



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

January 28, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the Jennings Ave: OR99E to Oatfield Rd. Project and Authorizing Good Faith Negotiations and Condemnation Actions

Purpose/Outcomes	Under ORS 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project.
Dollar Amount and Fiscal Impact	The right of way budget for the project is estimated to be \$992,481 and the total amount estimated for this project is \$5,152,316.
Funding Source	Federal Surface Transportation Program (STP) and County Road Funds.
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action/Review	1/21/21: BCC approval of Contract Amendment # 1 with Murraysmith Inc. for the Jennings Ave: OR 99E to Oatfield Rd. Project. 01/19/21: Discussion with BCC at issues 10/17/19: BCC approval of a Contract with Murraysmith Inc. for the Jennings Ave: OR 99E to Oatfield Rd Project. 10-11-18: BCC approval of Intergovernmental Agreement for Right of Way Services No. 32338 with Oregon Department of Transportation for the Jennings Ave OR 99E to Oatfield Road Project. 06/29/17: BCC approval of Supplemental Project Agreement No. 31035 with Oregon Department of Transportation for the Jennings Ave. OR 99E to Oatfield Road Project. 01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects.
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of providing safe roads for the "users of the transportation system so they can travel safely and efficiently in Clackamas County." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" and "Ensure

	safe, healthy and secure communities” by constructing bicycle lanes and sidewalks.
Counsel Review	Date of Counsel review: 1/7/21 NB
Procurement Review	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> This item is a resolution of necessity, required under ORS 35 as a precursor in support of possible condemnation action.
Contact Persons	Sharan LaDuca, DTD Sr. Right of Way Agent @ 503-742-4675 (o) or 503-679-0619 (c)

The County obtained Federal Surface Transportation Program funding to construct improvements along Jennings Avenue from OR99E to Oatfield Road. The improvements include constructing a curb tight sidewalk on the north side of the road and constructing bike lanes on both sides of the road for enhanced bicycle and pedestrian connectivity. The total length of improvements is approximately three quarters (3/4) of a mile (approximately 3860 feet).

In order to construct the improvements as designed, additional rights of way and easements will be required. The project is expected to impact 46 properties abutting the project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in that statute, a Resolution of Necessity is required before offers are made for needed rights of way and easements.

The project design team has collected and analyzed data sufficient to choose an alternative and advance the design of the project. The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The design has progressed through the Department of Transportation and Development (the “Department”) project development procedures and the final legal descriptions required for acquisition of the needed rights of way and easements from 46 properties affected by the Project are being developed and reviewed.

The Department shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts to make appraisals and appraisal reviews for acquisitions valued over \$10,000 or staff will utilize their own expertise and reliable data sources to prepare Appraisal Waiver Valuations in accordance with applicable law and regulation for acquisitions valued under \$10,000.

The resolution directs Department staff to proceed with good faith negotiations for the acquisition of the needed property rights and to utilize the expertise of authorized real estate appraisers and other such experts to assist in the acquisition process. The resolution further requires the Director of the Department to notify the Board if the exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a Condemnation Action.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the Resolution of Necessity and Purpose authorizing the acquisition of necessary rights of way, easements, and fee property by good faith negotiation if possible, or condemnation, if necessary.

Respectfully,

Sharan LaDuca

Sharan LaDuca
Senior Right of Way Agent

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Jennings Ave: OR99E to Oatfield Road Project



Board Order No. _____
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This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on January 28, 2021 and,

It appearing to the Board that the Jennings Ave: OR99E to Oatfield Road Project (the "Project") will construct a curb tight sidewalk on the north side of the road and construct bike lanes on both sides of the road; is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned in accordance with appropriate standards for the improvement of transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded; and

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

It further appearing to the Board that rights of way and easements within the boundaries described in the attached Exhibit "A" are a necessary part of the Project, consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the acquisition of the necessary rights of way and easements are described as follows: the centerline is described in Exhibit "A"; the width of right-of-way will be in accordance with the Clackamas County Comprehensive Plan and Transportation System Plan; ancillary easements including sign, slope, sidewalk, utility, wetland mitigation, storm water treatment, storm water detention, traffic and safety facility, and temporary construction purposes, together with such incidental additional right-of-way at intersections and due to topography, all as may be reasonably necessary to accommodate project design; and any uneconomic remnants, as determined by appraisal; all being in the public interest in order to commence and complete the Project in a timely manner; and,

It further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings, when such exercise is deemed necessary to accomplish public purposes for which it has responsibility.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Jennings Ave: OR99E to Oatfield Road Project



Board Order No. _____

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It further appearing that the Board has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County Department of Transportation and Development (the "Department"), in connection with the Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary rights of way, easements, and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

IT IS FURTHER ORDERED THAT:

1) The Department be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified as necessary within the boundaries of Exhibit "A". In so doing, the Department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to assist staff with the acquisition process; and,

2). It is the intention of the Board that the required rights of way, easements, and fee property be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director of the Department shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints of condemnation with the circuit court of the County and take such other steps as it determines necessary for the immediate possession of required rights of way, easements, and fee property and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2021.

Tootie Smith, Chair

Recording Secretary

JENNINGS AVENUE:
OR99E TO OATFIELD ROAD
JUNE 29, 2020

CLACKAMAS CO. PROJECT NO. 1831-22234
ROAD CENTERLINE DESCRIPTION

**EXHIBIT A
CENTERLINE DESCRIPTION OF JENNINGS AVENUE**

A road centerline in a portion of the B. Jennings DLC No. 40 and the James McNary DLC No. 38 in the Northeast One-Quarter, Southeast One-Quarter and Southwest One-Quarter of Section 18 Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

BEGINNING at the centerline intersection of Jennings Avenue and McLoughlin Boulevard (Hwy 99E), and being herein referenced as Jennings Avenue centerline station 64+36.50, said point also bears South 87°09'29" West, 2,730.73 feet from a 3 1/4" Bronze Disk marking the angle corner on the east line of the B. Jennings DLC No. 40;

Thence North 66°30'13" East, along the centerline of said Jennings Road, 563.50 feet to a 1/2" iron pipe at centerline station 70+00.00, said iron pipe being the intersection with Addie Street;

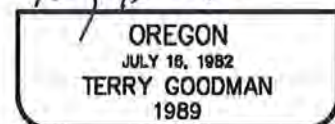
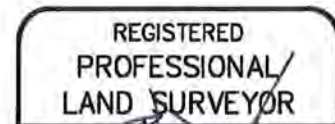
Thence continuing along said centerline, North 66°30'13" East, 1,660.31 feet to a point on the east line of said B. Jennings DLC No. 40 at centerline station 86+60.31 P.I., said point bears North 42°28'58" West, 1,018.63 feet from said 3 1/4" Bronze Disk marking the angle corner on the east line of the B. Jennings DLC No. 40;

Thence continuing along said centerline, North 46°52'34" East, 934.62 feet to an angle point at centerline station 95+94.93 P.I., said angle point bears North 43°14'45" West, 25.00 feet from a 1/2" iron pipe marking the most westerly corner of Lot 2, Block 2 of "Maywood" recorded as Plat No. 164 in the Clackamas County Plat Records;

Thence continuing along said centerline, North 46°37'55" East, 704.40 feet to an angle point at centerline station 102+99.33 P.I., said point bears North 15°07'11" East, 1,941.00 feet from said 3 1/4" Bronze Disk marking the angle corner on the east line of the B. Jennings DLC No. 40;

Thence North 47°09'05" East, 31.20 feet, more or less, to and terminating at centerline station 103+30.53, in the centerline of Oatfield Road;

**The centerline described above is per Survey Number
2020-148.**



RENEWAL DATE: 6-30-21



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

January 28, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement between Clackamas County and
the City of Gladstone for
Traffic Signal Maintenance and Transportation Engineering Services**

