

CITY OF PORTLAND PARTICIPATING AGREEMENT #

STATE OF OREGON AND THE OREGON COOPERATIVE PURCHASING PROGRAM (ORCPP)

through

ORCPP AGREEMENT #1640

JMR Group (dba McCoy Freightliner)

9622 NE Vancouver Way

Portland, OR 97211

Payment location: Payments must be sent to the address specified in the Contractor's invoice.

RE: Freightliner and Western Star Brand Vehicles

SPECIFICATIONS FOR GOODS: Contractor shall provide goods for the City of Portland as described in the State of Oregon Agreement #1640: Vehicles, including passenger cars, pickup trucks, cab and chassis, passenger/cargo vans, police pursuit rated vehicles, sport utility vehicles, crossover utility vehicles, alternative fuel vehicles and electric vehicles.

EFFECTIVE DATE AND DURATION: The initial term of this Agreement shall begin on June 21, 2021 and shall expire on April 30, 2023, unless terminated sooner as provided herein.

CONSIDERATION: The City agrees to pay Contractor a sum not to exceed \$10,000,000 for receipt and acceptance of the Goods in accordance with the schedule identified in Exhibit A, of the State of Oregon Agreement #1640 // as identified in Attachment A herein attached. Unit price payments shall be made to Contractor by the City on a monthly basis for the total Product delivered to the City's specified location and accepted by the City. Acceptance occurs when the City authorizes payment of the invoice. Unit prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor upon request.

DELIVERY: All equipment, goods and/or materials, or services shall be FOB delivered to the City of Portland, as specified on the purchase order.

RESTRICTIONS: Division of Asset Management is authorized to use this Agreement.

Attached: State of Oregon Agreement

PRICE AGREEMENT NUMBER:

PRICE AGREEMENT TITLE: Freightliner and Western Star Brand Vehicles

CITY OF PORTLAND SIGNATURES:

By: _____ Date: _____
Bureau Director

By: _____ Date: _____
Chief Procurement Officer

By: _____ Date: _____
N/A
Elected Official

Approved:

By: _____ Date: _____
N/A
Office of City Auditor

Approved as to Form:

By: _____ Date: _____
Office of City Attorney

EXHIBIT "A"
State of Oregon



PRICE AGREEMENT
WITH

JMR Group, LLC (dba McCoy Freightliner)

FOR

Freightliner and Western Star Brand Vehicles
Price Agreement # 1640

This Price Agreement (“Agreement”) is between the State of Oregon (the “State”), acting by and through its Department of Administrative Services Procurement Services (“DAS PS” or “Agency”) and JMR Group, LLC (dba McCoy Freightliner), an Oregon Limited Liability Company (“Contractor”).

Section 1 –Agreement

1.1 Parties

- 1.1.1 The only parties to this Agreement are Contractor and DAS PS.
- 1.1.2 Authorized Purchasers may purchase goods and related services specified in Exhibit A (“Goods”) by issuing ordering instruments that create and become part of separate contracts (“Contracts”). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and Contractor. DAS PS is an intended beneficiary of each Contract created by an ordering instrument.
- 1.1.3 As used in this Agreement, “Authorized Purchaser” means: State agencies of Oregon, Oregon Cooperative Procurement Program (“ORCPP”) participants and authorized members to the State of Washington Master Contracts Usage Agreement (MCUA). Contractor may be required to obtain manufacturer authorization prior to an MCUA member’s purchase of Goods under this Agreement.

1.2 Ordering Instrument

- 1.2.1 Authorized Purchasers may order Goods during the Term of this Agreement using an ordering instrument:
 - a) Authorized Purchasers who are agencies of the State of Oregon under DAS procurement authority may issue ordering instruments under this Price Agreement for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, Authorized Purchasers who are agencies of the State of Oregon must obtain all other necessary approvals, including but not limited to legal sufficiency approval as required.
 - b) Authorized Purchasers that are agencies of the State of Oregon may use either of the following as ordering instruments: i) the DAS PS approved purchase order form. Exhibit B is a sample DAS PS approved purchase order form; or ii) an electronic ordering method when the Authorized Purchaser is using a Small Purchase Order Transaction System (SPOTS) card. Unless expressly

authorized by DAS PS in writing, Contractor shall not accept a different type of ordering instrument from a State agency.

- c) Authorized Purchasers that are not agencies of the State of Oregon may use their own purchase order forms as ordering instruments.
- d) To be effective, the ordering instrument must specify all of the following:
 - i) Language stating that the ordering instrument is submitted under this Agreement (and include the Agreement reference number from the Agreement coversheet).
 - ii) The specific Goods and quantity of each item ordered.
 - iii) The net price.
 - iv) The requested delivery schedule.
 - v) The delivery location(s).
 - vi) The invoicing address.
 - vii) The Authorized Purchaser's authorized representative and relevant contact information, including an e-mail address or fax number.

1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Agreement. Additional, different or conflicting terms and conditions in any purchase order or any other form of either an Authorized Purchaser or the Contractor may not vary the terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.

1.2.3 Contractor shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates.

1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within three (3) business days after it is received. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail if the email address is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.

1.2.5 Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and Contractor and include the terms set forth in Sections 2 and 3. As used in the Contracts, "Price Agreement" means this Agreement.

1.2.6 DAS PS is not obligated or liable under an ordering instrument unless DAS PS is purchasing Goods as the Authorized Purchaser.

1.2.7 Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument or to purchase any Goods.

- 1.2.8 Contractor shall reject an ordering instrument from any entity that is not an Authorized Purchaser under this Agreement. Contractor may verify that Authorized Purchasers are ORCPP participants at the following address:

<https://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx>

Contractor may verify that Authorized Purchasers are MCUA members at the following address:

<https://apps.des.wa.gov/DESContracts/Home/MCUAListing>

- 1.2.9 Contractor shall reject an ordering instrument that does not meet the requirements of this Agreement.

1.3 Prices

- 1.3.1 Except as provided in this Section, during the Term of this Agreement, Contractor shall offer Goods to Authorized Purchasers at prices that do not exceed the prices listed in Exhibit A. The pricing for this Agreement is in U.S. dollars.

- 1.3.2 Contractor and an Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between Contractor and Authorized Purchaser.

- 1.3.3 Contractor shall subtract from percentages or prices charged to Authorized Purchasers any unit price decrease that has been achieved or gained by the Contractor, whether through the manufacturer or otherwise. Contractor shall give Authorized Purchasers the immediate benefit of the decrease. Contractor shall promptly notify the DAS-PS Contract Administrator ("Contract Administrator") of the amount and effective date of the decrease.

- 1.3.4 Either party to this Agreement may request a price adjustment, or an adjustment to the discount percentage, for some or all of the Goods, subject to Section 1.3.5 below.

- 1.3.5 Contractor may request unit price increases from DAS PS following the first year of the term of the Contract, but no more than once in any 12-month period. Contractor must submit a request to the Contract Administrator in writing at least 60 days before the proposed effective date of the increase, or at such other time as specified by the Contract Administrator for submittal of the request. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS PS. DAS PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or

Consumer Price Index data, published MSRP or any other relevant manufacturer or industry data substantiating the increase.

- 1.3.6 Discontinued Goods may be subtracted and new Goods meeting or exceeding the RFP specifications may be added throughout the term of this Agreement. Goods may be adjusted upon both parties' approval in writing, without a signed amendment to this Agreement. All adjustments will be included on a revised Exhibit A.

1.4 Contractor Reporting and Payment Requirements

Contractor will be required to submit Volume Sales Reports and Vendor Collected Administrative Fees.

1.4.1. Volume Sales Reports

Pursuant to the process defined by DAS PS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Volume Sales Report ("VSR") to DAS PS on a quarterly basis; the quarterly report is due no later than thirty (30) calendar days from the end of the applicable quarter. (For purposes of this Agreement, quarters end March 31, June 30, September 30 and December 31.) Upon written notice from DAS PS, **Contractor shall submit the VSR on a monthly basis, VSR due date to be determined by DAS PS.**

The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating "***No Sales for the Reporting Period***".

1.4.2. Vendor Collected Administrative Fee

Pursuant to the process defined by DAS PS and published at <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Vendor Collected Administrative Fee ("VCAF"), as directed by DAS PS. The VCAF is a charge equal to one percent (1%), not to exceed a total of \$325 per vehicle, of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the reporting period.

1.5 Term of Agreement

- 1.5.1 The initial term of this Agreement begins on the later of May 1, 2021 or the date this Agreement has been signed by DAS PS and Contractor and all required approvals have been obtained (the “Effective Date”) and expires two (2) years after the Effective Date unless sooner terminated or extended as provided in this Agreement. DAS PS has the option to extend this Agreement for one or more additional 1-year terms, provided that the initial term, together with all extensions, shall not exceed a total of five (5) years. DAS PS may exercise these options to extend by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then current term. The initial term, together with all extension terms are collectively referred to herein as the “Term” of this Agreement.
- 1.5.2 Notwithstanding the foregoing, DAS PS reserves the right in its sole discretion to extend the Agreement for a maximum of one (1) calendar month beyond the end of any term. DAS PS shall notify Contractor in writing of the one (1) month extension. Consecutive one (1) month extensions obtained under this Section 1.5.2 are not allowed.
- 1.5.3 After termination or expiration of this Agreement, Contractor shall not accept new ordering instruments.
- 1.5.4 Termination of this Agreement also terminates “blanket” ordering instruments in which the Contractor is not required to deliver specific quantities of Goods at specific times. The intent of this paragraph is to terminate what is commonly known as blanket purchase orders (orders that may contain details of the Goods, but under which actual sales of Goods are made by periodic releases that specify a date for delivery of specific Goods).
- 1.5.5 Except as provided in Section 1.5.4, termination of this Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument that was accepted before termination of this Agreement, for non-recurring deliveries of Goods.
- 1.5.6 DAS PS may, in its sole discretion, terminate this Agreement upon 30 calendar days’ written notice to Contractor for any or no reason.

1.6 Insurance

Contractor shall obtain insurance specified in Exhibit C and shall maintain the insurance until all Contracts under this Agreement are terminated.

1.7 Miscellaneous

- 1.7.1 Choice of Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- 1.7.2 Designation of Forum and Consent to Jurisdiction. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 1.7.3 Amendments. Unless otherwise defined in this Agreement, no amendment of this Agreement is valid unless it is in writing and signed by the parties.
- 1.7.4 Transfer. Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of DAS PS. DAS PS' consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided, their permitted legal successors and assigns.
- 1.7.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 1.7.6 Force Majeure. Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS PS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement within an acceptable time period. In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of

Contractor's obligations with all reasonable diligence. DAS PS, in its sole discretion, may extend the period for performance under this Agreement to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

- 1.7.7 Entire Agreement. This Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.
- 1.7.8 Notices. Except as otherwise expressly provided in this Price Agreement, any communications between the parties, or notices to be given under this Price Agreement, are effective only if given in writing or by personal delivery, email or United States Postal Service, postage prepaid, to the Contract Administrator for Contractor or DAS-PS, as applicable, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.
- 1.7.9 No Third Party Beneficiaries. DAS PS and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will 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 Agreement.
- 1.7.10 Waiver. The failure of DAS PS to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by DAS PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such a failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.
- 1.7.11 Certification of Compliance with Tax Laws. Contractor has complied with the tax laws of this State and all applicable tax laws of political subdivisions of this State. Contractor shall, throughout the duration of this Agreement and any Contract and any extensions thereof, comply with all tax laws of this State and all applicable tax laws of any

political subdivision of this State. For the purposes of this Section, “tax laws” includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) 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; (iii) Any tax provisions imposed by a political subdivision of this State that applied to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this subsection 1.7.11 constitutes a material default of this Agreement and any Contract. Any failure to comply entitles DAS PS or Authorized Purchaser to terminate this Agreement or any Contract, as applicable and to pursue and recover any and all damages that arise from the default and the termination of this Agreement or any Contract, and to pursue any or all of the remedies available under this Agreement or any Contract, at law, or in equity, including but not limited to:

- Termination of this Agreement or any Contract, as applicable, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State’s or Authorized Purchaser’s setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default of this Agreement or any Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods, services and applications.

