



DAN JOHNSON
DIRECTOR

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

July 21, 2022

Board of County Commissioners
Clackamas County

Approval of a Contract with Tyree Oil, Inc.
for Fleet Fuel and Fuel Services. Total Contract Value is \$18,000,000. Funding through
Fund 770 Fleet Services. General Fund are not involved.

Purpose/Outcome	Provides fuel for all Clackamas County vehicles and equipment.
Dollar Amount and Fiscal Impact	Maximum contract value is \$18,000,000.00 with a not to exceed \$2,000,000 each fiscal year. Total contract term with optional renewals through June 30, 2031.
Funding Source	Fleet Services budgets for fuel each FY and charges the County department to recover the cost of the fuel.
Duration	This contract shall be in effect through June 30, 2025 with up to three optional two – year term renewals.
Previous Board Action/Review	07/19/22: Discussion item at issues
Strategic Plan Alignment	To provide fuel for all Clackamas County lines of business at a cost less than retail prices.
Counsel Review	7/7/22; KR
Procurement Review	Was this item reviewed by Procurement? Yes
Contact Person	Warren Gadberry, Fleet Manager, 503-650-3988
Contract No.	6726

BACKGROUND:

Clackamas County is seeking fuel services for the County’s fleet of vehicles. The fleet consists of passenger cars, light trucks, heavy trucks, police vehicles and bulk tanks. Fuel used includes unleaded, premium unleaded and biodiesel. Most of the travel is within the county but vehicles in the fleet may travel anywhere in the state of Oregon and southwest Washington, so multiple locations are required.

Fuel Statistics for the 2020/2021 FY were:

	Unleaded	Diesel
# of Vehicles	717	144
# of Gallons purchased	367,192	184,512

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on April 26, 2022, Through RFP 2022-45. Proposals were publicly opened on May 26, 2022. The County received one (1) Proposal in response to the RFP. After review of the Proposals, contracting with Tyree Oil, Inc. was determined to be in the best interest of the county based upon the scoring criteria outlined in RFP 2022-45. Under this contract, the County's cost per gallon for fuel will be calculated from a formula that includes a set markup in addition to dealer costs.

RECOMMENDATION:

Staff respectfully recommends approval of this Contract with Tyree Oil, Inc. for Fleet Fuel and Fuel Services.

Respectfully submitted,

Warren Gadberry

Warren Gadberry
Fleet Manager
Department of Transportation and Development
Fleet Services Division



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #6726**

This Goods and Services Contract (this "Contract") is entered into between **Tyree Oil, Inc.** ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of its Department of Transportation and Development (DTD), Fleet Services Division, for the purposes of providing Clackamas County fuel and fuel services.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2025** and can be renewed for three (3) additional two-year terms. 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

Contractor will provide the fuel and fuel services described in RFP 2022-45 Clackamas County Fleet Fuel Services, attached and hereby incorporated by reference as Exhibit "A" and Contractor's Proposal, attached and hereby incorporated by reference as "Exhibit B."

Contractor will provide County with fuel cards in a timely fashion that County employees may use to purchase fuel or fuel related products at any of Contractor's designated cardlock fuel service providers, as described in Exhibit B. Contractor will provide County with bulk fuel as necessitated by County's winter ops program as set forth in Exhibit A. Contractor will act on behalf of the County to the maximum of their abilities to ensure no interruption of fuel services. Fuel transactions and an itemized invoice will be sent on or about the 1st and the 16th of each month. Fuel transactions will be imported into the County's then-current Fleet Management software program (currently FASTER) in the manner set forth in Exhibit A.

All fuel and fuel service work provided under this Contract must be in accordance with the terms and conditions set forth in Exhibit A.

This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit "A", and 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: Warren Gadberry.