Purpose/Outcomes	Clackamas County is seeking approval to allow Department of Transportation and Development (DTD) staff to cooperatively provide annual traffic signal maintenance and transportation engineering services to City of Gladstone to support City's traffic signals and intelligent transportation system infrastructure.
Dollar Amount and Fiscal Impact	Revenue – Varies between \$500 to \$3,000 annual reimbursements for staff time per traffic signal & roadway flashing beacons.
Funding Source	N/A
Duration	Indefinite or upon 60 days' notice by either party
Previous Board Action	1/19/21– Taken to issues for discussion
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Provide safe, efficient, and well-maintained transportation system throughout the County. 2. Build a strong infrastructure and Ensure safe, healthy, and secure communities.
Counsel Review	Date of Counsel review:11/02/2020, NB
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This is an IGA
Contact Person	Bikram Raghubansh, Senior Traffic Engineer 503-742-4706

BACKGROUND:

The City of Gladstone is requesting a formal agreement with Clackamas County to provide transportation engineering and traffic signal maintenance services to support traffic signal timing, and manage the City's traffic signals, flashing beacons, and intelligent transportation system. This agreement will allow Clackamas County to provide annual routine maintenance support to the City owned traffic signals along with transportation engineering support. Support provided by County transportation engineering and traffic signal maintenance staff will be reimbursed by the City for time and material costs.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with the City of Gladstone for the maintenance of traffic signal related assets and transportation engineering services.

Respectfully submitted,

Bikram Raghubansh

Bikram Raghubansh
Senior Traffic Engineer

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY
AND THE CITY OF GLADSTONE
FOR TRAFFIC SIGNAL MAINTENANCE AND
TRANSPORTATION ENGINEERING SERVICES**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("COUNTY"), a corporate body politic, and the City of Gladstone ("CITY"), a corporate body politic, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the "Parties" and each a "Party."

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, the City needs professional transportation engineering and signal maintenance staff to assist with design review, oversight, and maintenance of the City's new and existing traffic signal(s), intelligent transportation system ("ITS"), and roadway beacons; and

WHEREAS, the County has particular expertise in this area and is able and willing to provide traffic engineering review oversight support, signal timing, and perform signal maintenance for the City on the terms and conditions provided below; and

WHEREAS, this Agreement sets forth the responsibilities of the County for traffic signal maintenance on the City's signals, ITS devices, and roadway beacons at the locations listed in Attachment A; and

WHEREAS, this Agreement sets forth the responsibilities of the City to compensate the County for the work contemplated herein; and

WHEREAS, the City and County believe it is in the public interest to enter into this Agreement to set forth the circumstances under which the City may request the County to provide traffic engineering and traffic signal maintenance support on City roads and streets lying within the boundaries of the City; and

WHEREAS, the City would like to engage the County to perform the work associated with the Project and the County is willing to perform the work;

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective on the last date signed by the Parties below and shall continue thereafter in perpetuity unless terminated earlier by either party consistent with Section 5.
2. **County Obligations.**
 - A. The County shall provide all necessary labor and equipment to perform traffic signal consulting, inspection, configuration, testing, routine and preventive maintenance and repairs on both a regular scheduled and an on-call basis on those facilities identified in Attachment A. Work shall be performed to International Municipal Signal Association (IMSA), Manual on Uniform Traffic Control Devices (MUTCD) with Oregon Supplement and Institute of Transportation Engineers (ITE) industry standards, as well as the State of Oregon guidelines and specifications.

- B. If spare materials and replacement parts are unavailable from City inventory, County shall provide spare materials and replacement parts as necessary to repair a signal that is deemed by the City to create a dangerous condition. Materials and parts supplied by County will be charged to City at current replacement costs with associated shipping and handling fees necessary to replace County inventory.
- C. The County shall assist City with developing a recommended inventory list of spare materials and replacement parts to store/maintain on a regular basis.
- D. The County shall provide engineering review and construction inspection services as requested by City's Public Works Director or designee for new equipment installations not yet identified in Attachment A. New equipment which the Parties agree should be subject to the terms of this Agreement may be added to Attachment A by written amendment to this Agreement, signed by the City's Public Works Director, and the County's Director of the Department of Transportation and Development.
- E. The County shall assign an Oregon State-licensed Professional Civil Engineer (with expertise in Traffic Signal Operation) to assist the City as requested with traffic signal design review, alterations or additions to the traffic signal system, intelligent transportation systems (ITS), roadway flashing beacons, signal timing, review of development proposals with traffic impacts, and other traffic engineering matters. The County's Oregon State-licensed Professional Civil Engineer shall work in close coordination with the City's Public Works Engineering staff for design review oversight on the City's traffic signal, ITS, and roadway beacon projects.
- F. The County shall utilize IMSA Certified Technicians/Electricians when performing traffic signal maintenance, repairs, inspection, configuration, setup, or testing of the City's signal system. Certification level shall be commensurate with the task performed in accordance with IMSA specifications. Technicians/Electricians should be certified in temporary traffic control per IMSA guidelines.
- G. The County shall provide regular scheduled annual testing and maintenance of traffic signal components required for a fully functional traffic signal system, which includes all items shown in Attachment B.
- H. The County shall provide short term temporary traffic control measures as required by the most current Oregon Temporary Traffic Control Handbook and/or state adopted Manual on Uniform Traffic Control Devices ("MUTCD") during routine maintenance activities.
- I. The County shall provide responsive 24-hour on-call service that includes weekends and holidays.
 - i. The County shall respond to any calls involving an emergency, defined below, within four (4) hours, and shall respond to routine calls within forty-eight (48) hours.
Emergencies are:
 - 1. controller failures;
 - 2. dark signals;
 - a. In the event of a "dark signal," the County will verify with the Utility Service Provider (Gladstone Utility) before responding to ensure the outage is not due to a power outage, and the County will only be obligated to respond if the issue is isolated to the traffic signal. It will be the responsibility of the technician/electrician on duty to evaluate conditions at the site and determine the action necessary, including temporary repairs or traffic control.

3. any red lamp outage;
 4. any intersection in a flashing mode;
 5. any turn lane with only one signal head having an outage (red, yellow, or green);
 6. any equipment involved in a crash; or
 7. any condition involving a signal that the City Public Works Director or City Engineer or their designee declares to be an "emergency" or otherwise requests immediate response (subject to County personnel availability) because the City deems a dangerous condition to exist.
- ii. Except for emergency work described in Section 2(I) and routine maintenance work described in Attachment B, the County will provide a quote to the City outlining the work to be done with estimated labor and material costs in accordance with this Agreement before commencing any work. Prior to any work being started, the quote must be signed by the Public Works Director for the City and the Director of the Department of Transportation and Development for the County, or their respective designees.
 - iii. The County shall not be liable for any claim or action arising out of, or based upon, damages or injuries to persons or property caused by signal issues for which no request for work was made by the City to the County pursuant to the terms of this Section 2.
 - iv. The County shall record all activities performed any time staff is responding to a service call at the site of traffic signal facilities. This can be done on a County-standard form, but should include at minimum:
 1. the time and date the call is received;
 2. the time staff arrives onsite;
 3. who placed the call;
 4. location and condition upon arrival;
 5. necessary equipment, labor and materials;
 6. specifics of repair;
 7. additional repairs still needed;
 8. time site was secured; and
 9. time leaving site.
- J. The County will provide to the City reports on all work performed at the traffic signal(s) as requested by the City. Annual reports shall contain completed maintenance checklists as provided in Attachment B, as well as copies of all work reports, tests, etc. for any activities performed onsite.
- K. The County shall maintain an updated log book in each cabinet for traffic signals that details any and all maintenance or repairs performed.
- L. The County shall provide annual reports that include all of the information in Section 2(J), or earlier upon request of the City.
- M. The County shall submit a detailed monthly invoice to the City with work descriptions, labor costs, and material costs. The County shall invoice the City within sixty (60) days of performing City-authorized work at rates set forth in Attachment C..

N. The County shall submit to City new rates for staff not less than 45 days before the rates set forth in Attachment C change.