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

1.7.13 Records Archiving. Contractor shall retain, maintain and keep accessible all records relevant to this Price Agreement (the “Records”)

for a minimum of six (6) years, or such longer period as may be required by applicable law following termination of this Agreement. Such period shall be further extended until the conclusion of any audit, controversy or litigation commenced during such period and arising out of or related to this Agreement or any Contract. Financial Records must be kept in accordance with Generally Accepted Accounting Principles. During the record-retention period established in this Section, Contractor shall permit DAS-PS, the State of Oregon and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

- 1.7.14 Performance Evaluations. DAS PS may conduct evaluations of Contractor's performance during the term of this Agreement. DAS PS will compile and maintain completed evaluations, which will become a written record of Contractor's performance. DAS PS may also maintain as part of that written record information obtained from Contractor during an exit interview following Contract termination. DAS PS may provide copies of any documents in the written record to the Contractor and third parties upon request. DAS PS may use performance evaluations in any way it deems necessary, in its sole discretion, including but not limited to making responsibility determinations and decisions to award contracts.
- 1.7.15 Reporting. This Agreement and Contract(s) of Authorized Purchasers who are State agencies will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Agreement or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Agreement or any Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.
- 1.7.16 Survival: All rights and obligations cease upon termination or expiration of this Price Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination, including without limitation this Section 1.7.16, and provisions regarding warranties and liabilities, independent Contractor status and taxes and withholding, compensation, Contractor's representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

Section 2 – Standard Terms for Contracts Under This Agreement

- 2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** The Contract consists of the ordering instrument and the provisions in Sections 2 and 3 of the Price Agreement. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence.
- 2.2 PAYMENT:** Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under this Contract. AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT. Subject to Authorized Purchaser's acceptance of Goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.
- 2.3 OVERDUE CHARGES:** At Contractor's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).
- 2.4 PAYMENT ADDRESS:** Payments must be sent to the address specified in the Contractor's invoice.
- 2.5 INVOICES:** Contractor shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. Contractor shall include all of the following in its invoice:
- 2.5.1. Price Agreement number.
 - 2.5.2. Ordering instrument number.
 - 2.5.3. Goods ordered.
 - 2.5.4. Date delivered.
 - 2.5.5. Volume or quantity of Goods delivered.
 - 2.5.6. The price per item.
 - 2.5.7. The total amount invoiced.
 - 2.5.8. The address to which payment is to be sent.
 - 2.5.9. Additional Taxes (e.g. privilege or vehicle use tax and corporate activity tax) (determined based on the state of purchase)
- 2.6 PRICES:** Contractor represents that all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.
- 2.7 CANCELLATION; INSPECTIONS AND ACCEPTANCE:** The Authorized Purchaser may cancel an order in whole or in part before Goods described in the cancelled whole or part are delivered. The Authorized Purchaser has ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects,

including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). If the Authorized Purchaser elects to provide Contractor an opportunity to cure the defects, notice of rejection must also specify such opportunity to cure, and the time period in which such cure must be completed.

2.7.1. The Authorized Purchaser may elect to have Contractor deliver substitute conforming Goods at no additional cost to the Authorized Purchaser. In such an event, Contractor shall deliver substitute conforming Goods within ten (10) calendar days of receipt of notice of rejection.

2.7.2. If the Goods are rejected or acceptance is revoked, Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

2.7.3. Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

2.8 REPRESENTATIONS AND WARRANTIES:

2.8.1. **OFFICER STATUS, INSURANCE:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Price Agreement.

2.8.2. **WARRANTY ON MATERIALS, DESIGN AND MANUFACTURE:** Unless otherwise approved, in writing, by the Authorized Purchaser, Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit D to the Price Agreement.

2.8.3. **WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with the highest standards prevalent in the industry.

2.8.4. **WARRANTY OF TITLE:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods that is superior to or infringes upon the rights granted to the Authorized Purchaser under this Contract.

2.8.5. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (“OSHA”), and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.

2.8.6. **MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser, and provide warranty documents to the Authorized Purchaser, at time of delivery at no charge.

2.8.7. **WARRANTIES CUMULATIVE:** The warranties set forth in this Section 2.8 are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford the Authorized Purchaser the broadest warranty protection available.

2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

2.9.1 **LAWS AND REGULATIONS:** Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time.

2.9.2 **STATUTORY TERMS:** Authorized Purchaser’s performance under this Contract is conditioned upon Contractor’s compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

2.9.3 **NONCOMPLIANT GOODS:** In the event of a conflict between the specifications in this Contract and applicable federal or State law, the

law will prevail. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS PS and Authorized Purchaser.

2.9.4 RECALLED GOODS OR COMPONENTS: In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS PS, and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

- a) Reject the Goods.
- b) Revoke its acceptance of the Goods.
- c) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
- d) Terminate the Contract in its entirety or with respect to the recalled or noncompliant Goods.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and shall reimburse Authorized Purchaser for any payments made.

2.10 FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue (“ODR”) all information required by the ODR relative to the Contract. Authorized Purchaser may withhold final payment under the Contract until Contractor has met this requirement.

2.11 SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet (“SDS”) as defined by the OSHA for any Goods provided under the Price Agreement that may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.

2.12 TIME IS OF THE ESSENCE: Time is of the essence for performance of Contractor’s performance obligations under this Contract.

2.13 FORCE MAJEURE: Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party'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. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract within an acceptable time period.

2.14 RESERVED

2.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS: If Authorized Purchaser is an agency of the State of Oregon or another governmental body, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.

2.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

2.16.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser 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 any obligations required by this Contract.

2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

2.17 INDEMNIFICATION:

2.17.1 Contractor shall defend, save, hold harmless, and indemnify the Authorized Purchaser, the State of Oregon and its officers, employees and agents from and against

all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney's fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, "claim") which may be brought or made against any Authorized Purchaser, the State, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of Contractor, its employees or agents, (ii) any act or omission by Contractor that constitutes a material default of this Contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the Goods. Authorized Purchaser or the State shall promptly notify Contractor in writing of any claim of which Authorized Purchaser or State becomes aware. Contractor's obligation under this Section shall not extend to any claim solely caused by (i) the negligent or willful misconduct of Authorized Purchaser, or (ii) Authorized Purchaser's modification of Goods without Contractor's approval and in a manner inconsistent with the purpose and proper usage of such Goods.

2.17.2 The Oregon attorney general must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and that of its officers, employees, or agents under clauses (i) and (ii) above.

2.18 DEFAULT:

2.18.1 **BY CONTRACTOR:** Contractor is in default under this Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
- c) Contractor commits any default of any covenant, representation, warranty, obligation or certification under this Contract, provided however that Contractor may cure the default within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the default is curable by Contractor within an acceptable time period.

2.18.2 BY AUTHORIZED PURCHASER: Authorized Purchaser is in default of this Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice of such failure or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any default of any covenant, warranty, or obligation under this Contract and such default is not cured within ten (10) business days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice.

2.19 REMEDIES:

2.19.1 AUTHORIZED PURCHASER'S REMEDIES: If Contractor is in default under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- a) Termination of the Contract as provided in Section 2.20.2;
- b) Withholding all monies due for invoiced Goods or services that Contractor has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- d) Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.19.2 CONTRACTOR'S REMEDIES: If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in default under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.20.3, Contractor's sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, (b) with respect to services compensable on an hourly basis, a claim for unpaid

invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser, and (c) with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

2.20 TERMINATION:

2.20.1 BY MUTUAL CONSENT: This Contract may be terminated at any time by mutual written consent of Authorized Purchaser and Contractor.

2.20.2 RIGHTS OF AUTHORIZED PURCHASER. Authorized Purchaser may, at its sole discretion, terminate this Contract or other ordering instrument for convenience with thirty (30) days' written notice. Authorized Purchaser may terminate this Contract immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way so as to prohibit either the purchase of the Goods by Authorized Purchasers under the Price Agreement or Authorized Purchaser's payment for such Goods from the planned funding sources; or (c) Contractor is in default of this Contract under Section 2.18.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.

2.20.3 RIGHTS OF THE CONTRACTOR: Contractor may terminate this Contract with ten (10) days' written notice to Authorized Purchaser, if Authorized Purchaser is in default of this Contract as described in Section 2.18.2.

2.21 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to the this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles ("GAAP"). During the record-retention period established in this Section, Contractor shall permit DAS PS,

the Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

2.22 NOTICES: Except as otherwise expressly provided in this Contract, any communications between the parties, or notices to be given under this Contract, are effective only if given in writing by personal delivery, email or United States Postal Service, postage prepaid, to the party's authorized representative. For Authorized Purchaser, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the ordering instrument or as later indicated by Authorized Purchaser pursuant to this Section. For Contractor, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the Price Agreement or as later indicated by Contractor pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.

2.23 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS: The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

2.24 GOVERNING LAW: This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

2.25 VENUE; CONSENT TO JURISDICTION:

2.25.1 STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between an Authorized Purchaser that is an agency of the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District

of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25.2 NON STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any Claims between Contractor and an Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such Authorized Purchaser resides, or at the Authorized Purchaser's option, within such other county as the Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.26 SURVIVAL: The following provisions survive termination or expiration of this Contract: Sections 2.8, 2.9.1, 2.9.4, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23, 2.24, 2.25, 2.26; the paragraph in Exhibit C bearing the caption "TAIL COVERAGE"; and any other provision that by its nature would reasonably be expected to survive termination or expiration.

2.27 SEVERABILITY: If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 provision held to be invalid.

2.28 ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee,

transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

2.29 MERGER CLAUSE; AMENDMENT; WAIVER: This Contract constitutes the entire agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter of this Contract. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.

2.30 INTENDED BENEFICIARY. DAS PS is an intended beneficiary of this Contract. However, the parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of DAS PS.

2.31 ASSIGNMENT OF ANTITRUST RIGHTS. Contractor irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Agreement to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Agreement, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

Section 3 – Special Terms for Contracts under this Agreement

- 3.1 **CONTRACTOR CERTIFICATIONS:** If Contractor offers Goods under the Price Agreement, Contractor shall maintain its status as a manufacturer-authorized product reseller for the Goods throughout the Term of the Price Agreement. If Contractor offers installation and/or maintenance services under this Price Agreement, Contractor shall maintain its status as a manufacturer-authorized service provider. If any required status is discontinued, this Contract may be terminated.
- 3.2 **SELECTION PROCESS:** This is not an exclusive agreement. DAS PS intends to award multiple Price Agreements and Participating Addenda for the Goods and services offered under this solicitation. Authorized Purchasers who are State of Oregon Agencies must follow the selection process outlined below. Authorized Purchasers who are **not** State of Oregon Agencies may select the Contractor of Authorized Purchaser's choice in compliance with applicable statute and rules.
- 3.2.1 For purchases under \$10,000, Authorized Purchasers who are State Agencies may select the Contractor of their choice in compliance with applicable statute and rule.
- 3.2.2 For purchases over \$10,000 Authorized Purchasers who are State Agencies shall use one of the following selection processes:
- a) **Brand Name Justification** - A documented brand name justification in compliance with applicable statutes and rules.
 - b) **Best Value Analysis** - Authorized Purchaser may conduct a comparison of the offers based upon the following best value analysis process;
 - i. Determine category of need, if more than 3 Contractors offer Goods and services in the category of need, contact at least 3 Contractors and request a quote for the anticipated Goods and services. If 3 or less Contractors offer Goods and Services in category of need, contact all Contractors that provide Goods and services in the category of need and request a quote for anticipated Goods and services. Quoted rates must not exceed the most competitive rates and discounts set forth in this Price Agreement. Authorized Purchaser may provide a deadline for quote response to Contractor.
 - ii. Determine which Contractor and Authorized Dealer provides the best value for Authorized Purchaser. Some or all of the following factors may be used in the Authorized Purchaser's determination of best value (additional factors not listed may also be used) :
 - Applicable discounts and incremental pricing options;
 - Shipping costs;
 - Manufacture timelines;

- Delivery process;
 - Maintenance and repair service levels;
 - Applicable warranties;
 - Contractor's past performance record through reference checks;
 - Contractor's service area;
 - Price comparison
 - Life cycle costing including expected life, salvage value and discounted total cost of ownership.
- iii. Negotiate with one or more Contractors to gain the best value for the desired Goods and services.
- iv. Authorized Purchasers may make award decisions based on price alone, or may also take value and technical and past performance considerations into account.
- c) Document Authorized Purchasers procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.
- 3.3 DELIVERY CHARGES:** For all orders, FOB destination delivery costs up to 60 miles from dealership shall be paid by the Contractor. Additional delivery charges for delivery beyond 60 miles must be based on delivery cost outlined in Exhibit A.
- 3.4 ADVANCE PAYMENT PROHIBITED:** No advance payment shall be made for the Goods or services furnished by Contractor pursuant to this Contract.
- 3.5 NOTICE OF ORDER SHORTAGES:** Contractor shall notify Authorized Purchaser within twenty-four (24) hours of receiving notice that ordered Goods or services will not be available for shipment or scheduling on the scheduled delivery day. This includes a notice to Authorized Purchaser whenever a particular Good will be short-shipped. Notice of unavailability for services or projected short-shipment of Goods will not eliminate Authorized Purchaser's right to pursue all available remedies.
- 3.6 UNAUTHORIZED WORK:** Goods or services provided without or prior to receipt of written authority (i.e. without a Purchase Order duly issued under the Price Agreement) will be considered unauthorized and may not be paid for by Authorized Purchaser.
- 3.7 PRICE QUOTES:** Contractor price quotes will be considered a firm offer (or maximum price) for a set time period of 90 days after issuance. Upon any negotiations with an Authorized Purchaser, Contractor will update the quote, or provide a new "not-to-exceed" final price quote for desired Goods and Services prior to Authorized Purchaser placing an order. Price Quotes must include all costs, including but not limited to, additional options, taxes (including privilege tax and corporate activity or vehicle use tax for State of Oregon), fees, and delivery and registration costs.