III. COMPENSATION

- 1. PAYMENT.** The County will purchase fuel and fuel services on an as-needed basis. For any fuel or fuel services needed, the County agrees to compensate the Contractor on a time and material basis as set forth in Exhibit B. The maximum annual compensation authorized under this Contract shall not exceed **\$2,000,000.00** and the total Contract compensation shall not exceed **\$18,000,000.00**
- 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: WarrenGad@clackamas.us

4. **CONTRACTOR AND COUNTY CONTACTS.**

Contractor	County
Administrator: Payton Wayne Phone: 541-637-0076 Email: <u>payton.wayne@tyreeoil.com</u>	Administrator: Warren Gadberry Phone: 503-650-3988 Email: <u>WarrenGad@clackamas.us</u>

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. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** 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.

However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of District or Clackamas County ("County"), purport to act as legal representative of District or County, or settle any claim on behalf of District or County, without the approval of the Clackamas County Counsel's Office. District or County may assume their own defense and settlement at their election and expense.

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 provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article II, Section 4. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

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; and (3) 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 goods and services provided herein to the District, if any, will be delivered in a workmanlike manner and in accordance with the highest professional standards. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this Service 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 Article IV, Sections 1, 6, 8, 11, 13, 14, 15, 16, 18, 21, 22, 23, 27, and 32 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 26 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 payment for the goods and services delivered 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. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.
- 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,

EXHIBIT A
RFP 2022-45
CLACKAMAS COUNTY FLEET FUEL SERVICE



REQUEST FOR PROPOSALS #2022-45

FOR

CLACKAMAS COUNTY FLEET FUEL SERVICES

BOARD OF COUNTY COMMISSIONERS

TOOTIE SMITH, Chair
SONYA FISCHER, Commissioner
PAUL SAVAS, Commissioner
MARK SHULL, Commissioner
MARTHA SCHRADER, Commissioner

Gary Schmidt
County Administrator

Thomas Candelario
Contract Analyst

PROPOSAL CLOSING DATE, TIME AND LOCATION

DATE: May 26, 2022

TIME: 2:00 PM, Pacific Time

PLACE: Procurement@clackamas.us

SCHEDULE

Request for Proposals Issued.....	April 26, 2022
Protest of Specifications Deadline.....	May 5, 2022, 5:00 PM, Pacific Time
Deadline to Submit Clarifying Questions.....	May 12, 2022, 5:00 PM, Pacific Time
Request for Proposals Closing Date and Time.....	May 26, 2022, 2:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award
Anticipated Contract Start Date.....	July 1, 2022

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SECTION 1
NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County through its Board of County Commissioners will receive sealed Proposals per specifications until **2:00 PM, May 26, 2022** (“Closing”), to provide Clackamas County Fleet Fuel Services. No Proposals will be received or considered after that time.

RFP Documents can be downloaded from the state of Oregon procurement website (“OregonBuys”) at the following address <https://oregonbuys.gov/bsa/view/login/login.xhtml>, Document No. S-C01010-000002954.

Prospective Proposers will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Proposers are responsible for obtaining any Addenda, clarifying questions, and Notices of Award from OregonBuys. Sealed Proposals are to be emailed to Clackamas County Procurement Services at procurement@clackamas.us.

Contact Information

Procurement Process and Technical Questions: Thomas Candelario, tcandelario@clackamas.us

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

Clackamas County encourages proposals from Minority, Women, Veteran and Emerging Small Businesses.

SECTION 2 INSTRUCTIONS TO PROPOSERS

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

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

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

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

2.4 Addenda: If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check OregonBuys for any notices, published addenda, or response to clarifying questions.

2.5 Submission of Proposals: Proposals must be submitted in accordance with Section 5. All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Certification Form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

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

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

Only actual Proposers may protest if they believe they have been adversely affected because the Proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must

be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected Proposer with a right to submit a written protest, a Proposer must be next in line for award, i.e. the protester must claim that all higher rated Proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

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

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

2.8 Public Records: Proposals are deemed confidential until the "Notice of Intent to Award" letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.345(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

"This information constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance" (ORS 192.345). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

2.9 Investigation of References: County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

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

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

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

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

2.14 Proposal Terms: All Proposals, including any price quotations, will be valid and firm through a period of one hundred and eighty (180) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

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

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

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

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

2.19 Communication Blackout Period: Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee or other County employees or representatives about the RFP during the procurement process until the apparent successful Proposer is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Proposer.