3. City Obligations.

- A. The City shall compensate the County for the services provided based on the rates of staff in the County Department of Transportation and Development as shown in Attachment C, or as amended as provided herein. All undisputed payments shall be made within thirty (30) days after receipt of County's invoice sent per Section 2(M). City agrees to identify with reasonable detail any disputed fee(s), the reason for the dispute, and any additional information required to explain the basis for the dispute. The City and County shall then work together in good faith to resolve the dispute. If the parties cannot resolve the dispute within 90 days of City's identification of the disputed fee(s), either party may proceed using any available legal remedies.
- B. The City agrees to promptly contact the County any time signal issues are witnessed or reported to ensure timely repairs can be made.
- C. The City shall have the ultimate responsibility to approve the plans in writing for signal upgrading, phasing, timing, and coordination after recommendation by the County.
- D. The City grants County the right to enter into and occupy City rights-of-way for the purpose of performing routine maintenance and emergency repairs of the traffic signal equipment, ITS devices, and roadway beacons owned by the City.
- E. The City shall maintain responsibility for temporary traffic control from the time the signal issue is discovered until such time as the City deems the traffic control unnecessary or County staff arrive and provide traffic control per Section 2(H) or Section 2(I)(ii).
- F. The City's inventory of spare materials and replacement parts for common repairs shall be stored at City's Maintenance Center and shall be accessible to County technicians/electricians during weekday business hours with the assistance of City personnel.

4. Termination.

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. City may terminate this Agreement without cause upon:
 - i. Rate Increase: Within 30 days following County's notice of rate increase to City (rate increase shall not be effective until 45 days following notice to City); or
 - ii. For Convenience: Upon 60 days' notice.
- C. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon

as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- D. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. The County may terminate this Agreement upon 60 days' notice in the event the County is unable to provide staffing sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to provide services for performance of this Agreement.
- F. Nothing herein shall prevent the Parties from meeting to mutually discuss the Agreement. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- G. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

5. **Indemnification.**

- A. Notwithstanding anything to the contrary in Section 2(I)(iii) and subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

6. **Party Contacts**

- A. Bikram Raghubansh or his designee will act as liaison for the County for the Project.

Contact Information:

Clackamas County- Department of Transportation and Development
150 Beavercreek Road
Oregon City, OR 97045
(503) 742-4706 or BikramRag@clackamas.us

- B. Jim Whynot or his/her designee will act as liaison for the City for the Project.

Contact Information:

City of Gladstone – Public Works Department
18595 Portland Avenue

Gladstone, OR 97027
(503) 656-7957 or whynot@ci.gladstone.or.us

- C. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

7. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of at least three (3) years; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved
- E. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- F. **Debt Limitation.** This Agreement 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.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties and any prior agreements between the Parties affecting the subject matter of this Agreement are hereby terminated. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- K. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- L. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- M. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- N. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

[Signatures on Following Page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Gladstone

Chair, Board of County Commissioners



Public Works Director/City Manager

Date

12/10/20

Date

Approved as to form:



[NAME], City Attorney

Attachment A

County Maintained Traffic Signal and Flasher Beacon Locations

The County agrees to provide preventive maintenance, on-call repair, locates, and traffic engineering consultation services for signal and flasher facilities at the following locations within the City's Jurisdiction:

TRAFFIC SIGNALS

All traffic signals, pedestrian signals, vehicle detection, ITS devices, and related facilities at the following locations:

TC ID No.	Device Type	Major Street	Minor Street
05626	Signal	Oatfield Rd	Webster Rd
05625	Signal	82nd Dr	Oatfield Rd
05627	Signal	Portland Ave	Gloucester Rd

ROADWAY FLASHING BEACONS

Includes school zone flashers, intersection flashers, and Rectangular Rapid Flashing Beacons (RRFB) at the following locations:

TC ID No.	Device Type	Address/School	Major Street	Minor Street
05624	4-Way Flasher	Intersection	82 nd Dr	Arlington St
05628	4-Way Flasher	Intersection	Portland Ave	Dartmouth St
05630 (A)	School Zone Flasher	Kraxberger Middle School	Oatfield Rd	Angus Way
05630 (B)	School Zone Flasher	Kraxberger Middle School	Oatfield Rd	Stonehill St
05630 (C)	School Zone Flasher	Kraxberger Middle School	Webster Rd	South of Ridgewood Dr
05630 (D)	School Zone Flasher	Kraxberger Middle School	Webster Rd	South of Spring Hill Pl
05630 (E)	School Zone Flasher	Kraxberger Middle School	Webster Rd	North of Los Verdes Dr



Jackson County

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

Transportation Maintenance Division

Annual Cabinet Inspections

Traffic Signal #: TC-

Date: / /

Location:
Owner:

Arrive:
Depart:

Controller Mfg:

Model:

CMU Mfg:

Model: 210

S/N:

New CMU Mfg:

Model: 210

S/N:

VAC:

VDC:

AMPS:

	Pass	Fail	N/A	
Controller Timing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Timing Sheet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Cabinet Print	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Intersection As-Built	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Verify Inputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Verify Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Flasher Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Locks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Thermostat/Fan Test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Change Air Filter(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Cleaned/Lubed Cabinet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Remove/Cleaned Graffiti	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Diode Matrix Sheet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____

Conflict Monitor Test note: _____

Miscellaneous Details:

Electrician _____

Electrician _____

Attachment C

Schedule of Rates

Clackamas County
Traffic Engineering & Traffic Signal Maintenance
Labor Rates

2020/21 Fiscal Year

Employee Class Description	Group	Labor Rate
Engineering Supervisor	Engineering	\$180.26
Civil Engineer, Senior	Engineering	\$167.00
Civil Engineer	Engineering	\$140.46
Civil Engineer, Associate	Engineering	\$120.26
Engineering Tech 3	Engineering	\$98.65
Engineering Tech 2	Engineering	\$77.69
Engineering Intern	Engineering	\$24.96
Traffic Signal Electrician	Maintenance	\$123.18



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

January 28, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Supplemental Project Agreement No. 34029 with
Oregon Department of Transportation (ODOT) for the
OR 211 at Canby Marquam Highway Project**

Purpose/Outcome	Clackamas County Department of Transportation and Development (DTD) is seeking approval for this intergovernmental agreement with Oregon Department of Transportation (ODOT) for the OR 211 at Canby Marquam Highway Project.
Dollar Amount and Fiscal Impact	County is not contributing funds toward the design or construction of project. The project will be financed by the State at an estimated cost of \$723,700. County will be responsible for power costs associated with intersection lighting at the intersection, which is estimated to be less than \$100 annually.
Funding Source	NA
Duration	Effective upon date it is fully executed and approved as required by applicable law
Previous Board Action	1/19/21: Discussion item at issues
Strategic Plan Alignment	1. This project will install safety countermeasures that are proven to reduce crashes, which is consistent with the DTD/Traffic Safety goal of reducing the number of fatalities and serious injury crashes to zero by 2035. 2. The project will result in enduring safety infrastructure, which is consistent with the goals of (a) building a strong infrastructure and (b) ensuring safe, healthy and secure communities.
Counsel Review	Reviewed and approved by Counsel on 12/16/2020
Procurement Review	1. Was this item processed through Procurement? NO 2. If no, provide brief explanation: This is an intergovernmental agreement and procurement review is not applicable.
Contact Person	Christian Snuffin, Senior Traffic Engineer 503-680-5623

BACKGROUND:

Clackamas County is requesting to go into agreement with ODOT for the OR 211 at Canby Marquam Highway Project. ODOT is constructing and installing safety improvements on roads approaching and at the intersection of OR 211 and Canby Marquam Highway (north of the intersection) and S. Kropf Road (south of the intersection). The Project includes the following:

- a. Constructing a 2" grind/inlay, installing transverse rumble strips, and installing a through route activated warning system on Canby Marquam north of the intersection;
- b. Installing static solar powered flashers on stop signs on S. Kropf Road south of the intersection; and
- c. Installing intersection illumination, enhanced intersection warning signs, and a through route activated warning system on OR 211.