Section 4 – Signature of Contractor’s Duly Authorized Representative

4.1 The undersigned represents:

- (a) Signee is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Contractor;
- (b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
- (c) Contractor will furnish the Goods in accordance with Contracts under this Agreement; and
- (d) Contractor shall furnish federal identification number or social security number under a separate document.
- (e) All Contractor affirmations contained in its bid or proposal related to this Agreement are true and correct.
- (f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.
- (g) Contractor has a written policy and practice that meets the requirements, described in ORS279A.112, of preventing sexual harassment, sexual assault, and discriminating against employees who are members of a protected class. Contractor agrees, as a material term of the Price Agreement, to maintain the policy and practiced in force during the entire Price Agreement term.
- (h) Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
- (i) Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor’s compliance with this Section constitutes a material element of this Price Agreement and a failure to comply constitutes a default that entitles Agency to terminate this Price Agreement for cause.
- (j) Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

Agreed:

Contractor's Name: JMR Group, LLC (dba McCoy Freightliner)

Authorized Signature: _____

Printed Name of Authorized Signature: _____

Title of Authorized Signature: _____

Date: _____

Contractor Administrative Contact (also referred to as Contract Administrator):

Name	Kevin Dripps
Address	9622 NE Vancouver way, Portland 97211
Telephone	503-283-0345
E-mail	KEVINDRIPPS@PDXFTL.COM

Section 5 – Signature of DAS PS

Agreed:

Authorized Signature: Darwin Kumpula Digitally signed by Darwin Kumpula
Date: 2021.03.31 12:17:30 -07'00'

Date: 31 March 2021

DAS PS Contract Administrator (Type or Print):

Name	Brent Lutz
Address	1255 SE Ferry Street, Salem, OR 97301
Telephone	(971) 719-3436
E-mail	brent.l.lutz@oregon.gov

Legal Review:

Approved pursuant to ORS 291.047

Approved by Marc S. Bocci, Senior Assistant Attorney General

Per email dated 3/16/2021

Exhibit B


	STATE OF OREGON	PURCHASE ORDER (PO) NO.	PAGE #		
Authorized Purchaser's Authorized Representative		Purchase Order Date	Requisition No.		
Contractor Name and Address		Authorized Purchaser's Invoicing Address			
Contractor FEIN	Price Agreement number	Authorized Purchaser's Authorized Representative Email Address			
Deliver to Address		Authorized Purchaser's Authorized Representative Phone and Fax Number			
		Delivery Schedule or Delivery Date			
Item	Description	Quantity	U/M	Unit Price	Net Price
				Sub Total	
				Freight	
				Total	
<p>This Purchase Order, in addition to any exhibits or addenda attached, is placed against State of Oregon Solicitation # DASPS-2295-20 and Price Agreement #1640. The terms and conditions contained in the Price Agreement apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.</p>					
Agency's Authorized Representative to Make Purchase				Date	

Exhibit C

INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor's expense the insurance specified in **this Exhibit C prior** to performing under this Price Agreement and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than **\$2,000,000** per occurrence. Annual aggregate limit shall not be less than **\$4,000,000**.

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than **\$2,000,000** for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Price Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

SPECIFICATIONS

1. GENERAL PROVISIONS:

- 1.1 **SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be interpreted as requiring that Contractor shall perform to only the best commercial practice and that Contractor shall supply and incorporate into Goods only materials and workmanship of first quality. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, and Contractor failed to seek a formal request for change during the solicitation process for the Agreement, then Contractor shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification.
- 1.2 **ADHERENCE TO THE SPECIFICATIONS:** Deviations from specifications discovered after purchase shall be corrected by Contractor at no cost to the Authorized Purchaser.

2. SPECIFICATIONS:

Specifications below provide a minimum requirement.

- 2.1 All Base Model Vehicles must include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications. All Vehicle Base Models must include two (2) sets of keys and all user manuals.
- 2.2 Additional equipment packages, factory installed options and aftermarket options may also be offered. Cab and Chassis optional Body Upfit may also be offered. Contractor shall provide all sub-contractors for Body Upfits to DAS PS.
- 2.3 All required installation services must be completed by the manufacturer or a manufacturer authorized installer and Contractor must certify completed vehicle conforms to all Federal Motor Vehicle Safety Standards ("FMVSS") and all body modifications must have National Highway Traffic Safety Administration ("NHTSA") certification.
- 2.4 Unless otherwise DAS PS approved, all Vehicles must be no older than 1 year beyond the current Manufacturer's model year, new and unused, free of damage, rust and other defects that may affect appearance or serviceability.
- 2.5 All Vehicles must comply with all federal and State laws, requirements, and regulations applicable to the type and class of Vehicles and contractual services. This includes, but is not limited to, FMVSS, Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State laws, requirements, and regulations. In addition, if any applicable federal or State legislation becomes effective during the term of the Contract regarding the Goods and related services, including but not limited to requirements concerning specifications and safety, and environmental requirements, those requirements shall immediately become a part of the Agreement and each Contract. The Contractor shall meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor shall contact the Contract Administrator immediately.
- 2.6 Vehicles must not contain Dealer's advertising or identification (name, logos, etc.) including all Base Equipment; OEM Options, Accessories, & Implements; OEM & Replacement Parts; and their components. Manufacturer's advertising or identification (name, model, logos, etc.) will be permitted on the respective Vehicles if such

advertising or identification is a Manufacturer's standard on the specific Vehicle.

- 2.7 Acceptable Vehicle fuel and alternative fuel options include gasoline (E-10), diesel, bio-diesel, natural gas (compressed or liquefied), ethanol flex fuel (E-85), liquefied petroleum gas, Hydrogen Fuel Cell Electric Hybrid, Plug-in Hybrid Electric and Plug-in Electric Vehicle. Additional fuel options may be accepted upon DAS PS approval.

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CLASS Definition	MODEL CODE	MODEL YEAR
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**Class 5, 16,001 - 19,500
GVWR Medium-duty**

FCCC MT45 2022

**Class 6, 19,501 - 26,000
GVWR Light-heavy Duty**

FCCC MT55 2022

M2 106 2022

108SD 2022

**Class 7, 26,001 - 33,000
GVWR Heavy Duty**

M2 106 2022

M2 106 2022

108SD 2022

108SD 2022

4700 2022

**Class 8, 33,001 GVWR - and
above Heavy Duty**

M2 112 2022

M2 112 2022

114SD 2022

114SD 2022

114SD 2022

114SD 2022

122SD 2022

122SD	2022
4700WS	2022
4700WS	2022
4700WS	2022
4800WS	2022
4900WS	2022
5700WS	2022
126 Cascadia DC	2022
126 Cas SLPR	2022

Category: Cab/Chassis Class 1-8

VEHICLE DESCRIPTION	PRICE Does not include privilege/use tax or CAT	Per Mile DELIVERY outside 60 Mile Radius
Freightliner MT45 6.7 L	\$55,357.00	\$3.00
Freightliner MT55 6.7 L	\$56,656.00	\$3.00
Freightliner M2 106 6.7 L	\$60,934.00	\$3.00
Freightliner 108SD 6.7 L	\$65,699.00	\$3.00
Freightliner M2 106 DD8 Detroit	\$62,861.00	\$3.00
Freightliner M2 106 9L	\$65,779.00	\$3.00
Freightliner M2 108SD DD8	\$67,883.00	\$3.00
Freightliner M2 108SD 9L	\$68,848.00	\$3.00
Western Star 4700 SA 9L	\$82,958.00	\$3.00
Freightliner M2 112 9L	\$77,910.00	\$3.00
Freightliner M2 112 DD13	\$84,331.00	\$3.00
Freightliner 114SD 9L	\$78,426.00	\$3.00
Freightliner 114SD DD8	\$79,560.00	\$3.00
Freightliner 114SD 12L CUM	\$86,003.00	\$3.00
Freightliner 114SD DD13	\$86,189.00	\$3.00
Freightliner 122SD DD13	\$92,812.00	\$3.00

Freightliner 122SD DD15	\$95,830.00	\$3.00
WESTERN STAR 4700 9L	\$92,948.00	\$3.00
WESTERN STAR 4700 12L	\$96,256.00	\$3.00
WESTERN STAR 4700 DD13	\$98,271.00	\$3.00
WESTERN STAR 4800 DD13	\$103,140.00	\$3.00
WESTERN STAR 4900 DD15	\$106,204.00	\$3.00
WESTERN STAR 5700 DD13	\$104,816.00	\$3.00
Freightliner CASCADIA DC DD13	\$111,559.00	\$3.00
Freightliner CASCADIA SLPR DD15	\$131,970.00	\$3.00

CITY OF PORTLAND PARTICIPATING AGREEMENT # _____

STATE OF OREGON AND THE OREGON COOPERATIVE PURCHASING PROGRAM (ORCPP)

through

ORCPP AGREEMENT #1659

Gresham Automotive, Inc. (dba Gresham Ford)

1999 E. Powell Blvd
Gresham, OR 97080

Payment location: Payments must be sent to the address specified in the Contractor's invoice.

RE: Ford Brand Vehicles

SPECIFICATIONS FOR GOODS: Contractor shall provide goods for the City of Portland as described in the State of Oregon Agreement #1659: Vehicles, including passenger cars, pickup trucks, cab and chassis, passenger/cargo vans, police pursuit rated vehicles, sport utility vehicles, crossover utility vehicles, alternative fuel vehicles and electric vehicles.

EFFECTIVE DATE AND DURATION: The initial term of this Agreement shall begin on June 21, 2021 and shall expire on April 30, 2023, unless terminated sooner as provided herein.

CONSIDERATION: The City agrees to pay Contractor a sum not to exceed \$10,000,000 for receipt and acceptance of the Goods in accordance with the schedule identified in Exhibit A, of the State of Oregon Agreement #1659 // as identified in Attachment A herein attached. Unit price payments shall be made to Contractor by the City on a monthly basis for the total Product delivered to the City's specified location and accepted by the City. Acceptance occurs when the City authorizes payment of the invoice. Unit prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor upon request.

DELIVERY: All equipment, goods and/or materials, or services shall be FOB delivered to the City of Portland, as specified on the purchase order.

RESTRICTIONS: Division of Asset Management is authorized to use this Agreement.

Attached: State of Oregon Agreement

PRICE AGREEMENT NUMBER: _____

PRICE AGREEMENT TITLE: Ford Brand Vehicles

CITY OF PORTLAND SIGNATURES:

By: _____ Date: _____
Bureau Director

By: _____ Date: _____
Chief Procurement Officer

By: _____ Date: _____
N/A
Elected Official

Approved:

By: _____ Date: _____
N/A
Office of City Auditor

Approved as to Form:

By: _____ Date: _____
Office of City Attorney

State of Oregon



PRICE AGREEMENT WITH

Gresham Automotive, Inc. (dba Gresham Ford)

FOR

Ford Brand Vehicles
Price Agreement # 1659

This Price Agreement (“Agreement”) is between the State of Oregon (the “State”), acting by and through its Department of Administrative Services Procurement Services (“DAS PS” or “Agency”) and Gresham Automotive, Inc. (dba Gresham Ford), a Delaware Corporation (“Contractor”).

Section 1 – Agreement

1.1 Parties

- 1.1.1 The only parties to this Agreement are Contractor and DAS PS.
- 1.1.2 Authorized Purchasers may purchase goods and related services specified in Exhibit A (“Goods”) by issuing ordering instruments that create and become part of separate contracts (“Contracts”). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and Contractor. DAS PS is an intended beneficiary of each Contract created by an ordering instrument.
- 1.1.3 As used in this Agreement, “Authorized Purchaser” means: State agencies of Oregon, Oregon Cooperative Procurement Program (“ORCPP”) participants and authorized members to the State of Washington Master Contracts Usage Agreement (MCUA). Contractor may be required to obtain manufacturer authorization prior to an MCUA member’s purchase of Goods under this Agreement.