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

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

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

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

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

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

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

2.27 Nondiscrimination: The successful Proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

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

SECTION 3 SCOPE OF WORK

3.1. INTRODUCTION

Clackamas County is seeking Proposals from vendors to provide fuel services as detailed in this RFP.

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals and note the communication restriction outlined in Section 2.19.

3.2 BACKGROUND

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

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

3.3. SCOPE OF WORK

3.3.1. Scope:

3.3.2. EMERGENCY REQUIREMENTS

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

3.3.3. REPORTING SYSTEM

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

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

The ASCII file must contain the following items:

- Date of transaction
- Time of transaction
- Equipment # - This number must match the equipment numbers within the FASTER database or you must have an FVC (Fuel Vehicle Conversion Code) conversion table set up to convert the equipment number to one that matches the equipment number within the FASTER database.
- Employee Number/Driver – This number must match a valid EMP (Employee Code) within the FASTER database or you must have a FEC (Fuel System Employee Conversion Code) conversion table set up to convert the employee number to one that matches the employee number within the FASTER database.
- Site/Location Number – To reduce tank inventory in the FASTER database, each site must have tanks defined as a table code. Each transaction must be identified by site. The FASTER Fleet Management system uses a FSC (Fuel Site Conversion Code) to convert sites from the transaction file into the Operational Costs applet.
- Product Code – This code defines the type of fuel that was dispensed. The FASTER Fleet Management system uses a FPS (Fuel Product Conversion Code) to convert fuel types into the database.
- Quantity
- Odometer Reading
- Pump/Hose number – Pumps/Hose numbers are attached to tanks in the Tank Inventory applet. This is used by the software to reduce the inventory for the tank.
- Cost – If the cost is going to come from the automated fuel system, this field must be included
- In the event a new software program is procured for this purpose, we will work with the proposer to institute a new import.

3.3.4. REPORTING SYSTEM

The Contractor shall provide an online reporting system with up to date fuel transaction and inquiry functions. The Contractor shall provide exception reports if transactions exceed more than 3 transactions in a 24 hour period for either the driver or vehicle.

3.3.5. FUEL STATISTICS FOR 2020/2021 FISCAL YEAR:

	Unleaded	Diesel
# of Vehicles	717	144
# of Gallons purchased	367,192	184,512

3.3.6. STATE AND FEDERAL TAX EXEMPTION

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

3.3.7. MATERIAL SAFETY DATA SHEET(S)

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

3.3.8. OSHA REQUIREMENTS

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

3.3.9. ENVIRONMENTAL CONDITIONS

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

3.3.10 CARDLOCK

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

3.3.11. WINTER OPERATIONS SURPLUS TANKS

The County provides winter operations throughout the County in the event of inclement weather and requires diesel fuel in certain areas from approximately November 1st through March 31st. The County has procured 1,000 gallon tanks to be used for this function.

The Contractor shall provide bulk diesel fuel for our emergency winter operations at the following sites:

Brightwood 60095 E Marmot Rd, Sandy OR 97055

Barton 19009 SE Barton Park Rd, Boring OR 97009

Marquam 9324 S Wildcat Rd, Molalla OR 97038

These sites are subject to change and a minimum of 30 days notice of any change in location will be provided to the Contractor prior to any fueling requests.

3.3.12. FUELS

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

- All motor fuels shall be free from impurities including, but not limited to, water, dirt, harmful oils, fibrous materials and other petroleum products or contaminants
- In case of damage directly traceable to contaminated fuel at a site, the Contractor shall bare the full responsibility for the costs incurred for labor and repairs and/or labor and replacement of necessary components required.
- Fuel storage tanks shall comply with current and future Federal and State regulations.
- Regular unleaded gasoline shall have a minimum octane rating of 87 with 10% ethanol.
- Mid-grade unleaded gasoline shall have a minimum octane rating of 89 with 10% ethanol.