The Project will be financed by State at an estimated cost of \$723,700.00 in federal and state funds. County is not contributing funds to the Project.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with ODOT for the OR 211 at Canby Marquam Highway Project.

Respectfully submitted,

Christian Snuffin

Christian Snuffin
Senior Traffic Engineer/Project Manager

INTERGOVERNMENTAL AGREEMENT
OR 211 at Canby Marquam Highway
Clackamas County
Key No. 20142

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 366.576, ODOT may enter into agreements with any county, city, town or road district for the construction, reconstruction, improvement, repair or maintenance of any road, highway or street, with mutually agreed upon terms and conditions, for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Oregon Route (OR) 211 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Canby Marquam Highway and S. Kropf Road are a part of the county road system under the jurisdiction and control of Agency. Each Party maintains the roadway system under its control.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. State is constructing and installing safety improvements on roads approaching and at the intersection (known as Hamricks Corner) of OR 211 and Canby Marquam Highway (north of the intersection) and S. Kropf Road (south of the intersection), hereinafter referred to as "Project". The Project includes the following:
 - a. constructing a 2" grind/inlay, installing transverse rumble strips, and installing a through route activated warning system on Canby Marquam north of the intersection;
 - b. Installing static solar powered flashers on stop signs on S. Kropf Road south of the intersection; and
 - c. Installing intersection illumination, enhanced intersection warning signs, and a through route activated warning system on OR 211.

The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. The Project will be financed by State at an estimated cost of \$723,700.00 in federal and state funds. The estimate for the total Project cost is subject to change. Agency is not contributing funds to the Project.
3. The term of this Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement.

AGENCY OBLIGATIONS

1. Agency grants State the right to enter onto Agency right of way for performance of duties as set forth in this Agreement.
2. Agency shall be responsible for 100 percent of power costs associated with the intersection illumination installed as a part of this Project. Agency shall require the power company to send invoices directly to Agency.
3. **Americans with Disabilities Act Compliance:**
 - a. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.

- b. Maintenance obligations in this section shall survive termination of this Agreement.
4. Agency, by execution of this Agreement, gives consent as required by ORS 373.050(1) to any and all closure of streets that intersect the state highway, if any there be in connection with or arising out of the Project covered by this Agreement.
5. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
6. Agency's Project Manager for this Project is Joe Marek, Transportation Safety Program Manager, Clackamas County, 150 Beaver Creek Road, Oregon City, Oregon 97045; phone: 503-742-4705; email: JoeMar@clackamas.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. Americans with Disabilities Act Compliance:

When the project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the State shall:

- a. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- b. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
- c. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>.

2. State shall remain responsible for maintenance of OR 211. Project safety improvements will be maintained by State.
3. State shall be responsible for 100 percent of maintenance costs, but not power costs, associated with the intersection illumination installed as a part of this Project.
4. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
5. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
6. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on OR 211.
7. State's Project Manager for this Project is Paul Welch, Project Manager, ODOT Region 2 Area 3, 455 Airport Road SE, Building A, Salem, Oregon 97303; phone: (503) 986-2702; email: Paul.Welch@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to perform any of the provisions called for by this Agreement within the time specified herein or any extension thereof.
 - b. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its

reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- c. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
 6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State

on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (Key Number 20142) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

CLACKAMAS COUNTY, by and through
its elected officials

By _____
Chair

Date _____

By _____
Recording Secretary

Date _____

LEGAL REVIEW APPROVAL
(If required in Agency's process)

By _____
Agency Legal Counsel

Date _____

Agency Contact:

Joe Marek,
Transportation Safety Program Manager
Clackamas County
150 Beaver Creek Road,
Oregon City, OR 97045
phone: 503-742-4705
email: JoeMar@clackamas.us

State Contact:

Paul Welch, Project Manager
ODOT Region 2 Area 3
455 Airport Road SE, Building A
Salem, OR 97303
phone: (503) 986-2702
email: Paul.Welch@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Deputy Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic Roadway Engineer

Date _____

By _____
Region 2 (Northwest) Manager

Date _____

By _____
Region 2 Project Delivery Manager

Date _____

By _____
Area 3 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A
Project Location Sketch Maps





DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Baker Rock Crushing Co.,
to provide Aggregate Rock for Clackamas County**

Purpose/ Outcomes	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Baker Rock Crushing Co, for aggregate rock
Dollar Amount and Fiscal Impact	\$75,000 annually. Total contract value through expiration is \$225,000.
Funding Source	DTD Transportation Maintenance, 215-7433-00-424412
Duration	October 31, 2023
Previous Board Action	1/12/21: Discussion with the board at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
Counsel Review	November 18, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
Contract Number	3487

BACKGROUND:

The Department of Transportation and Development has a continual need for aggregate rock. Aggregate rock is used on a variety of projects including shouldering, digouts, ditching, catch basins, guardrail and pothole patching. These materials are essential to constructing, preserving, and rehabilitating roads and bridges. Clackamas County does stockpile rock at various locations throughout the County. One of the biggest expenses on a project is equipment and labor. By having resources such as rock vendors throughout the County, the County can cut back on trucking costs by using vendors that are closest to our job sites. By having these contracts in place, the County is able to plan ahead where to get the rock needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LCRB Rules on October 14, 2020. Bids were publically opened October 28, 2020. The County received two (2) proposals



DAN JOHNSON

DIRECTOR

from Baker Rock Crushing Co, and Turin and Sons Inc. Both vendors were chosen and were awarded the Contract through October 31, 2023.

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 Progress Road, Oregon City, OR 97045

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Baker Rock Crushing Co., for the aggregate rock.

Respectfully submitted,

Terry Abbott

Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #3487**

This Goods and Services Contract (this "Contract") is entered into between **Baker Rock Crushing Co.** ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Aggregate Rock.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. 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 RFQ# 2020-82 Aggregate Rock, issued on October 14, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A", and the Contractor's Quote attached and hereby incorporated by reference as Exhibit "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: Paul Runyan.

III. COMPENSATION

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$75,000.00** and the total Contract compensation shall not exceed **\$225,000.00**.
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 Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

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 six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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, which includes any hazardous, toxic,

or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide 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, agents, 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, subcontractors, 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; 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.

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 with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 officers, elected officials, agents, 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 officers, elected officials, agents, 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 Warranty 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 Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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 by operation of law or otherwise, 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, 15, 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 ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (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.

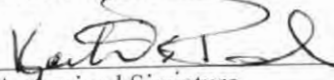
29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, 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 WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. 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. 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 ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Baker Rock Crushing Co.
21880 SW Farmington Road
Beaverton, OR 97007

Clackamas County

 11/17/2020
Authorized Signature Date

Chair Date

KEITH E. PEAL VICEPRESIDENT MKTG. & SALES
Name / Title (Printed)

Recording Secretary

060464-11
Oregon Business Registry #

Approved as to Form:

DBC/Oregon
Entity Type / State of Formation

 11/18/20
County Counsel Date

EXHIBIT A
RFQ #2020-82 Aggregate Rock
Issued October 14, 2020



Procurement Division
Public Services Building
2051 Kaen Road
Oregon City, OR 97045
(503) 742-5444 (Office)

REQUEST FOR QUOTES (RFQ) #2020-82

Issue Date: October 14, 2020

Project Name:	Aggregate Rock Products		
Quote Due Date/Time:	October 28, 2020, 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	twhitley@clackamas.us

**SUBMIT QUOTES VIA EMAIL TO PROCUREMENT@CLACKAMAS.US
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE
“AGGREGATE ROCK” IN THE SUBJECT LINE**

1. ANNOUNCEMENT AND SPECIAL INFORMATION

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-82-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to procurement@clackamas.us. If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

2. SCOPE

The purpose of this RFQ is to obtain competitive market prices on various sizes and types of rock products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

Price Adjustments: The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

Price adjustments will be executed by way of an amendment signed by both the County and the vendor.

Price adjustments must be sent to the project manager as identified within the final contract.