1.2 Ordering Instrument

- 1.2.1 Authorized Purchasers may order Goods during the Term of this Agreement using an ordering instrument:
 - a) Authorized Purchasers who are agencies of the State of Oregon under DAS procurement authority may issue ordering instruments under this Price Agreement for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, Authorized Purchasers who are agencies of the State of Oregon must obtain all other necessary approvals, including but not limited to legal sufficiency approval as required.
 - b) Authorized Purchasers that are agencies of the State of Oregon may use either of the following as ordering instruments: i) the DAS PS approved purchase order form. Exhibit B is a sample DAS PS approved purchase order form; or ii) an electronic ordering method when the Authorized Purchaser is using a Small Purchase Order Transaction System (SPOTS) card. Unless expressly

authorized by DAS PS in writing, Contractor shall not accept a different type of ordering instrument from a State agency.

- c) Authorized Purchasers that are not agencies of the State of Oregon may use their own purchase order forms as ordering instruments.
- d) To be effective, the ordering instrument must specify all of the following:
 - i) Language stating that the ordering instrument is submitted under this Agreement (and include the Agreement reference number from the Agreement coversheet).
 - ii) The specific Goods and quantity of each item ordered.
 - iii) The net price.
 - iv) The requested delivery schedule.
 - v) The delivery location(s).
 - vi) The invoicing address.
 - vii) The Authorized Purchaser's authorized representative and relevant contact information, including an e-mail address or fax number.

1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Agreement. Additional, different or conflicting terms and conditions in any purchase order or any other form of either an Authorized Purchaser or the Contractor may not vary the terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.

1.2.3 Contractor shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates.

1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within three (3) business days after it is received. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail if the email address is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.

1.2.5 Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and Contractor and include the terms set forth in Sections 2 and 3. As used in the Contracts, "Price Agreement" means this Agreement.

1.2.6 DAS PS is not obligated or liable under an ordering instrument unless DAS PS is purchasing Goods as the Authorized Purchaser.

1.2.7 Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument or to purchase any Goods.

- 1.2.8 Contractor shall reject an ordering instrument from any entity that is not an Authorized Purchaser under this Agreement. Contractor may verify that Authorized Purchasers are ORCPP participants at the following address:

<https://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx>

Contractor may verify that Authorized Purchasers are MCUA members at the following address:

<https://apps.des.wa.gov/DESContracts/Home/MCUAListing>

- 1.2.9 Contractor shall reject an ordering instrument that does not meet the requirements of this Agreement.

1.3 Prices

- 1.3.1 Except as provided in this Section, during the Term of this Agreement, Contractor shall offer Goods to Authorized Purchasers at prices that do not exceed the prices listed in Exhibit A. The pricing for this Agreement is in U.S. dollars.

- 1.3.2 Contractor and an Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between Contractor and Authorized Purchaser.

- 1.3.3 Contractor shall subtract from percentages or prices charged to Authorized Purchasers any unit price decrease that has been achieved or gained by the Contractor, whether through the manufacturer or otherwise. Contractor shall give Authorized Purchasers the immediate benefit of the decrease. Contractor shall promptly notify the DAS-PS Contract Administrator (“Contract Administrator”) of the amount and effective date of the decrease.

- 1.3.4 Either party to this Agreement may request a price adjustment, or an adjustment to the discount percentage, for some or all of the Goods, subject to Section 1.3.5 below.

- 1.3.5 Contractor may request unit price increases from DAS PS following the first year of the term of the Contract, but no more than once in any 12-month period. Contractor must submit a request to the Contract Administrator in writing at least 60 days before the proposed effective date of the increase, or at such other time as specified by the Contract Administrator for submittal of the request. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS PS. DAS PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or

Consumer Price Index data, published MSRP or any other relevant manufacturer or industry data substantiating the increase.

- 1.3.6 Discontinued Goods may be subtracted and new Goods meeting or exceeding the RFP specifications may be added throughout the term of this Agreement. Goods may be adjusted upon both parties' approval in writing, without a signed amendment to this Agreement. All adjustments will be included on a revised Exhibit A.

1.4 Contractor Reporting and Payment Requirements

Contractor will be required to submit Volume Sales Reports and Vendor Collected Administrative Fees.

1.4.1. Volume Sales Reports

Pursuant to the process defined by DAS PS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Volume Sales Report ("VSR") to DAS PS on a quarterly basis; the quarterly report is due no later than thirty (30) calendar days from the end of the applicable quarter. (For purposes of this Agreement, quarters end March 31, June 30, September 30 and December 31.) Upon written notice from DAS PS, **Contractor shall submit the VSR on a monthly basis, VSR due date to be determined by DAS PS.**

The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating "***No Sales for the Reporting Period***".

1.4.2. Vendor Collected Administrative Fee

Pursuant to the process defined by DAS PS and published at <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Vendor Collected Administrative Fee ("VCAF"), as directed by DAS PS. The VCAF is a charge equal to one percent (1%), not to exceed a total of \$325 per vehicle, of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the reporting period.

1.5 Term of Agreement

- 1.5.1 The initial term of this Agreement begins on the later of May 1, 2021 or the date this Agreement has been signed by DAS PS and Contractor and all required approvals have been obtained (the "Effective Date") and expires two (2) years after the Effective Date unless sooner terminated or extended as provided in this Agreement. DAS PS has the option to extend this Agreement for one or more additional 1-year terms, provided that the initial term, together with all extensions, shall not exceed a total of five (5) years. DAS PS may exercise these options to extend by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then current term. The initial term, together with all extension terms are collectively referred to herein as the "Term" of this Agreement.
- 1.5.2 Notwithstanding the foregoing, DAS PS reserves the right in its sole discretion to extend the Agreement for a maximum of one (1) calendar month beyond the end of any term. DAS PS shall notify Contractor in writing of the one (1) month extension. Consecutive one (1) month extensions obtained under this Section 1.5.2 are not allowed.
- 1.5.3 After termination or expiration of this Agreement, Contractor shall not accept new ordering instruments.
- 1.5.4 Termination of this Agreement also terminates "blanket" ordering instruments in which the Contractor is not required to deliver specific quantities of Goods at specific times. The intent of this paragraph is to terminate what is commonly known as blanket purchase orders (orders that may contain details of the Goods, but under which actual sales of Goods are made by periodic releases that specify a date for delivery of specific Goods).
- 1.5.5 Except as provided in Section 1.5.4, termination of this Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument that was accepted before termination of this Agreement, for non-recurring deliveries of Goods.
- 1.5.6 DAS PS may, in its sole discretion, terminate this Agreement upon 30 calendar days' written notice to Contractor for any or no reason.

1.6 Insurance

Contractor shall obtain insurance specified in Exhibit C and shall maintain the insurance until all Contracts under this Agreement are terminated.

1.7 Miscellaneous

- 1.7.1 Choice of Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- 1.7.2 Designation of Forum and Consent to Jurisdiction. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 1.7.3 Amendments. Unless otherwise defined in this Agreement, no amendment of this Agreement is valid unless it is in writing and signed by the parties.
- 1.7.4 Transfer. Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of DAS PS. DAS PS' consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided, their permitted legal successors and assigns.
- 1.7.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 1.7.6 Force Majeure. Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS PS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement within an acceptable time period. In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of

Contractor's obligations with all reasonable diligence. DAS PS, in its sole discretion, may extend the period for performance under this Agreement to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

- 1.7.7 Entire Agreement. This Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.
- 1.7.8 Notices. Except as otherwise expressly provided in this Price Agreement, any communications between the parties, or notices to be given under this Price Agreement, are effective only if given in writing or by personal delivery, email or United States Postal Service, postage prepaid, to the Contract Administrator for Contractor or DAS-PS, as applicable, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.
- 1.7.9 No Third Party Beneficiaries. DAS PS and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will 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 Agreement.
- 1.7.10 Waiver. The failure of DAS PS to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by DAS PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such a failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.
- 1.7.11 Certification of Compliance with Tax Laws. Contractor has complied with the tax laws of this State and all applicable tax laws of political subdivisions of this State. Contractor shall, throughout the duration of this Agreement and any Contract and any extensions thereof, comply with all tax laws of this State and all applicable tax laws of any

political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) 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; (iii) Any tax provisions imposed by a political subdivision of this State that applied to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this subsection 1.7.11 constitutes a material default of this Agreement and any Contract. Any failure to comply entitles DAS PS or Authorized Purchaser to terminate this Agreement or any Contract, as applicable and to pursue and recover any and all damages that arise from the default and the termination of this Agreement or any Contract, and to pursue any or all of the remedies available under this Agreement or any Contract, at law, or in equity, including but not limited to:

- Termination of this Agreement or any Contract, as applicable, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's or Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default of this Agreement or any Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods, services and applications.

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

1.7.13 Records Archiving. Contractor shall retain, maintain and keep accessible all records relevant to this Price Agreement (the "Records")

for a minimum of six (6) years, or such longer period as may be required by applicable law following termination of this Agreement. Such period shall be further extended until the conclusion of any audit, controversy or litigation commenced during such period and arising out of or related to this Agreement or any Contract. Financial Records must be kept in accordance with Generally Accepted Accounting Principles. During the record-retention period established in this Section, Contractor shall permit DAS-PS, the State of Oregon and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

1.7.14 Performance Evaluations. DAS PS may conduct evaluations of Contractor's performance during the term of this Agreement. DAS PS will compile and maintain completed evaluations, which will become a written record of Contractor's performance. DAS PS may also maintain as part of that written record information obtained from Contractor during an exit interview following Contract termination. DAS PS may provide copies of any documents in the written record to the Contractor and third parties upon request. DAS PS may use performance evaluations in any way it deems necessary, in its sole discretion, including but not limited to making responsibility determinations and decisions to award contracts.

1.7.15 Reporting. This Agreement and Contract(s) of Authorized Purchasers who are State agencies will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Agreement or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Agreement or any Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

1.7.16 Survival: All rights and obligations cease upon termination or expiration of this Price Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination, including without limitation this Section 1.7.16, and provisions regarding warranties and liabilities, independent Contractor status and taxes and withholding, compensation, Contractor's representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

Section 2 – Standard Terms for Contracts Under This Agreement

- 2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** The Contract consists of the ordering instrument and the provisions in Sections 2 and 3 of the Price Agreement. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence.
- 2.2 PAYMENT:** Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under this Contract. AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT. Subject to Authorized Purchaser's acceptance of Goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.
- 2.3 OVERDUE CHARGES:** At Contractor's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).
- 2.4 PAYMENT ADDRESS:** Payments must be sent to the address specified in the Contractor's invoice.
- 2.5 INVOICES:** Contractor shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. Contractor shall include all of the following in its invoice:
- 2.5.1. Price Agreement number.
 - 2.5.2. Ordering instrument number.
 - 2.5.3. Goods ordered.
 - 2.5.4. Date delivered.
 - 2.5.5. Volume or quantity of Goods delivered.
 - 2.5.6. The price per item.
 - 2.5.7. The total amount invoiced.
 - 2.5.8. The address to which payment is to be sent.
 - 2.5.9. Additional Taxes (e.g. privilege or vehicle use tax and corporate activity tax) (determined based on the state of purchase)
- 2.6 PRICES:** Contractor represents that all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.
- 2.7 CANCELLATION; INSPECTIONS AND ACCEPTANCE:** The Authorized Purchaser may cancel an order in whole or in part before Goods described in the cancelled whole or part are delivered. The Authorized Purchaser has ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects,

including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). If the Authorized Purchaser elects to provide Contractor an opportunity to cure the defects, notice of rejection must also specify such opportunity to cure, and the time period in which such cure must be completed.

2.7.1. The Authorized Purchaser may elect to have Contractor deliver substitute conforming Goods at no additional cost to the Authorized Purchaser. In such an event, Contractor shall deliver substitute conforming Goods within ten (10) calendar days of receipt of notice of rejection.

2.7.2. If the Goods are rejected or acceptance is revoked, Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

2.7.3. Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

2.8 REPRESENTATIONS AND WARRANTIES:

2.8.1. **OFFICER STATUS, INSURANCE:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Price Agreement.

2.8.2. **WARRANTY ON MATERIALS, DESIGN AND MANUFACTURE:** Unless otherwise approved, in writing, by the Authorized Purchaser, Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit D to the Price Agreement.

2.8.3. **WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with the highest standards prevalent in the industry.

2.8.4. **WARRANTY OF TITLE:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods that is superior to or infringes upon the rights granted to the Authorized Purchaser under this Contract.

2.8.5. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (“OSHA”), and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.

2.8.6. **MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser, and provide warranty documents to the Authorized Purchaser, at time of delivery at no charge.

2.8.7. **WARRANTIES CUMULATIVE:** The warranties set forth in this Section 2.8 are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford the Authorized Purchaser the broadest warranty protection available.

2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

2.9.1 **LAWS AND REGULATIONS:** Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time.

2.9.2 **STATUTORY TERMS:** Authorized Purchaser’s performance under this Contract is conditioned upon Contractor’s compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

2.9.3 **NONCOMPLIANT GOODS:** In the event of a conflict between the specifications in this Contract and applicable federal or State law, the

law will prevail. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS PS and Authorized Purchaser.