- Premium unleaded gasoline shall have a minimum octane rating of 91 and unblended.
- Diesel shall have a minimum cetane rating of 45.
- Diesel fuel #2 ASTM shall be sulfur free. Diesel fuel shall be winterized for the months of October through March to a cloud point not higher than 6°C above the tenth percentile minimum ambient temperature for the area in which the fuel is sold.
- Each fuel site should include, at minimum, one of the higher octane rated fuels (mid-grade or premium), regular unleaded and diesel #2 fuel.

3.3.13 DEF

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

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

3.3.3. Term of Contract:

The term of the contract shall be from the effective date through **June 30, 2025** with the option for three (3) additional two (2) year renewals thereafter subject to the mutual agreement of the parties.

3.3.4 Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer’s willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Goods & Services Contract for this RFP can be found at <https://www.clackamas.us/finance/terms.html>.

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

Travel Expense Reimbursement is Authorized

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.

COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.

**SECTION 4
EVALUATION PROCEDURE**

- 4.1** An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

4.2 Evaluation Criteria

<u>Category</u>	<u>Points available:</u>
Proposer's General Background and Qualifications	0-30
Scope of Work	0-65
Fees	0-20
Available points	0-115

- 4.3** Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.

SECTION 5 PROPOSAL CONTENTS

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

5.1.1. Complete Proposals must be mailed to the below address or emailed to Procurement@clackamas.us. The subject line of the email must identify the RFP title. Proposers are encouraged to contact Procurement to confirm receipt of the Proposal.

5.1.3. County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

5.1.4. Proposal may not exceed a total of **20 pages** (single-sided), inclusive of all exhibits, attachments or other information.

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

5.2. Proposer's General Background and Qualifications: (30 Total Points Possible)

- Description of the firm.
- Description of providing similar services to public entities of similar size within the past five (5) years.
- Description of the firm's ability to meet the requirements in Section 3.
- Description of what distinguishes the firm from other firms performing a similar service.

5.3. Scope of Work (65 Total Possible Points)

Online Reporting System Description (20 Possible Points)

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

Interface (20 Possible Points)

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

Experience (5 Possible Points)

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

Fuel Availability (20 Possible Points)

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

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

5.4. Fees (20 Possible Points)

Fees should be on a time and material basis that details the following

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

Fees should be sufficiently descriptive to facilitate acceptance of a Proposal. List the not-to-exceed amount you propose for the service. Fees and fee schedules should outline all estimated expenses, hourly rates for all assigned individuals, anticipated travel, other reimbursable expenses.

5.5. References

Provide at least three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references. Please note the required three references may not be from County staff, but additional references may be supplied.

5.6. Completed Proposal Certification (see the below form)

PROPOSAL CERTIFICATION

RFP #2022-45

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

Each Proposer must read, complete and submit a copy of this Proposal Certification with their Proposal. Failure to do so may result in rejection of the Proposal. By signature on this Proposal Certification, the undersigned certifies that they are authorized to act on behalf of the Proposer 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)(e), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Proposer is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Proposer to 24% backup withholding.

SECTION II. NON-DISCRIMINATION: That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

SECTION III. CONFLICT OF INTEREST: The undersigned hereby certifies that no elected official, officer, agent or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFP, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its elected officials, officers, agents, or employees had induced Proposer to submit this Proposal. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a proposal 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 RFP (including any attachments); and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFP and Proposal; and
4. Will use recyclable products to the maximum extend economically feasible in the performance of the contract work set forth in this RFP.

Name: _____ Date: _____

Signature: _____ Title: _____

Email: _____ Telephone: _____

Oregon Business Registry Number: _____ OR CCB # (if applicable): _____

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: _____

EXHIBIT B CONTRACTOR'S PROPOSAL

5.2 - Tyree Oil is a fuel distributor with more than thirty years' experience serving the fuel and lubricants needs of Oregon's commercial, industrial and governmental sectors. In addition to a proprietary delivery fleet, Tyree offers fuel at an extensive third-party cardlock and retail network throughout the state. We at Tyree look forward to continuing to serve as a reliable supplier of Clackamas County's fuel requirements.