Ordering Process: Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor will invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

Requirements:

- A. Measurement: Measurement of rock materials will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of rock products, loaded, FOB supplier's site.
- C. Materials: Rock products supplied shall conform to the State of Oregon's Standard Specifications for Construction 2021 Edition. Rock products not meeting the required specification will be rejected.

3. SAMPLE CONTRACT

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

4. QUOTE

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form;

5. EVALUATION

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

CLACKAMAS COUNTY CERTIFICATIONS
RFQ #2020-82

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

SECTION II. NON-DISCRIMINATION

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter 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.

SECTION III. CONFLICT OF INTEREST

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: BAKER ROCK RESOURCES Date: 10/22/2020
Signature: [Signature] Title: VICE PRESIDENT MKTY. & SALES
Name: KEITH E. PEAL Telephone: 503-642-2531
Email: KEITHPEAL@BAKER-ROCK.COM OR CCB # (if applicable): 05232

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: _____

Oregon Business Registry Number: 060464-11

**CLACKAMAS COUNTY
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

QUOTE PREPARATION

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

QUOTE EVALUATION AND AWARD

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

**RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET
COMPANY NAME:**

MATERIAL/DESCRIPTION	COST PER TON
3" -0 CRUSHED ROCK	\$
1" -0 CRUSHED ROCK	\$
1 1/2" -0 CRUSHED ROCK	\$
3/4" -0 CRUSHED ROCK	\$
1/4" -0 CRUSHED ROCK	\$
4"-2" CRUSHED DRAIN	\$
3"-12" CRUSHED ROCK	\$
RIP RAP	\$
PIT RUN	\$
FILL SAND	\$
WINTER SAND 1/4-.10 CLEAN CRUSHED AGGREGATE	\$
MASON SAND	\$
TOP SOIL	\$
<u>ADDITIONAL PRODUCTS AVAILABLE</u>	
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

**EXHIBIT B
CONTRACTOR'S QUOTE**

RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
3" -0 CRUSHED ROCK	\$ 9.00
1" -0 CRUSHED ROCK	\$ —
1 1/2" -0 CRUSHED ROCK	\$ 9.00
3/4" -0 CRUSHED ROCK	\$ 9.25
1/4" -0 CRUSHED ROCK	\$ —
4"-2" CRUSHED DRAIN	\$ —
3"-12" CRUSHED ROCK	\$ 14.50
RIP RAP	\$ —
PIT RUN	\$ 9.00
FILL SAND	\$ —
WINTER SAND 1/4"-10 CLEAN CRUSHED AGGREGATE	\$ —
MASON SAND	\$ —
TOP SOIL	\$ —
<u>ADDITIONAL PRODUCTS AVAILABLE</u>	
	\$
6x3 Crushed Rock	\$ 10.50
	\$
1 1/2" x 3/4" Crushed Drain	\$ 10.50
	\$
3/4" x 1/4" Crushed Drain	\$ 14.00
	\$

* All prices are f.o.b @
 Baker Rock Resources Molalla Quarry.
 33999 S. Ball Rd.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Jim Turin and Sons, Inc.,
dba Mt. Hood Rock Products, Inc.,
to provide Aggregate Rock for Clackamas County**

Purpose/ Outcomes	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Jim Turin and Sons, Inc., dba Mt. Hood Rock Products, Inc., for aggregate rock
Dollar Amount and Fiscal Impact	\$75,000 annually. Total contract value through expiration is \$225,000.
Funding Source	DTD Transportation Maintenance, 215-7433-00-424412
Duration	October 31, 2023
Previous Board Action	1/12/21: Discussion with the board at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
Counsel Review	November 23, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
Contract Number	3489

BACKGROUND:

The Department of Transportation and Development has a continual need for aggregate rock. Aggregate rock is used on a variety of projects including shouldering, digouts, ditching, catch basins, guardrail and pothole patching. These materials are essential to constructing, preserving, and rehabilitating roads and bridges. Clackamas County does stockpile rock at various locations throughout the County. One of the biggest expenses on a project is equipment and labor. By having resources such as rock vendors throughout the County, the County can cut back on trucking costs by using vendors that are closest to our job sites. By having these contracts in place, the County is able to plan ahead where to get the rock needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site.

PROCUREMENT PROCESS:



DAN JOHNSON

DIRECTOR

This project was advertised in accordance with ORS 279B and LCRB Rules on October 14, 2020. Bids were publicly opened October 28, 2020. The County received two (2) proposals from Baker Rock Crushing Co, and Turin and Sons Inc. Both vendors were chosen and were awarded the Contract through October 31, 2023.

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Jim Turin and Sons, Inc., dba Mt. Hood Rock Products, Inc., for the aggregate rock.

Respectfully submitted,

Terry Abbott

Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #3489**

This Goods and Services Contract (this "Contract") is entered into between **Jim Turin and Sons, Inc., dba Mt. Hood Rock Products, Inc.**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Aggregate rock.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. 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 RFQ# 2020-82 Aggregate Rock, issued on October 14, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A", and the Contractor's Quote attached and hereby incorporated by reference as Exhibit "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: Paul Runyan.

III. COMPENSATION

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$75,000.00** and the total Contract compensation shall not exceed **\$225,000.00**.
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 Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

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 six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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, which includes any hazardous, toxic,

or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide 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, agents, 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, subcontractors, 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; 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.

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 with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 officers, elected officials, agents, 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 officers, elected officials, agents, 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 Warranty 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 Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, 22, and 27, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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 by operation of law or otherwise, 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, 15, 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 ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (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.

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 WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. 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. 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 ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

EXHIBIT A
RFQ #2020-82 Aggregate Rock
Issued October 14, 2020



Procurement Division
Public Services Building
2051 Kaen Road
Oregon City, OR 97045
(503) 742-5444 (Office)

REQUEST FOR QUOTES (RFQ) #2020-82

Issue Date: October 14, 2020

Project Name:	Aggregate Rock Products		
Quote Due Date/Time:	October 28, 2020, 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	twhitley@clackamas.us

**SUBMIT QUOTES VIA EMAIL TO PROCUREMENT@CLACKAMAS.US
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE
“AGGREGATE ROCK” IN THE SUBJECT LINE**

1. ANNOUNCEMENT AND SPECIAL INFORMATION

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-82-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to procurement@clackamas.us. If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

2. SCOPE

The purpose of this RFQ is to obtain competitive market prices on various sizes and types of rock products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

Price Adjustments: The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

Price adjustments will be executed by way of an amendment signed by both the County and the vendor.

Price adjustments must be sent to the project manager as identified within the final contract.

Ordering Process: Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor will invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

Requirements:

- A. Measurement: Measurement of rock materials will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of rock products, loaded, FOB supplier's site.
- C. Materials: Rock products supplied shall conform to the State of Oregon's Standard Specifications for Construction 2021 Edition. Rock products not meeting the required specification will be rejected.

3. SAMPLE CONTRACT

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

4. QUOTE

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form;

5. EVALUATION

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

CLACKAMAS COUNTY CERTIFICATIONS
RFQ #2020-82

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

SECTION II. NON-DISCRIMINATION

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter 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.

SECTION III. CONFLICT OF INTEREST

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: Jim Turin & Sons, Inc. Date: 10.27.2020
Signature: [Signature] Title: President
Name: Dan J Turin Telephone: 503.449.5237
Email: dan@turinajps.net OR CCB # (if applicable): 53420

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: _____

Oregon Business Registry Number: 0230324-2

**CLACKAMAS COUNTY
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

QUOTE PREPARATION

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

QUOTE EVALUATION AND AWARD

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

**RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET
COMPANY NAME:**

MATERIAL/DESCRIPTION	COST PER TON
3" -0 CRUSHED ROCK	\$
1" -0 CRUSHED ROCK	\$
1 1/2" -0 CRUSHED ROCK	\$
3/4" -0 CRUSHED ROCK	\$
1/4" -0 CRUSHED ROCK	\$
4"-2" CRUSHED DRAIN	\$
3"-12" CRUSHED ROCK	\$
RIP RAP	\$
PIT RUN	\$
FILL SAND	\$
WINTER SAND 1/4-.10 CLEAN CRUSHED AGGREGATE	\$
MASON SAND	\$
TOP SOIL	\$
<u>ADDITIONAL PRODUCTS AVAILABLE</u>	
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

EXHIBIT B
CONTRACTOR'S QUOTE

RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
3" -0 CRUSHED ROCK	\$ 12.35
1" -0 CRUSHED ROCK	\$ 12.75
1 ½" -0 CRUSHED ROCK	\$ no bid
¾" -0 CRUSHED ROCK	\$ no bid
¼" -0 CRUSHED ROCK	\$ no bid
4"-2" CRUSHED DRAIN	\$ no bid
3"-12" CRUSHED ROCK	\$ no bid
RIP RAP	\$ 40.00
PIT RUN #2	\$ 9.40
FILL SAND	\$ no bid
WINTER SAND ¼-.10 CLEAN CRUSHED AGGREGATE	\$ no bid
MASON SAND	\$ no bid
TOP SOIL	\$ no bid
<u>ADDITIONAL PRODUCTS AVAILABLE</u>	
Screenings	\$ 6.00
	\$
	\$
	\$
	\$
	\$
	\$
	\$



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Lakeside Industries, Inc.,
to provide Asphaltic Concrete for Clackamas County**

Purpose/ Outcomes	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Lakeside Industries, Inc., for asphaltic concrete.
Dollar Amount and Fiscal Impact	\$700,000 annually. Total contract value through expiration is, \$2,100,000.
Funding Source	Transportation Maintenance, 215-7433-00-424411
Duration	October 31, 2023
Previous Board Action	1/12/21: Discussion with the board at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
Counsel Review	November 30, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
Contract Number	3484

BACKGROUND:

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BROADWAY ROAD, OREGON CITY, OR 97045

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LORB Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Lakeside Industries, Inc., for the asphaltic concrete.

Respectfully submitted,

Terry Abbott

Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #3484**

This Goods and Services Contract (this "Contract") is entered into between **Lakeside Industries, Inc.**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Asphaltic concrete.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. 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 RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A," and the Contractor's Quote, attached and hereby incorporated by reference as Exhibit "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: Paul Runyan.

III. COMPENSATION

- 1. PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
- 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 Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

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 six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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, which includes any hazardous, toxic,

or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide 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, agents, 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, subcontractors, 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; 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.

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 with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 officers, elected officials, agents, 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 officers, elected officials, agents, 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 Warranty 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 Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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 by operation of law or otherwise, 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, 15, 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 ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (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.

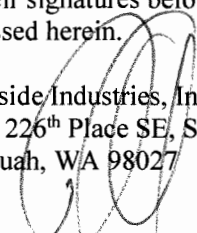
29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, 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 WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. 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. 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 ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Lakeside Industries, Inc.
6505 226th Place SE, Suite# 200
Issaquah, WA 98027

Clackamas County



Authorized Signature 11/30/2020
Date

Chair Date

RON S. GREEN REGIONAL MANAGER

Name / Title (Printed)

Recording Secretary


366469-82

Oregon Business Registry #

Approved as to Form:

FBC/Washington

Entity Type / State of Formation



County Counsel 11/30/20 Date

EXHIBIT A
RFQ #2020-81 Asphaltic Concrete
Issued October 13, 2020



Procurement Division
Public Services Building
2051 Kaen Road
Oregon City, OR 97045
(503) 742-5444 (Office)

REQUEST FOR QUOTES (RFQ) #2020-81

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	twhitley@clackamas.us

**SUBMIT QUOTES VIA EMAIL TO PROCUREMENT@CLACKAMAS.US
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

1. ANNOUNCEMENT AND SPECIAL INFORMATION

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to procurement@clackamas.us. If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

2. SCOPE

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

Price Adjustments: The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

Price adjustments will be executed by way of an amendment signed by both the County and the vendor.

Price adjustments must be sent to the project manager as identified within the final contract.

Ordering Process: Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

Requirements:

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

3. SAMPLE CONTRACT

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

4. QUOTE

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

5. EVALUATION

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

CLACKAMAS COUNTY CERTIFICATIONS
RFQ #2020-81

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

SECTION II. NON-DISCRIMINATION

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter 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.

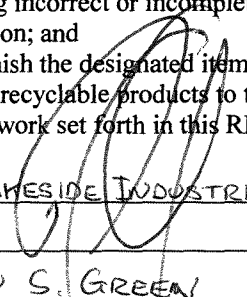
SECTION III. CONFLICT OF INTEREST

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: LAKESIDE INDUSTRIES, INC. Date: 10/20/2020
Signature:  Title: REGIONAL MANAGER
Name: RON S. GREEN Telephone: (503) 222-6421
Email: ron.green@lakesideindustries.com OR CCB # (if applicable): 108542

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: _____

Oregon Business Registry Number: 366469-82

**CLACKAMAS COUNTY
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

QUOTE PREPARATION

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

QUOTE EVALUATION AND AWARD

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, ¾" DENSE	\$
LEVEL 3, ½" DENSE	\$
LEVEL 3, 3/8" DENSE	\$
LEVEL 2, ½" DENSE	\$
DRIVEWAY MIX (200#C)	\$
COLD MIX	\$
EZ STREET – VOC FREE PICK UP	\$
EZ STREET – VOC FREE DELIVERED	\$

EXHIBIT B
CONTRACTOR'S QUOTE

RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, 3/4" DENSE	\$ 56 ⁰⁰
LEVEL 3, 1/2" DENSE	\$ 56 ⁰⁰
LEVEL 3, 3/8" DENSE	\$ 61 ⁰⁰
LEVEL 2, 1/2" DENSE	\$ 58 ⁰⁰
DRIVEWAY MIX (200#C)	\$ 61 ⁰⁰
COLD MIX	\$
EZ STREET - VOC FREE PICK UP	\$ 115 ⁰⁰
EZ STREET - VOC FREE DELIVERED	\$ 130 ⁰⁰



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Jim Turin and Sons dba, Mt.
Hood Asphalt Products, Inc.,
to provide Asphaltic Concrete for Clackamas County**

Purpose/ Outcomes	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Jim Turin and Sons dba Mt. Hood Asphalt Products, Inc. for asphaltic concrete.
Dollar Amount and Fiscal Impact	\$700,000 annually. Total contract value through expiration is, \$2,100,000.
Funding Source	Transportation Maintenance, 215-7433-00-424411
Duration	October 31, 2023
Previous Board Action	1/12/21: Discussion with the board at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
Counsel Review	November 30, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
Contract Number	3481

BACKGROUND:

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel



DAN JOHNSON
DIRECTOR

back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LCRB Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Jim Turin and Sons dba Mt. Hood Asphalt Products, Inc., for the asphaltic concrete.

Respectfully submitted,

Terry Abbott

Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #3481**

This Goods and Services Contract (this "Contract") is entered into between **Mt. Hood Asphalt Products, Inc.**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Asphaltic concrete.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. 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 RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A," and the Contractor's Quote, attached and hereby incorporated by reference as Exhibit "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: Paul Runyan.

III. COMPENSATION

- 1. PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
- 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 Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

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 six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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, which includes any hazardous, toxic,

or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide 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, agents, 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, subcontractors, 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; 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.

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 with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 officers, elected officials, agents, 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 officers, elected officials, agents, 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 Warranty 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 Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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 by operation of law or otherwise, 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, 15, 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 ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (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.