2.9.4 RECALLED GOODS OR COMPONENTS: In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS PS, and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

- a) Reject the Goods.
- b) Revoke its acceptance of the Goods.
- c) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
- d) Terminate the Contract in its entirety or with respect to the recalled or noncompliant Goods.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and shall reimburse Authorized Purchaser for any payments made.

2.10 FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue (“ODR”) all information required by the ODR relative to the Contract. Authorized Purchaser may withhold final payment under the Contract until Contractor has met this requirement.

2.11 SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet (“SDS”) as defined by the OSHA for any Goods provided under the Price Agreement that may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.

2.12 TIME IS OF THE ESSENCE: Time is of the essence for performance of Contractor’s performance obligations under this Contract.

2.13 FORCE MAJEURE: Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party'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. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract within an acceptable time period.

2.14 RESERVED

2.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS: If Authorized Purchaser is an agency of the State of Oregon or another governmental body, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.

2.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

2.16.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser 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 any obligations required by this Contract.

2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

2.17 INDEMNIFICATION:

2.17.1 Contractor shall defend, save, hold harmless, and indemnify the Authorized Purchaser, the State of Oregon and its officers, employees and agents from and against

all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney's fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, "claim") which may be brought or made against any Authorized Purchaser, the State, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of Contractor, its employees or agents, (ii) any act or omission by Contractor that constitutes a material default of this Contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the Goods. Authorized Purchaser or the State shall promptly notify Contractor in writing of any claim of which Authorized Purchaser or State becomes aware. Contractor's obligation under this Section shall not extend to any claim solely caused by (i) the negligent or willful misconduct of Authorized Purchaser, or (ii) Authorized Purchaser's modification of Goods without Contractor's approval and in a manner inconsistent with the purpose and proper usage of such Goods.

2.17.2 The Oregon attorney general must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and that of its officers, employees, or agents under clauses (i) and (ii) above.

2.18 DEFAULT:

2.18.1 **BY CONTRACTOR:** Contractor is in default under this Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
- c) Contractor commits any default of any covenant, representation, warranty, obligation or certification under this Contract, provided however that Contractor may cure the default within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the default is curable by Contractor within an acceptable time period.

2.18.2 BY AUTHORIZED PURCHASER: Authorized Purchaser is in default of this Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice of such failure or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any default of any covenant, warranty, or obligation under this Contract and such default is not cured within ten (10) business days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice.

2.19 REMEDIES:

2.19.1 AUTHORIZED PURCHASER'S REMEDIES: If Contractor is in default under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- a) Termination of the Contract as provided in Section 2.20.2;
- b) Withholding all monies due for invoiced Goods or services that Contractor has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- d) Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.19.2 CONTRACTOR'S REMEDIES: If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in default under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.20.3, Contractor's sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, (b) with respect to services compensable on an hourly basis, a claim for unpaid

invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser, and (c) with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

2.20 TERMINATION:

2.20.1 BY MUTUAL CONSENT: This Contract may be terminated at any time by mutual written consent of Authorized Purchaser and Contractor.

2.20.2 RIGHTS OF AUTHORIZED PURCHASER. Authorized Purchaser may, at its sole discretion, terminate this Contract or other ordering instrument for convenience with thirty (30) days' written notice. Authorized Purchaser may terminate this Contract immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way so as to prohibit either the purchase of the Goods by Authorized Purchasers under the Price Agreement or Authorized Purchaser's payment for such Goods from the planned funding sources; or (c) Contractor is in default of this Contract under Section 2.18.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.

2.20.3 RIGHTS OF THE CONTRACTOR: Contractor may terminate this Contract with ten (10) days' written notice to Authorized Purchaser, if Authorized Purchaser is in default of this Contract as described in Section 2.18.2.

2.21 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles ("GAAP"). During the record-retention period established in this Section, Contractor shall permit DAS PS, the

Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

2.22 NOTICES: Except as otherwise expressly provided in this Contract, any communications between the parties, or notices to be given under this Contract, are effective only if given in writing by personal delivery, email or United States Postal Service, postage prepaid, to the party's authorized representative. For Authorized Purchaser, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the ordering instrument or as later indicated by Authorized Purchaser pursuant to this Section. For Contractor, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the Price Agreement or as later indicated by Contractor pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.

2.23 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS: The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

2.24 GOVERNING LAW: This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

2.25 VENUE; CONSENT TO JURISDICTION:

2.25.1 STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between an Authorized Purchaser that is an agency of the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District

of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25.2 NON STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any Claims between Contractor and an Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such Authorized Purchaser resides, or at the Authorized Purchaser's option, within such other county as the Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.26 SURVIVAL: The following provisions survive termination or expiration of this Contract: Sections 2.8, 2.9.1, 2.9.4, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23, 2.24, 2.25, 2.26; the paragraph in Exhibit C bearing the caption "TAIL COVERAGE"; and any other provision that by its nature would reasonably be expected to survive termination or expiration.

2.27 SEVERABILITY: If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 provision held to be invalid.

2.28 ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee,

transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

2.29 MERGER CLAUSE; AMENDMENT; WAIVER: This Contract constitutes the entire agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter of this Contract. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.

2.30 INTENDED BENEFICIARY. DAS PS is an intended beneficiary of this Contract. However, the parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of DAS PS.

2.31 ASSIGNMENT OF ANTITRUST RIGHTS. Contractor irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Agreement to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Agreement, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

Section 3 – Special Terms for Contracts under this Agreement

- 3.1 CONTRACTOR CERTIFICATIONS: If Contractor offers Goods under the Price Agreement, Contractor shall maintain its status as a manufacturer-authorized product reseller for the Goods throughout the Term of the Price Agreement. If Contractor offers installation and/or maintenance services under this Price Agreement, Contractor shall maintain its status as a manufacturer-authorized service provider. If any required status is discontinued, this Contract may be terminated.
- 3.2 SELECTION PROCESS: This is not an exclusive agreement. DAS PS intends to award multiple Price Agreements and Participating Addenda for the Goods and services offered under this solicitation. Authorized Purchasers who are State of Oregon Agencies must follow the selection process outlined below. Authorized Purchasers who are **not** State of Oregon Agencies may select the Contractor of Authorized Purchaser's choice in compliance with applicable statute and rules.
- 3.2.1 For purchases under \$10,000, Authorized Purchasers who are State Agencies may select the Contractor of their choice in compliance with applicable statute and rule.
- 3.2.2 For purchases over \$10,000 Authorized Purchasers who are State Agencies shall use one of the following selection processes:
- a) **Brand Name Justification** - A documented brand name justification in compliance with applicable statutes and rules.
 - b) **Best Value Analysis** - Authorized Purchaser may conduct a comparison of the offers based upon the following best value analysis process;
 - i. Determine category of need, if more than 3 Contractors offer Goods and services in the category of need, contact at least 3 Contractors and request a quote for the anticipated Goods and services. If 3 or less Contractors offer Goods and Services in category of need, contact all Contractors that provide Goods and services in the category of need and request a quote for anticipated Goods and services. Quoted rates must not exceed the most competitive rates and discounts set forth in this Price Agreement. Authorized Purchaser may provide a deadline for quote response to Contractor.
 - ii. Determine which Contractor and Authorized Dealer provides the best value for Authorized Purchaser. Some or all of the following factors may be used in the Authorized Purchaser's determination of best value (additional factors not listed may also be used) :
 - Applicable discounts and incremental pricing options;
 - Shipping costs;
 - Manufacture timelines;

- Delivery process;
 - Maintenance and repair service levels;
 - Applicable warranties;
 - Contractor's past performance record through reference checks;
 - Contractor's service area;
 - Price comparison
 - Life cycle costing including expected life, salvage value and discounted total cost of ownership.
- iii. Negotiate with one or more Contractors to gain the best value for the desired Goods and services.
- iv. Authorized Purchasers may make award decisions based on price alone, or may also take value and technical and past performance considerations into account.
- c) Document Authorized Purchasers procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.
- 3.3 DELIVERY CHARGES:** For all orders, FOB destination delivery costs up to 60 miles from dealership shall be paid by the Contractor. Additional delivery charges for delivery beyond 60 miles must be based on delivery cost outlined in Exhibit A.
- 3.4 ADVANCE PAYMENT PROHIBITED:** No advance payment shall be made for the Goods or services furnished by Contractor pursuant to this Contract.
- 3.5 NOTICE OF ORDER SHORTAGES:** Contractor shall notify Authorized Purchaser within twenty-four (24) hours of receiving notice that ordered Goods or services will not be available for shipment or scheduling on the scheduled delivery day. This includes a notice to Authorized Purchaser whenever a particular Good will be short-shipped. Notice of unavailability for services or projected short-shipment of Goods will not eliminate Authorized Purchaser's right to pursue all available remedies.
- 3.6 UNAUTHORIZED WORK:** Goods or services provided without or prior to receipt of written authority (i.e. without a Purchase Order duly issued under the Price Agreement) will be considered unauthorized and may not be paid for by Authorized Purchaser.
- 3.7 PRICE QUOTES:** Contractor price quotes will be considered a firm offer (or maximum price) for a set time period of 90 days after issuance. Upon any negotiations with an Authorized Purchaser, Contractor will update the quote, or provide a new "not-to-exceed" final price quote for desired Goods and Services prior to Authorized Purchaser placing an order. Price Quotes must include all costs, including but not limited to, additional options, taxes (including privilege tax and corporate activity or vehicle use tax for State of Oregon), fees, and delivery and registration costs.

Section 4 – Signature of Contractor’s Duly Authorized Representative

4.1 The undersigned represents:

- (a) Signee is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Contractor;
- (b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
- (c) Contractor will furnish the Goods in accordance with Contracts under this Agreement; and
- (d) Contractor shall furnish federal identification number or social security number under a separate document.
- (e) All Contractor affirmations contained in its bid or proposal related to this Agreement are true and correct.
- (f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.
- (g) Contractor has a written policy and practice that meets the requirements, described in ORS279A.112, of preventing sexual harassment, sexual assault, and discriminating against employees who are members of a protected class. Contractor agrees, as a material term of the Price Agreement, to maintain the policy and practiced in force during the entire Price Agreement term.
- (h) Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
- (i) Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor’s compliance with this Section constitutes a material element of this Price Agreement and a failure to comply constitutes a default that entitles Agency to terminate this Price Agreement for cause.
- (j) Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

Agreed:

Contractor's Name: Gresham Automotive, Inc. (dba Gresham Ford)

Authorized Signature: Bess R Wills, GM. S/T

Printed Name of Authorized Signature: Bess R Wills

Title of Authorized Signature: General Manager. Sec. Treasurer

Date: 3-26-21

Contractor Administrative Contact (also referred to as Contract Administrator):

Name	Paul Blankenship
Address	1999 E Powell Blvd Gresham OR 97080
Telephone	503-489-1626
E-mail	paul@greshamford.com

Section 5 – Signature of DAS PS

Agreed:

Authorized Signature: Darwin Kumpula Digitally signed by Darwin Kumpula
Date: 2021.04.01 12:26:57 -07'00'

Date: 4/1/21

DAS PS Contract Administrator (Type or Print):

Name	Brent Lutz
Address	1255 SE Ferry Street, Salem, OR 97301
Telephone	(971) 719-3436
E-mail	brent.l.lutz@oregon.gov

Legal Review:

Approved pursuant to ORS 291.047

Approved by Marc S. Bocci, Senior Assistant Attorney General

Per email dated

Exhibit B


	STATE OF OREGON	PURCHASE ORDER (PO) NO.	PAGE #		
Authorized Purchaser's Authorized Representative		Purchase Order Date	Requisition No.		
Contractor Name and Address		Authorized Purchaser's Invoicing Address			
Contractor FEIN	Price Agreement number	Authorized Purchaser's Authorized Representative Email Address			
Deliver to Address		Authorized Purchaser's Authorized Representative Phone and Fax Number			
		Delivery Schedule or Delivery Date			
Item	Description	Quantity	U/M	Unit Price	Net Price
				Sub Total	
				Freight	
				Total	
<p>This Purchase Order, in addition to any exhibits or addenda attached, is placed against State of Oregon Solicitation # DASPS-2295-20 and Price Agreement #1659. The terms and conditions contained in the Price Agreement apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.</p>					
Agency's Authorized Representative to Make Purchase				Date	

Exhibit C

INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Price Agreement and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than **\$2,000,000** per occurrence. Annual aggregate limit shall not be less than **\$4,000,000**.

