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restraining trade;
- (c) The proposer fully understands and submits its proposal with the specific knowledge that:
 - 1. The selected proposal must be approved by the Board of Commissioners.
 - 2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all proposals will become part of the public file on this matter. The County reserves the right to reject any or all proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h) That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (i) That the Proposer is legally qualified to contract with the County.
- (j) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in

the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

- (k) The proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

☐ Resident Bidder, as defined in ORS 279A.120

☐ Non-Resident Proposer, Resident State _____

Oregon Business Registry Number _____

Contractor's Authorized Representative

Signature: _____ Date: _____

Name: _____ Title: _____

Firm: _____

Address: _____

City/State/Zip: _____ Phone: () _____

e-mail: _____ Fax: _____

Contract Manager:

Name _____ Title: _____

Phone number: _____

Email Address: _____

SECTION 6
SAMPLE CONTRACT FORM

(Provided as sample – do not complete or sign.)

Resulting Contract will incorporate the RFP and the Contractors proposal.

GOODS AND SERVICES CONTRACT

This Goods and Services Contract ("Contract") is entered into between XXXXX ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") for the purposes of providing XXXXXX.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until XXXXX. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in [Scope of Work, RFP, RFQ (remember name and number, issue date, and if any addenda)], attached and hereby incorporated by reference as Attachment "A." This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment "A", and the Contractor's [Quote/Proposal] attached and hereby incorporated by reference as Attachment "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: .

III. COMPENSATION

1. **PAYMENT.** The County agrees to compensate the Contractor on a [fixed fee or time and material] basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed \$ and the total Contract compensation shall not exceed \$
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: ☐ Yes ☐ No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. Invoices shall be submitted to the County Representative at: Mailing Address & Email Address

IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) 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.

2. AVAILABILITY OF FUNDS. County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

3. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those

of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the County evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for personal injury and property damage for the protection of the County, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the County evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the County, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

C. Contractor shall provide County a certificate of insurance naming the Clackamas County and its agents, officers, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

E. If any other required liability insurance is arranged on a “claims made” basis, “tail” coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor’s insurer will provide “tail” coverage as subscribed, whichever is greater, or continuous “claims made” liability coverage for thirty-six (36) months following the contract completion. Continuous “claims made” coverage will be acceptable in lieu of “tail” coverage, provided it’s retroactive date is on or before the effective date of this Contract.

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be 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. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

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

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.

- b. **Service Warranty.** Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the Section IV and the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

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

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or

property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or

eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

(A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the COUNTY on account of any labor or material furnished.

(B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract.

(C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES AND ALL NECESSARY STATE APPROVALS HAVING BEEN OBTAINED. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF