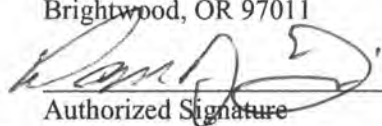
29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, 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 WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. 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. 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 ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Mt. Hood Asphalt Products, Inc.
62285 Boulder Creek Lane
Brightwood, OR 97011

Clackamas County

 11-24-20 _____
Authorized Signature Date Chair Date

Dan J Turin President _____
Name / Title (Printed) Recording Secretary

167848-11 _____
Oregon Business Registry #

Approved as to Form:

DBC/Oregon _____
Entity Type / State of Formation

 11/30/20 _____
County Counsel Date

EXHIBIT A
RFQ #2020-81 Asphaltic Concrete
Issued October 13, 2020



Procurement Division
Public Services Building
2051 Kaen Road
Oregon City, OR 97045
(503) 742-5444 (Office)

REQUEST FOR QUOTES (RFQ) #2020-81

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	twhitley@clackamas.us

**SUBMIT QUOTES VIA EMAIL TO PROCUREMENT@CLACKAMAS.US
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

1. ANNOUNCEMENT AND SPECIAL INFORMATION

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to procurement@clackamas.us. If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

2. SCOPE

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

Price Adjustments: The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

Price adjustments will be executed by way of an amendment signed by both the County and the vendor.

Price adjustments must be sent to the project manager as identified within the final contract.

Ordering Process: Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

Requirements:

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

3. SAMPLE CONTRACT

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

4. QUOTE

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

5. EVALUATION

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

CLACKAMAS COUNTY CERTIFICATIONS
RFQ #2020-81

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

SECTION II. NON-DISCRIMINATION

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter 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.

SECTION III. CONFLICT OF INTEREST

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: Jim Turin & Sons, Inc. Date: 10-27-2020
Signature: [Signature] Title: President
Name: Dan J Turin Telephone: 503-644-5237
Email: dan.turin@jps.net OR CCB # (if applicable): 53420

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: _____

Oregon Business Registry Number: 0230524-2

**CLACKAMAS COUNTY
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

QUOTE PREPARATION

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

QUOTE EVALUATION AND AWARD

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, 3/4" DENSE	\$
LEVEL 3, 1/2" DENSE	\$
LEVEL 3, 3/8" DENSE	\$
LEVEL 2, 1/2" DENSE	\$
DRIVEWAY MIX (200#C)	\$
COLD MIX	\$
EZ STREET – VOC FREE PICK UP	\$
EZ STREET – VOC FREE DELIVERED	\$

EXHIBIT B
CONTRACTOR'S QUOTE

RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, 3/4" DENSE	\$ 53.00
LEVEL 3, 1/2" DENSE	\$ 53.00
LEVEL 3, 3/8" DENSE	\$ no bid
LEVEL 2, 1/2" DENSE	\$ 54.00
DRIVEWAY MIX (200#C)	\$ 55.00
COLD MIX	\$ no bid
EZ STREET - VOC FREE PICK UP	\$ no bid
EZ STREET - VOC FREE DELIVERED	\$ no bid



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Baker Rock Crushing Co.,
to provide Asphaltic Concrete for Clackamas County**

Purpose/ Outcomes	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Baker Rock Crushing Co, for asphaltic concrete.
Dollar Amount and Fiscal Impact	\$700,000 annually. Total contract value through expiration is, \$2,100,000.
Funding Source	Transportation Maintenance, 215-7433-00-424411
Duration	October 31, 2023
Previous Board Action	1/12/21: Discussion with the board at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
Counsel Review	November 30, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
Contract Number	3480

BACKGROUND:

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.



DAN JOHNSON
DIRECTOR

PROCUREMENT PROCESS:

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

This project was advertised in accordance with ORS 279B and LCRB Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Baker Rock Crushing Co., for the asphaltic concrete.

Respectfully submitted,

Terry Abbott

Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #3480**

This Goods and Services Contract (this "Contract") is entered into between **Baker Rock Crushing Co.**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development, for the purposes of providing Asphaltic concrete.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. 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 RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A," and the Contractor's Quote, attached and hereby incorporated by reference as Exhibit "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: Paul Runyan.

III. COMPENSATION

- 1. PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
- 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 Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

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 six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal

requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide 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, agents, 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, subcontractors, 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; 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.

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 with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 officers, elected officials, agents, 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 officers, elected officials, agents, 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 Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, 22 and 27, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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 by operation of law or otherwise, 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, 15, 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 ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (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.

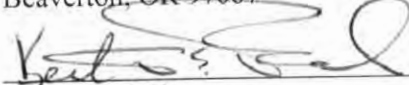
30. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, 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.

31. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. 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. 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 ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Baker Rock Crushing Co.
21880 SW Farmington Blvd
Beaverton, OR 97007

Clackamas County

 11/30/2020
Authorized Signature Date

Chair Date

KEITH E. REAL VICE President MKTG.
Name / Title (Printed) # 2123

Recording Secretary

060464-11
Oregon Business Registry #

Approved as to Form:

DBC/Oregon
Entity Type / State of Formation

 11/30/20
County Counsel Date

EXHIBIT A
RFQ #2020-81 Asphaltic Concrete
Issued October 13, 2020



Procurement Division
Public Services Building
2051 Kaen Road
Oregon City, OR 97045
(503) 742-5444 (Office)

REQUEST FOR QUOTES (RFQ) #2020-81

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	twhitley@clackamas.us

**SUBMIT QUOTES VIA EMAIL TO PROCUREMENT@CLACKAMAS.US
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

1. ANNOUNCEMENT AND SPECIAL INFORMATION

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to procurement@clackamas.us. If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

2. SCOPE

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

Price Adjustments: The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

Price adjustments will be executed by way of an amendment signed by both the County and the vendor.

Price adjustments must be sent to the project manager as identified within the final contract.

Ordering Process: Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

Requirements:

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

3. SAMPLE CONTRACT

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

4. QUOTE

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

5. EVALUATION

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

CLACKAMAS COUNTY CERTIFICATIONS
RFQ #2020-81

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

SECTION II. NON-DISCRIMINATION

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter 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.

SECTION III. CONFLICT OF INTEREST

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: Baker Rock Resources

Date: 10/26/2020

Signature: 

Title: Vice President, Marketing and Sales

Name: Keith Peal

Telephone: 503-642-2531

Email: keithpeal@baker-rock.com

OR CCB # (if applicable): 158803 & 03838

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote, Resident State: _____

Oregon Business Registry Number: 264313-87

**CLACKAMAS COUNTY
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

QUOTE PREPARATION

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

QUOTE EVALUATION AND AWARD

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, 3/4" DENSE	\$
LEVEL 3, 1/2" DENSE	\$
LEVEL 3, 3/8" DENSE	\$
LEVEL 2, 1/2" DENSE	\$
DRIVEWAY MIX (200#C)	\$
COLD MIX	\$
EZ STREET – VOC FREE PICK UP	\$
EZ STREET – VOC FREE DELIVERED	\$

EXHIBIT B
CONTRACTOR'S QUOTE



Baker Rock Resources
21880 SW Farmington Blvd.
Beaverton, OR. 97007
503-642-2531

October 27, 2020

Clackamas County, Procurement Division

2051 Kaen Road

Oregon City, OR 97045

Attn: Tralee Whitley

RE: RFQ #2020-81

Tralee-

Attached you will find Baker Rock Resource's submission for Asphaltic Concrete, Quote #2020-81.

As you may be aware, Baker Rock Resources has been an asphalt concrete supplier throughout the Portland Metro area for over 40 years. We have extensive hot mix and cold mix production experience, and we produce to ODOT specifications. Our yard in Beaverton is open Monday through Friday, 7:00 a.m. to 4:30 p.m.

Currently, we supply cold mix, in bulk, to Tillamook County, the City of Tigard, the City of the Dalles, and the City of Springfield to name a few. Our product is a proprietary, "No VOC" cold mix asphalt that we produce at our plant in Beaverton Oregon. The product is a suitable alternative to EZ Street/EZ Street No VOC cold mix, and we are happy to supply any additional information required to confirm this.

We appreciate the opportunity to present this quote.