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than **\$2,000,000** for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Price Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

SPECIFICATIONS

1. GENERAL PROVISIONS:

- 1.1 **SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be interpreted as requiring that Contractor shall perform to only the best commercial practice and that Contractor shall supply and incorporate into Goods only materials and workmanship of first quality. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, and Contractor failed to seek a formal request for change during the solicitation process for the Agreement, then Contractor shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification.
- 1.2 **ADHERENCE TO THE SPECIFICATIONS:** Deviations from specifications discovered after purchase shall be corrected by Contractor at no cost to the Authorized Purchaser.

2. SPECIFICATIONS:

Specifications below provide a minimum requirement.

- 2.1 All Base Model Vehicles must include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications. All Vehicle Base Models must include two (2) sets of keys and all user manuals.
- 2.2 Additional equipment packages, factory installed options and aftermarket options may also be offered. Cab and Chassis optional Body Upfit may also be offered. Contractor shall provide all sub-contractors for Body Upfits to DAS PS.
- 2.3 All required installation services must be completed by the manufacturer or a manufacturer authorized installer and Contractor must certify completed vehicle conforms to all Federal Motor Vehicle Safety Standards ("FMVSS") and all body modifications must have National Highway Traffic Safety Administration ("NHTSA") certification.
- 2.4 Unless otherwise DAS PS approved, all Vehicles must be no older than 1 year beyond the current Manufacturer's model year, new and unused, free of damage, rust and other defects that may affect appearance or serviceability.
- 2.5 All Vehicles must comply with all federal and State laws, requirements, and regulations applicable to the type and class of Vehicles and contractual services. This includes, but is not limited to, FMVSS, Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State laws, requirements, and regulations. In addition, if any applicable federal or State legislation becomes effective during the term of the Contract regarding the Goods and related services, including but not limited to requirements concerning specifications and safety, and environmental requirements, those requirements shall immediately become a part of the Agreement and each Contract. The Contractor shall meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor shall contact the Contract Administrator immediately.
- 2.6 Vehicles must not contain Dealer's advertising or identification (name, logos, etc.) including all Base Equipment; OEM Options, Accessories, & Implements; OEM & Replacement Parts; and their components. Manufacturer's advertising or identification (name, model, logos, etc.) will be permitted on the respective Vehicles if such

advertising or identification is a Manufacturer's standard on the specific Vehicle.

- 2.7 Acceptable Vehicle fuel and alternative fuel options include gasoline (E-10), diesel, bio-diesel, natural gas (compressed or liquefied), ethanol flex fuel (E-85), liquefied petroleum gas, Hydrogen Fuel Cell Electric Hybrid, Plug-in Hybrid Electric and Plug-in Electric Vehicle. Additional fuel options may be accepted upon DAS PS approval.

	Return To Main	Category: Cab/Chassis Class 1-8				
CLASS Definition	MODEL CODE	MODEL YEAR	VEHICLE TYPE	VEHICLE DESCRIPTION	PRICE Does not include privilege/use tax or CAT	Per Mile DELIVERY outside 60 Mile Radius
Class 1, under 6,000 GVWR						
Class 2, 6,001 - 10,000 GVWR Light-duty F-250 BOX DELETE CLASS #2	F2A F2B X2A X2B W2A W2B	2021 2021 2021 2021 2021 2021	F-250 F-250 F-250 F-250 F-250 F-250	XL Regular Cab 4X2 – Box Delete 142 in. Wheelbase XL Regular Cab 4X4 – Box Delete 142 in. Wheelbase XL SuperCab 4X2 – Box Delete 164 in. Wheelbase XL SuperCab 4X4 – Box Delete 164 in. Wheelbase XL Crew Cab 4X2 – Box Delete 176 in. Wheelbase XL Crew Cab 4X4 – 8' Box 176 in. Wheelbase	\$ 23,597.41 \$ 26,099.18 \$ 25,264.92 \$ 27,774.77 \$ 26,389.05 \$ 28,907.99	\$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05
Class 3, 10,001 - 14,000 GVWR Medium-duty F-350 CHASSIS SRW #1	F3E F3F X3E X3F W3E W3F	2022 2022 2022 2022 2022 2022	F-350 F-350 F-350 F-350 F-350 F-350	XL Chassis Cab Regular Cab 4X2 - 145 in. Wheelbase - SRW XL Chassis Cab Regular Cab 4X4 - 145 in. Wheelbase - SRW XL Chassis Cab SuperCab 4X2 -168 in. Wheelbase SRW XL Chassis Cab SuperCab 4X4 -168 in. Wheelbase SRW XL Chassis Cab Crew Cab 4X2 - 179 in. Wheelbase SRW XL Chassis Cab Crew Cab 4X4 - 179 in. Wheelbase SRW	\$ 26,298.09 \$ 29,436.16 \$ 28,346.37 \$ 31,484.44 \$ 29,123.06 \$ 32,259.11	\$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05
F-350 CHASSIS DRW #2	F3G F3G F3H F3H X3G X3H W3G W3H	2022 2022 2022 2022 2022 2022 2022 2022	F-350 F-350 F-350 F-350 F-350 F-350 F-350 F-350	XL Chassis Cab Regular Cab 4X2 - 145 in. Wheelbase - DRW XL Chassis Cab Regular Cab 4X2 - 169 in. Wheelbase - DRW XL Chassis Cab Regular Cab 4X4 - 145 in. Wheelbase - DRW XL Chassis Cab Regular Cab 4X4 - 169 in. Wheelbase - DRW XL Chassis Cab SuperCab 4X2 -168 in. Wheelbase DRW XL Chassis Cab SuperCab 4X4 -168 in. Wheelbase DRW XL Chassis Cab Crew Cab 4X2 - 179 in. Wheelbase DRW XL Chassis Cab Crew Cab 4X4 - 179 in. Wheelbase DRW	\$ 27,378.79 \$ 27,535.34 \$ 30,493.63 \$ 30,654.22 \$ 29,422.02 \$ 32,564.13 \$ 30,201.74 \$ 33,337.68	\$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05 \$ 2.05
CLASS 3 MEDIUM DUTY #2	E3F E3F	2022 2022	Econoline Econoline	Commercial Cutaway 138 in. Wheelbase - SRW E-350 Commercial Cutaway 158 in. Wheelbase - SRW E-350	\$ 25,880.01 \$ 26,104.23	\$ 2.05 \$ 2.05
Class 4, 14,001 - 16,000 GVWR Medium-duty F-450 CHASSIS CLASS 4 #1	F4G	2022	F-450	XL Chassis Cab Regular Cab 4X2 - 145 in. Wheelbase - DRW	\$ 32,302.54	\$ 2.05

	F4G	2022	F-450	XL Chassis Cab Regular Cab 4X2 - 169 in. Wheelbase - DRW	\$ 32,464.14	\$ 2.05
	F4G	2022	F-450	XL Chassis Cab Regular Cab 4X2 - 193 in. Wheelbase - DRW	\$ 32,616.65	\$ 2.05
	F4G	2022	F-450	XL Chassis Cab Regular Cab 4X2 - 205 in. Wheelbase - DRW	\$ 32,773.20	\$ 2.05
	F4H	2022	F-450	XL Chassis Cab Regular Cab 4X4 - 145 in. Wheelbase - DRW	\$ 34,884.68	\$ 2.05
	F4H	2022	F-450	XL Chassis Cab Regular Cab 4X4 - 169 in. Wheelbase - DRW	\$ 35,039.68	\$ 2.05
	F4H	2022	F-450	XL Chassis Cab Regular Cab 4X4 - 193 in. Wheelbase - DRW	\$ 35,190.68	\$ 2.05
	F4H	2022	F-450	XL Chassis Cab Regular Cab 4X4 - 205 in. Wheelbase - DRW	\$ 35,346.68	\$ 2.05
	X4G	2022	F-450	XL Chassis Cab SuperCab 4X2 -168 in. Wheelbase DRW	\$ 34,343.68	\$ 2.05
	X4G	2022	F-450	XL Chassis Cab SuperCab 4X2 -192 in. Wheelbase DRW	\$ 34,498.68	\$ 2.05
	X4H	2022	F-450	XL Chassis Cab SuperCab 4X4 -168 in. Wheelbase DRW	\$ 37,448.68	\$ 2.05
	X4H	2022	F-450	XL Chassis Cab SuperCab 4X4 -192 in. Wheelbase DRW	\$ 37,600.68	\$ 2.05
	W4G	2022	F-450	XL Chassis Cab Crew Cab 4X2 - 179 in. Wheelbase DRW	\$ 35,101.68	\$ 2.05
	W4G	2022	F-450	XL Chassis Cab Crew Cab 4X2 - 203 in. Wheelbase DRW	\$ 35,261.68	\$ 2.05
	W4H	2022	F-450	XL Chassis Cab Crew Cab 4X4 - 179 in. Wheelbase DRW	\$ 38,212.68	\$ 2.05
	W4H	2022	F-450	XL Chassis Cab Crew Cab 4X4 - 203 in. Wheelbase DRW	\$ 38,363.68	\$ 2.05
CLASS 4 MEDIUM DUTY #2						
	E4F	2022	Econoline	Commercial Cutaway 158 in. Wheelbase - DRW E-450	\$ 28,098.98	\$ 2.05
	E4F	2022	Econoline	Commercial Cutaway 176 in. Wheelbase - DRW E-450	\$ 28,753.46	\$ 2.05
Class 5, 16,001 - 19,500 GVWR Medium-duty F-550 CHASSIS CLASS 5						
	F5G	2022	F-550	XL Chassis Cab Regular Cab 4X2 - 145 in. Wheelbase - DRW	\$ 33,286.68	\$ 2.05
	F5G	2022	F-550	XL Chassis Cab Regular Cab 4X2 - 169 in. Wheelbase - DRW	\$ 33,442.68	\$ 2.05
	F5G	2022	F-550	XL Chassis Cab Regular Cab 4X2 - 193 in. Wheelbase - DRW	\$ 33,597.68	\$ 2.05
	F5G	2022	F-550	XL Chassis Cab Regular Cab 4X2 - 205 in. Wheelbase - DRW	\$ 33,748.68	\$ 2.05
	F5H	2022	F-550	XL Chassis Cab Regular Cab 4X4 - 145 in. Wheelbase - DRW	\$ 35,865.68	\$ 2.05
	F5H	2022	F-550	XL Chassis Cab Regular Cab 4X4 - 169 in. Wheelbase - DRW	\$ 36,016.68	\$ 2.05
	F5H	2022	F-550	XL Chassis Cab Regular Cab 4X4 - 193 in. Wheelbase - DRW	\$ 36,166.68	\$ 2.05
	F5H	2022	F-550	XL Chassis Cab Regular Cab 4X4 - 205 in. Wheelbase - DRW	\$ 36,321.68	\$ 2.05
	X5G	2022	F-550	XL Chassis Cab SuperCab 4X2 -168 in. Wheelbase DRW	\$ 35,318.68	\$ 2.05
	X5G	2022	F-550	XL Chassis Cab SuperCab 4X2 -192 in. Wheelbase DRW	\$ 35,470.68	\$ 2.05
	X5H	2022	F-550	XL Chassis Cab SuperCab 4X4 -168 in. Wheelbase DRW	\$ 38,420.68	\$ 2.05
	X5H	2022	F-550	XL Chassis Cab SuperCab 4X4 -192 in. Wheelbase DRW	\$ 38,576.68	\$ 2.05
	W5G	2022	F-550	XL Chassis Cab Crew Cab 4X2 - 179 in. Wheelbase DRW	\$ 36,078.68	\$ 2.05
	W5G	2022	F-550	XL Chassis Cab Crew Cab 4X2 - 203 in. Wheelbase DRW	\$ 36,233.68	\$ 2.05
	W5H	2022	F-550	XL Chassis Cab Crew Cab 4X4 - 179 in. Wheelbase DRW	\$ 39,184.68	\$ 2.05
	W5H	2022	F-550	XL Chassis Cab Crew Cab 4X4 - 203 in. Wheelbase DRW	\$ 39,344.68	\$ 2.05
Class 6, 19,501 - 26,000 GVWR Light-heavy Duty F-600 CHASSIS CLASS 6						
	F6K	2022	F-600	XL Chassis Cab Regular Cab 4X2 - 145 in. Wheelbase - DRW	\$ 36,935.68	\$ 2.05
	F6K	2022	F-600	XL Chassis Cab Regular Cab 4X2 - 169 in. Wheelbase - DRW	\$ 37,090.68	\$ 2.05
	F6K	2022	F-600	XL Chassis Cab Regular Cab 4X2 - 193 in. Wheelbase - DRW	\$ 37,065.68	\$ 2.05
	F6K	2022	F-600	XL Chassis Cab Regular Cab 4X2 - 205 in. Wheelbase - DRW	\$ 37,400.68	\$ 2.05
	F6L	2022	F-600	XL Chassis Cab Regular Cab 4X4 - 145 in. Wheelbase - DRW	\$ 39,975.68	\$ 2.05
	F6L	2022	F-600	XL Chassis Cab Regular Cab 4X4 - 169 in. Wheelbase - DRW	\$ 39,668.68	\$ 2.05
	F6L	2022	F-600	XL Chassis Cab Regular Cab 4X4 - 193 in. Wheelbase - DRW	\$ 39,819.68	\$ 2.05
	F6L	2022	F-600	XL Chassis Cab Regular Cab 4X4 - 205 in. Wheelbase - DRW	\$ 39,975.68	\$ 2.05

CITY OF PORTLAND PARTICIPATING AGREEMENT #

STATE OF OREGON AND THE OREGON COOPERATIVE PURCHASING PROGRAM (ORCPP)

through

ORCPP AGREEMENT #1639

DSU Peterbilt and GMC, Inc.