5.3 - Tyree Oil agrees to provide on-line reporting access via CFN and/or Pacific Pride portals. Tyree Oil will set up all requested employees of Clackamas County (max. of 4) through CFN and/or Pacific Pride to reports including, but not limited to, real-time transaction inquiries and fuel summary reports. Tyree Oil can also provide e-receipts, online real-time transaction receipts, via the same portal(s).

5.4 - Fees:

The County's cost per gallon for fuel, excluding "rack price", to be calculated as follows: \$0.094 per gallon dealer (Contractor) mark-up, plus freight costs, transfer costs, taxes (if applicable) and any other fuels/costs associated with the cost of the product (fuel) which are posted by the Pacific Pride or CFN Franchisor. Taxes will either be charged or omitted based on the County's tax exemption pursuant to this Contract. The term "rack" is defined as the cost of the product on the OPIS branded and unbranded averaged for the Portland terminals for fuel products (an accepted industry index for determining the price of fuel products).

New card service charge: \$3.00/card

5.5 - Tyree Oil supplies trucking companies, municipal transits and other large fleet operators throughout Oregon.

Tyree Oil offers fuel through an extensive third-party network of reliable operators who prioritize assuring availability at their fueling sites.

Cardlock sites in Clackamas County **NOT** owned by Tyree Oil.

1. Oregon City - 13006 S. Clackamas River Drive
2. Clackamas - 10111 SE Hwy 212

3. Clackamas - 9911 SE Elon
4. Milwaukie - 3046 Harrison Street
5. Beavercreek - 22020 S. Beavercreek Road
6. Gladstone - 19855 McLoughlin Boulevard
7. Tualatin - 9700 SW Tualatin-Sherwood Road
8. Tualatin - 19022 SW Cipole Rd
9. Canby - 640 SW 2nd Avenue
10. Estacada - 453 SW 2nd
11. Estacada - 512 SE Currin St
12. Wilsonville - 28855 SW Boones Ferry Road
13. Wilsonville - 10388 Ridder Rd
14. Molalla - 627 W Main St
15. Sandy - 37396 Ruben Ln
16. Boring - 28300 SE HWY 212

General Notes –

- Tyree Oil can provide manuals for CFN and/or Pacific Pride showing maps and locations of all sites. Smart phone apps are also available for both brands.
- Oregon City and Clackamas sites have diesel fuel available by high volume pumps.

Retail sites in Clackamas County **NOT** owned by Tyree Oil and listed available products.

- | | | |
|------------------------------|----------------------------|---|
| 1. Clairmont (Oregon City) - | 1511 Molalla Avenue | Unleaded (87),
Midgrade (89), Premium, (92), and Propane |
| 2. Gladstone - | 19855 McLoughlin Boulevard | Unleaded (87),
Premium (92), and Diesel #2 |
| 3. Oak Grove - | 13939 McLoughlin Boulevard | Unleaded (87),
Midgrade (89), and Premium (92) |
| 4. Canby - | 262 SE 1 st | Unleaded (87),
Midgrade (89), Premium (92), Diesel #2, and Propane |

- Normally, all retail sites operate 6:00 am until 9:00 pm 364 days per year (closed Christmas Day)
- Motor oils, windshield fluids, restroom, and pay telephones are available at all four sites.

General Notes –

- Due to sites in Clackamas County NOT being owned and operated by Tyree Oil, all above information is subject to change without direct knowledge by Tyree Oil. Content provided in this RFP in regards to site specific information is accurate to the best of Tyree Oil's knowledge. Tyree Oil is not responsible for any discrepancies that may be

found in this agreement due to ownership and/or product changes beyond our control. Clackamas County understands that none of these possible omissions and/or errors are intentional and that Tyree Oil has provided the most accurate information possible that is available to them.

- Tyree Oil acknowledges and agrees to support your emergency fueling requirements per section 3.3.2 We have access to fuel inventory for your various County locations and are prepared to prioritize delivery service for backup generators and other emergency fueling needs as required.
- The \$3.00 card fee applies only to new and re-issued cards, not already existing plastic.