Regards,

Shane Weston

Asphalt Division Manager, Baker Rock Resources

shaneweston@baker-rock.com

Cell: 503-680-9366

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:**

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, ¼" DENSE	\$45.50
LEVEL 3, ½" DENSE	\$45.50
LEVEL 3, 3/8" DENSE	\$52.00
LEVEL 2, ½" DENSE	\$47.00
DRIVEWAY MIX (200#C)	\$47.00
COLD MIX	\$89.50
EZ STREET – VOC FREE PICK UP	\$89.50
EZ STREET – VOC FREE DELIVERED	\$105.00



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Goods and Services Contract with South County Asphalt, LLC, to provide Asphaltic Concrete for Clackamas County

Purpose/ Outcomes	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and South County Asphalt, LLC. for asphaltic concrete.
Dollar Amount and Fiscal Impact	\$700,000 annually. Total contract value through expiration is, \$2,100,000.
Funding Source	Transportation Maintenance, 215-7433-00-424411
Duration	October 31, 2023
Previous Board Action	1/12/21: Discussion with the board at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
Counsel Review	November 30, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
Contract Number	3485

BACKGROUND:

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LORB Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and South County Asphalt, LLC, for the asphaltic concrete.

Respectfully submitted,

Terry Abbott

Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #3485**

This Goods and Services Contract (this "Contract") is entered into between **South County Asphalt, LLC**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Asphaltic concrete.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. 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 RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A," and the Contractor's Quote, attached and hereby incorporated by reference as Exhibit "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: Paul Runyan.

III. COMPENSATION

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
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 Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

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 six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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, which includes any hazardous, toxic,

or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide 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, agents, 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, subcontractors, 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; 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.

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 with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, 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 officers, elected officials, agents, 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 officers, elected officials, agents, 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 Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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 by operation of law or otherwise, 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, 15, 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 ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (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.

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 WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. 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. 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 ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

EXHIBIT A
RFQ #2020-81 Asphaltic Concrete
Issued October 13, 2020



Procurement Division
Public Services Building
2051 Kaen Road
Oregon City, OR 97045
(503) 742-5444 (Office)

REQUEST FOR QUOTES (RFQ) #2020-81

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	twhitley@clackamas.us

**SUBMIT QUOTES VIA EMAIL TO PROCUREMENT@CLACKAMAS.US
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

1. ANNOUNCEMENT AND SPECIAL INFORMATION

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to procurement@clackamas.us. If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

2. SCOPE

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

Price Adjustments: The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

Price adjustments will be executed by way of an amendment signed by both the County and the vendor.

Price adjustments must be sent to the project manager as identified within the final contract.

Ordering Process: Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

Requirements:

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

3. SAMPLE CONTRACT

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

4. QUOTE

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

5. EVALUATION

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

CLACKAMAS COUNTY CERTIFICATIONS
RFQ #2020-81

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

SECTION II. NON-DISCRIMINATION

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter 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.

SECTION III. CONFLICT OF INTEREST

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: SOUTH COUNTY Date: 10/23/2020
Signature: DAVID ELSNER Title: MEMBER
Name: DAVID ELSNER Telephone: (971) 235-9792
Email: DAVE@EAGLE-ELSNER.COM OR CCB # (if applicable): N/A

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: _____

Oregon Business Registry Number: 142704-90

**CLACKAMAS COUNTY
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

QUOTE PREPARATION

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

QUOTE EVALUATION AND AWARD

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, 3/4" DENSE	\$
LEVEL 3, 1/2" DENSE	\$
LEVEL 3, 3/8" DENSE	\$
LEVEL 2, 1/2" DENSE	\$
DRIVEWAY MIX (200#C)	\$
COLD MIX	\$
EZ STREET – VOC FREE PICK UP	\$
EZ STREET – VOC FREE DELIVERED	\$

EXHIBIT B
CONTRACTOR'S QUOTE

RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, 3/4" DENSE	\$ 47.50
LEVEL 3, 1/2" DENSE	\$ 48.00
LEVEL 3, 3/8" DENSE	\$ 51.00
LEVEL 2, 1/2" DENSE	\$ 49.00
DRIVEWAY MIX (200#C)	\$
COLD MIX *	\$ 105.00
EZ STREET - VOC FREE PICK UP *	\$ 105.00
EZ STREET - VOC FREE DELIVERED*	\$ 125.00

* QPR - VOC FREE
PER ATTACHED

South County Asphalt, LLC. is located at 24420 S. Highway 99E in Canby, Oregon. We have been producing ODOT-spec asphaltic concrete pavement since 2019 at this location. We are open Monday – Saturday during construction season from 6:00 to 5:00 p.m. We can open Sundays and nights for additional cost if needed.

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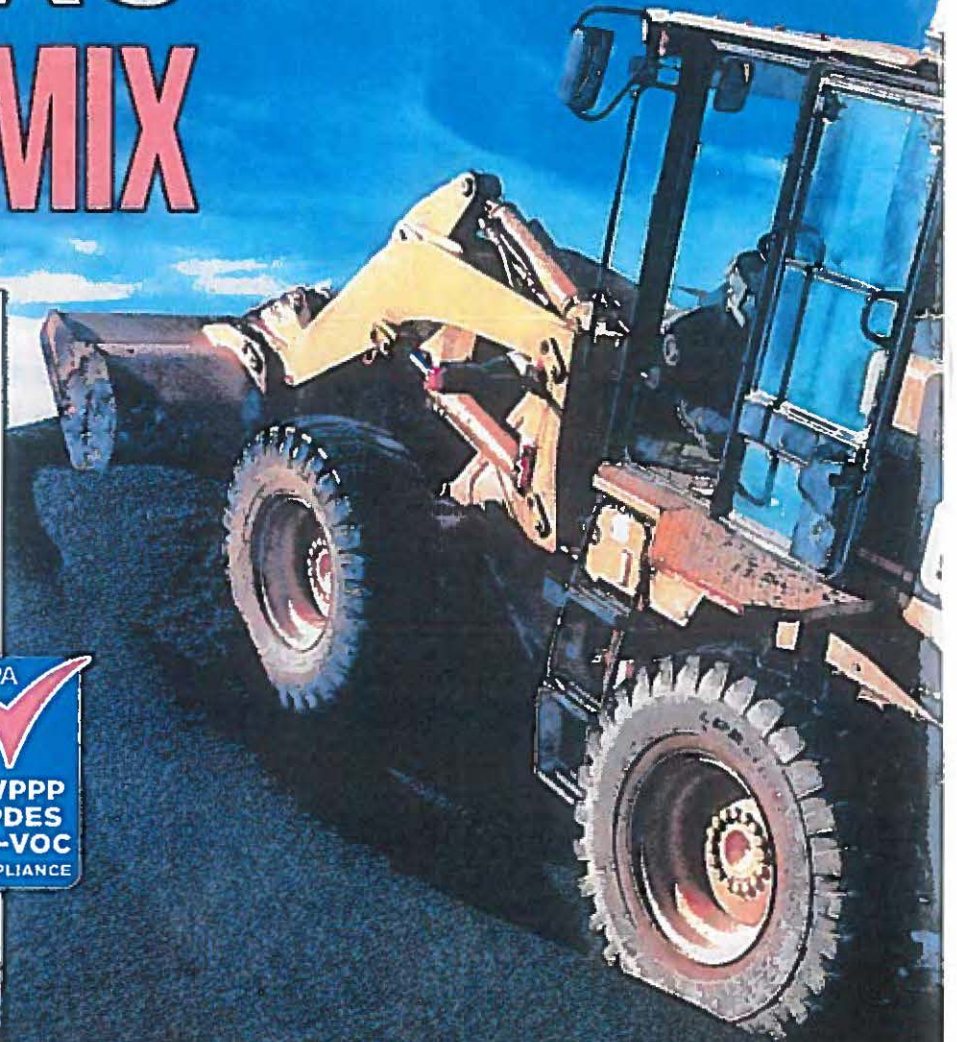
South County Asphalt

24370 South Highway 99E • Canby, OR 97013

Dave Elsner - (971) 235-4571

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- Specifically Blended for the Climate in the Northwest
- **Our No VOC Formula Provides 0% Surface Water Runoff Toxicity & Meets all EPA Regulated SWPPP & NPDES Requirements**
- Guaranteed **PERMANENT**



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For technical questions and FREE samples call: Don Nathan - (865) 599-0105