4810 N. Basin Avenue
Portland, OR 97217

Payment location: Payments must be sent to the address specified in the Contractor's invoice.

RE: GMC, Peterbilt and Isuzu Vehicles

SPECIFICATIONS FOR GOODS: Contractor shall provide goods for the City of Portland as described in the State of Oregon Agreement #1639: Vehicles, including passenger cars, pickup trucks, cab and chassis, passenger/cargo vans, police pursuit rated vehicles, sport utility vehicles, crossover utility vehicles, alternative fuel vehicles and electric vehicles.

EFFECTIVE DATE AND DURATION: The initial term of this Agreement shall begin on June 21, 2021 and shall expire on April 30, 2023, unless terminated sooner as provided herein.

CONSIDERATION: The City agrees to pay Contractor a sum not to exceed \$4,000,000 for receipt and acceptance of the Goods in accordance with the schedule identified in Exhibit A, of the State of Oregon Agreement #1639 // as identified in Attachment A herein attached. Unit price payments shall be made to Contractor by the City on a monthly basis for the total Product delivered to the City's specified location and accepted by the City. Acceptance occurs when the City authorizes payment of the invoice. Unit prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor upon request.

DELIVERY: All equipment, goods and/or materials, or services shall be FOB delivered to the City of Portland, as specified on the purchase order.

RESTRICTIONS: Division of Asset Management is authorized to use this Agreement.

Attached: State of Oregon Agreement

PRICE AGREEMENT NUMBER:

PRICE AGREEMENT TITLE: GMC, Peterbilt and Isuzu Vehicles

CITY OF PORTLAND SIGNATURES:

By: _____ Date: _____
Bureau Director

By: _____ Date: _____
Chief Procurement Officer

By: _____ Date: _____
N/A
Elected Official

Approved:

By: _____ Date: _____
N/A
Office of City Auditor

Approved as to Form:

By: _____ Date: _____
Office of City Attorney

State of Oregon



PRICE AGREEMENT WITH

DSU Peterbilt and GMC, Inc.

FOR

GMC, Peterbilt and Isuzu Vehicles
Price Agreement # 1639

This Price Agreement (“Agreement”) is between the State of Oregon (the “State”), acting by and through its Department of Administrative Services Procurement Services (“DAS PS” or “Agency”) and DSU Peterbilt and GMC, Inc., an Oregon Corporation (“Contractor”).

Section 1 – Agreement

1.1 Parties

- 1.1.1 The only parties to this Agreement are Contractor and DAS PS.
- 1.1.2 Authorized Purchasers may purchase goods and related services specified in Exhibit A (“Goods”) by issuing ordering instruments that create and become part of separate contracts (“Contracts”). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and Contractor. DAS PS is an intended beneficiary of each Contract created by an ordering instrument.
- 1.1.3 As used in this Agreement, “Authorized Purchaser” means: State agencies of Oregon, Oregon Cooperative Procurement Program (“ORCPP”) participants and authorized members to the State of Washington Master Contracts Usage Agreement (MCUA). Contractor may be required to obtain manufacturer authorization prior to an MCUA member’s purchase of Goods under this Agreement.

1.2 Ordering Instrument

- 1.2.1 Authorized Purchasers may order Goods during the Term of this Agreement using an ordering instrument:
 - a) Authorized Purchasers who are agencies of the State of Oregon under DAS procurement authority may issue ordering instruments under this Price Agreement for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, Authorized Purchasers who are agencies of the State of Oregon must obtain all other necessary approvals, including but not limited to legal sufficiency approval as required.
 - b) Authorized Purchasers that are agencies of the State of Oregon may use either of the following as ordering instruments: i) the DAS PS approved purchase order form. Exhibit B is a sample DAS PS approved purchase order form; or ii) an electronic ordering method when the Authorized Purchaser is using a Small Purchase Order Transaction System (SPOTS) card. Unless expressly

authorized by DAS PS in writing, Contractor shall not accept a different type of ordering instrument from a State agency.

- c) Authorized Purchasers that are not agencies of the State of Oregon may use their own purchase order forms as ordering instruments.
- d) To be effective, the ordering instrument must specify all of the following:
 - i) Language stating that the ordering instrument is submitted under this Agreement (and include the Agreement reference number from the Agreement coversheet).
 - ii) The specific Goods and quantity of each item ordered.
 - iii) The net price.
 - iv) The requested delivery schedule.
 - v) The delivery location(s).
 - vi) The invoicing address.
 - vii) The Authorized Purchaser's authorized representative and relevant contact information, including an e-mail address or fax number.

1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Agreement. Additional, different or conflicting terms and conditions in any purchase order or any other form of either an Authorized Purchaser or the Contractor may not vary the terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.

1.2.3 Contractor shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates.

1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within three (3) business days after it is received. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail if the email address is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.

1.2.5 Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and Contractor and include the terms set forth in Sections 2 and 3. As used in the Contracts, "Price Agreement" means this Agreement.

1.2.6 DAS PS is not obligated or liable under an ordering instrument unless DAS PS is purchasing Goods as the Authorized Purchaser.

1.2.7 Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument or to purchase any Goods.

- 1.2.8 Contractor shall reject an ordering instrument from any entity that is not an Authorized Purchaser under this Agreement. Contractor may verify that Authorized Purchasers are ORCPP participants at the following address:

<https://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx>

Contractor may verify that Authorized Purchasers are MCUA members at the following address:

<https://apps.des.wa.gov/DESContracts/Home/MCUAListing>

- 1.2.9 Contractor shall reject an ordering instrument that does not meet the requirements of this Agreement.

1.3 Prices

- 1.3.1 Except as provided in this Section, during the Term of this Agreement, Contractor shall offer Goods to Authorized Purchasers at prices that do not exceed the prices listed in Exhibit A. The pricing for this Agreement is in U.S. dollars.

- 1.3.2 Contractor and an Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between Contractor and Authorized Purchaser.

- 1.3.3 Contractor shall subtract from percentages or prices charged to Authorized Purchasers any unit price decrease that has been achieved or gained by the Contractor, whether through the manufacturer or otherwise. Contractor shall give Authorized Purchasers the immediate benefit of the decrease. Contractor shall promptly notify the DAS-PS Contract Administrator ("Contract Administrator") of the amount and effective date of the decrease.

- 1.3.4 Either party to this Agreement may request a price adjustment, or an adjustment to the discount percentage, for some or all of the Goods, subject to Section 1.3.5 below.

- 1.3.5 Contractor may request unit price increases from DAS PS following the first year of the term of the Contract, but no more than once in any 12-month period. Contractor must submit a request to the Contract Administrator in writing at least 60 days before the proposed effective date of the increase, or at such other time as specified by the Contract Administrator for submittal of the request. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS PS. DAS PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or

Consumer Price Index data, published MSRP or any other relevant manufacturer or industry data substantiating the increase.

- 1.3.6 Discontinued Goods may be subtracted and new Goods meeting or exceeding the RFP specifications may be added throughout the term of this Agreement. Goods may be adjusted upon both parties' approval in writing, without a signed amendment to this Agreement. All adjustments will be included on a revised Exhibit A.

1.4 Contractor Reporting and Payment Requirements

Contractor will be required to submit Volume Sales Reports and Vendor Collected Administrative Fees.

1.4.1. Volume Sales Reports

Pursuant to the process defined by DAS PS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Volume Sales Report ("VSR") to DAS PS on a quarterly basis; the quarterly report is due no later than thirty (30) calendar days from the end of the applicable quarter. (For purposes of this Agreement, quarters end March 31, June 30, September 30 and December 31.) Upon written notice from DAS PS, **Contractor shall submit the VSR on a monthly basis, VSR due date to be determined by DAS PS.**

The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating "***No Sales for the Reporting Period***".

1.4.2. Vendor Collected Administrative Fee

Pursuant to the process defined by DAS PS and published at <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Vendor Collected Administrative Fee ("VCAF"), as directed by DAS PS. The VCAF is a charge equal to one percent (1%), not to exceed a total of \$325 per vehicle, of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the reporting period.

1.5 Term of Agreement

- 1.5.1 The initial term of this Agreement begins on the later of May 1, 2021 or the date this Agreement has been signed by DAS PS and Contractor and all required approvals have been obtained (the "Effective Date") and expires two (2) years after the Effective Date unless sooner terminated or extended as provided in this Agreement. DAS PS has the option to extend this Agreement for one or more additional 1-year terms, provided that the initial term, together with all extensions, shall not exceed a total of five (5) years. DAS PS may exercise these options to extend by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then current term. The initial term, together with all extension terms are collectively referred to herein as the "Term" of this Agreement.
- 1.5.2 Notwithstanding the foregoing, DAS PS reserves the right in its sole discretion to extend the Agreement for a maximum of one (1) calendar month beyond the end of any term. DAS PS shall notify Contractor in writing of the one (1) month extension. Consecutive one (1) month extensions obtained under this Section 1.5.2 are not allowed.
- 1.5.3 After termination or expiration of this Agreement, Contractor shall not accept new ordering instruments.
- 1.5.4 Termination of this Agreement also terminates "blanket" ordering instruments in which the Contractor is not required to deliver specific quantities of Goods at specific times. The intent of this paragraph is to terminate what is commonly known as blanket purchase orders (orders that may contain details of the Goods, but under which actual sales of Goods are made by periodic releases that specify a date for delivery of specific Goods).
- 1.5.5 Except as provided in Section 1.5.4, termination of this Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument that was accepted before termination of this Agreement, for non-recurring deliveries of Goods.
- 1.5.6 DAS PS may, in its sole discretion, terminate this Agreement upon 30 calendar days' written notice to Contractor for any or no reason.

1.6 Insurance

Contractor shall obtain insurance specified in Exhibit C and shall maintain the insurance until all Contracts under this Agreement are terminated.

1.7 Miscellaneous

- 1.7.1 Choice of Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- 1.7.2 Designation of Forum and Consent to Jurisdiction. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 1.7.3 Amendments. Unless otherwise defined in this Agreement, no amendment of this Agreement is valid unless it is in writing and signed by the parties.
- 1.7.4 Transfer. Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of DAS PS. DAS PS' consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided, their permitted legal successors and assigns.
- 1.7.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 1.7.6 Force Majeure. Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS PS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement within an acceptable time period. In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of

Contractor's obligations with all reasonable diligence. DAS PS, in its sole discretion, may extend the period for performance under this Agreement to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

- 1.7.7 Entire Agreement. This Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.
- 1.7.8 Notices. Except as otherwise expressly provided in this Price Agreement, any communications between the parties, or notices to be given under this Price Agreement, are effective only if given in writing or by personal delivery, email or United States Postal Service, postage prepaid, to the Contract Administrator for Contractor or DAS-PS, as applicable, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.
- 1.7.9 No Third Party Beneficiaries. DAS PS and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will 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 Agreement.
- 1.7.10 Waiver. The failure of DAS PS to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by DAS PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such a failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.
- 1.7.11 Certification of Compliance with Tax Laws. Contractor has complied with the tax laws of this State and all applicable tax laws of political subdivisions of this State. Contractor shall, throughout the duration of this Agreement and any Contract and any extensions thereof, comply with all tax laws of this State and all applicable tax laws of any

political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) 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; (iii) Any tax provisions imposed by a political subdivision of this State that applied to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this subsection 1.7.11 constitutes a material default of this Agreement and any Contract. Any failure to comply entitles DAS PS or Authorized Purchaser to terminate this Agreement or any Contract, as applicable and to pursue and recover any and all damages that arise from the default and the termination of this Agreement or any Contract, and to pursue any or all of the remedies available under this Agreement or any Contract, at law, or in equity, including but not limited to:

- Termination of this Agreement or any Contract, as applicable, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's or Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default of this Agreement or any Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods, services and applications.

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

1.7.13 Records Archiving. Contractor shall retain, maintain and keep accessible all records relevant to this Price Agreement (the "Records")

for a minimum of six (6) years, or such longer period as may be required by applicable law following termination of this Agreement. Such period shall be further extended until the conclusion of any audit, controversy or litigation commenced during such period and arising out of or related to this Agreement or any Contract. Financial Records must be kept in accordance with Generally Accepted Accounting Principles. During the record-retention period established in this Section, Contractor shall permit DAS-PS, the State of Oregon and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

- 1.7.14 Performance Evaluations. DAS PS may conduct evaluations of Contractor's performance during the term of this Agreement. DAS PS will compile and maintain completed evaluations, which will become a written record of Contractor's performance. DAS PS may also maintain as part of that written record information obtained from Contractor during an exit interview following Contract termination. DAS PS may provide copies of any documents in the written record to the Contractor and third parties upon request. DAS PS may use performance evaluations in any way it deems necessary, in its sole discretion, including but not limited to making responsibility determinations and decisions to award contracts.
- 1.7.15 Reporting. This Agreement and Contract(s) of Authorized Purchasers who are State agencies will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Agreement or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Agreement or any Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.
- 1.7.16 Survival: All rights and obligations cease upon termination or expiration of this Price Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination, including without limitation this Section 1.7.16, and provisions regarding warranties and liabilities, independent Contractor status and taxes and withholding, compensation, Contractor's representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

Section 2 – Standard Terms for Contracts Under This Agreement

- 2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** The Contract consists of the ordering instrument and the provisions in Sections 2 and 3 of the Price Agreement. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence.
- 2.2 PAYMENT:** Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under this Contract. AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT. Subject to Authorized Purchaser's acceptance of Goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.
- 2.3 OVERDUE CHARGES:** At Contractor's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).
- 2.4 PAYMENT ADDRESS:** Payments must be sent to the address specified in the Contractor's invoice.
- 2.5 INVOICES:** Contractor shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. Contractor shall include all of the following in its invoice:
- 2.5.1. Price Agreement number.
 - 2.5.2. Ordering instrument number.
 - 2.5.3. Goods ordered.
 - 2.5.4. Date delivered.
 - 2.5.5. Volume or quantity of Goods delivered.
 - 2.5.6. The price per item.
 - 2.5.7. The total amount invoiced.
 - 2.5.8. The address to which payment is to be sent.
 - 2.5.9. Additional Taxes (e.g. privilege or vehicle use tax and corporate activity tax) (determined based on the state of purchase)
- 2.6 PRICES:** Contractor represents that all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.
- 2.7 CANCELLATION; INSPECTIONS AND ACCEPTANCE:** The Authorized Purchaser may cancel an order in whole or in part before Goods described in the cancelled whole or part are delivered. The Authorized Purchaser has ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects,

including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). If the Authorized Purchaser elects to provide Contractor an opportunity to cure the defects, notice of rejection must also specify such opportunity to cure, and the time period in which such cure must be completed.

2.7.1. The Authorized Purchaser may elect to have Contractor deliver substitute conforming Goods at no additional cost to the Authorized Purchaser. In such an event, Contractor shall deliver substitute conforming Goods within ten (10) calendar days of receipt of notice of rejection.

2.7.2. If the Goods are rejected or acceptance is revoked, Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

2.7.3. Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

2.8 REPRESENTATIONS AND WARRANTIES:

2.8.1. **OFFICER STATUS, INSURANCE:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Price Agreement.

2.8.2. **WARRANTY ON MATERIALS, DESIGN AND MANUFACTURE:** Unless otherwise approved, in writing, by the Authorized Purchaser, Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit D to the Price Agreement.

2.8.3. **WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with the highest standards prevalent in the industry.

2.8.4. **WARRANTY OF TITLE:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods that is superior to or infringes upon the rights granted to the Authorized Purchaser under this Contract.

2.8.5. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (“OSHA”), and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.

2.8.6. **MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser, and provide warranty documents to the Authorized Purchaser, at time of delivery at no charge.

2.8.7. **WARRANTIES CUMULATIVE:** The warranties set forth in this Section 2.8 are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford the Authorized Purchaser the broadest warranty protection available.

2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

2.9.1 **LAWS AND REGULATIONS:** Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time.

2.9.2 **STATUTORY TERMS:** Authorized Purchaser’s performance under this Contract is conditioned upon Contractor’s compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

2.9.3 **NONCOMPLIANT GOODS:** In the event of a conflict between the specifications in this Contract and applicable federal or State law, the

law will prevail. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS PS and Authorized Purchaser.

2.9.4 RECALLED GOODS OR COMPONENTS: In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS PS, and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

- a) Reject the Goods.
- b) Revoke its acceptance of the Goods.
- c) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
- d) Terminate the Contract in its entirety or with respect to the recalled or noncompliant Goods.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and shall reimburse Authorized Purchaser for any payments made.

2.10 FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue (“ODR”) all information required by the ODR relative to the Contract. Authorized Purchaser may withhold final payment under the Contract until Contractor has met this requirement.

2.11 SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet (“SDS”) as defined by the OSHA for any Goods provided under the Price Agreement that may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.

2.12 TIME IS OF THE ESSENCE: Time is of the essence for performance of Contractor’s performance obligations under this Contract.

2.13 FORCE MAJEURE: Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party'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. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract within an acceptable time period.

2.14 RESERVED

2.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS: If Authorized Purchaser is an agency of the State of Oregon or another governmental body, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.

2.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

2.16.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser 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 any obligations required by this Contract.

2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

2.17 INDEMNIFICATION:

2.17.1 Contractor shall defend, save, hold harmless, and indemnify the Authorized Purchaser, the State of Oregon and its officers, employees and agents from and against

all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney's fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, "claim") which may be brought or made against any Authorized Purchaser, the State, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of Contractor, its employees or agents, (ii) any act or omission by Contractor that constitutes a material default of this Contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the Goods. Authorized Purchaser or the State shall promptly notify Contractor in writing of any claim of which Authorized Purchaser or State becomes aware. Contractor's obligation under this Section shall not extend to any claim solely caused by (i) the negligent or willful misconduct of Authorized Purchaser, or (ii) Authorized Purchaser's modification of Goods without Contractor's approval and in a manner inconsistent with the purpose and proper usage of such Goods.

2.17.2 The Oregon attorney general must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and that of its officers, employees, or agents under clauses (i) and (ii) above.

2.18 DEFAULT:

2.18.1 **BY CONTRACTOR:** Contractor is in default under this Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
- c) Contractor commits any default of any covenant, representation, warranty, obligation or certification under this Contract, provided however that Contractor may cure the default within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the default is curable by Contractor within an acceptable time period.

2.18.2 BY AUTHORIZED PURCHASER: Authorized Purchaser is in default of this Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice of such failure or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any default of any covenant, warranty, or obligation under this Contract and such default is not cured within ten (10) business days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice.

2.19 REMEDIES:

2.19.1 AUTHORIZED PURCHASER'S REMEDIES: If Contractor is in default under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- a) Termination of the Contract as provided in Section 2.20.2;
- b) Withholding all monies due for invoiced Goods or services that Contractor has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- d) Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.19.2 CONTRACTOR'S REMEDIES: If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in default under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.20.3, Contractor's sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, (b) with respect to services compensable on an hourly basis, a claim for unpaid

invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser, and (c) with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

2.20 TERMINATION:

2.20.1 BY MUTUAL CONSENT: This Contract may be terminated at any time by mutual written consent of Authorized Purchaser and Contractor.

2.20.2 RIGHTS OF AUTHORIZED PURCHASER. Authorized Purchaser may, at its sole discretion, terminate this Contract or other ordering instrument for convenience with thirty (30) days' written notice. Authorized Purchaser may terminate this Contract immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way so as to prohibit either the purchase of the Goods by Authorized Purchasers under the Price Agreement or Authorized Purchaser's payment for such Goods from the planned funding sources; or (c) Contractor is in default of this Contract under Section 2.18.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.

2.20.3 RIGHTS OF THE CONTRACTOR: Contractor may terminate this Contract with ten (10) days' written notice to Authorized Purchaser, if Authorized Purchaser is in default of this Contract as described in Section 2.18.2.

2.21 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to the this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles ("GAAP"). During the record-retention period established in this Section, Contractor shall permit DAS PS,

the Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

2.22 NOTICES: Except as otherwise expressly provided in this Contract, any communications between the parties, or notices to be given under this Contract, are effective only if given in writing by personal delivery, email or United States Postal Service, postage prepaid, to the party's authorized representative. For Authorized Purchaser, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the ordering instrument or as later indicated by Authorized Purchaser pursuant to this Section. For Contractor, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the Price Agreement or as later indicated by Contractor pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.

2.23 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS: The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

2.24 GOVERNING LAW: This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

2.25 VENUE; CONSENT TO JURISDICTION:

2.25.1 STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between an Authorized Purchaser that is an agency of the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District

of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25.2 NON STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any Claims between Contractor and an Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such Authorized Purchaser resides, or at the Authorized Purchaser's option, within such other county as the Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.26 SURVIVAL: The following provisions survive termination or expiration of this Contract: Sections 2.8, 2.9.1, 2.9.4, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23, 2.24, 2.25, 2.26; the paragraph in Exhibit C bearing the caption "TAIL COVERAGE"; and any other provision that by its nature would reasonably be expected to survive termination or expiration.

2.27 SEVERABILITY: If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 provision held to be invalid.

2.28 ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee,

transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

2.29 MERGER CLAUSE; AMENDMENT; WAIVER: This Contract constitutes the entire agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter of this Contract. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.

2.30 INTENDED BENEFICIARY. DAS PS is an intended beneficiary of this Contract. However, the parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of DAS PS.

2.31 ASSIGNMENT OF ANTITRUST RIGHTS. Contractor irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Agreement to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Agreement, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

Section 3 – Special Terms for Contracts under this Agreement

- 3.1 **CONTRACTOR CERTIFICATIONS:** If Contractor offers Goods under the Price Agreement, Contractor shall maintain its status as a manufacturer-authorized product reseller for the Goods throughout the Term of the Price Agreement. If Contractor offers installation and/or maintenance services under this Price Agreement, Contractor shall maintain its status as a manufacturer-authorized service provider. If any required status is discontinued, this Contract may be terminated.
- 3.2 **SELECTION PROCESS:** This is not an exclusive agreement. DAS PS intends to award multiple Price Agreements and Participating Addenda for the Goods and services offered under this solicitation. Authorized Purchasers who are State of Oregon Agencies must follow the selection process outlined below. Authorized Purchasers who are **not** State of Oregon Agencies may select the Contractor of Authorized Purchaser's choice in compliance with applicable statute and rules.
- 3.2.1 For purchases under \$10,000, Authorized Purchasers who are State Agencies may select the Contractor of their choice in compliance with applicable statute and rule.
- 3.2.2 For purchases over \$10,000 Authorized Purchasers who are State Agencies shall use one of the following selection processes:
- a) **Brand Name Justification** - A documented brand name justification in compliance with applicable statutes and rules.
 - b) **Best Value Analysis** - Authorized Purchaser may conduct a comparison of the offers based upon the following best value analysis process;
 - i. Determine category of need, if more than 3 Contractors offer Goods and services in the category of need, contact at least 3 Contractors and request a quote for the anticipated Goods and services. If 3 or less Contractors offer Goods and Services in category of need, contact all Contractors that provide Goods and services in the category of need and request a quote for anticipated Goods and services. Quoted rates must not exceed the most competitive rates and discounts set forth in this Price Agreement. Authorized Purchaser may provide a deadline for quote response to Contractor.
 - ii. Determine which Contractor and Authorized Dealer provides the best value for Authorized Purchaser. Some or all of the following factors may be used in the Authorized Purchaser's determination of best value (additional factors not listed may also be used) :
 - Applicable discounts and incremental pricing options;
 - Shipping costs;
 - Manufacture timelines;

- Delivery process;
 - Maintenance and repair service levels;
 - Applicable warranties;
 - Contractor's past performance record through reference checks;
 - Contractor's service area;
 - Price comparison
 - Life cycle costing including expected life, salvage value and discounted total cost of ownership.
- iii. Negotiate with one or more Contractors to gain the best value for the desired Goods and services.
- iv. Authorized Purchasers may make award decisions based on price alone, or may also take value and technical and past performance considerations into account.
- c) Document Authorized Purchasers procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.
- 3.3 DELIVERY CHARGES:** For all orders, FOB destination delivery costs up to 60 miles from dealership shall be paid by the Contractor. Additional delivery charges for delivery beyond 60 miles must be based on delivery cost outlined in Exhibit A.
- 3.4 ADVANCE PAYMENT PROHIBITED:** No advance payment shall be made for the Goods or services furnished by Contractor pursuant to this Contract.
- 3.5 NOTICE OF ORDER SHORTAGES:** Contractor shall notify Authorized Purchaser within twenty-four (24) hours of receiving notice that ordered Goods or services will not be available for shipment or scheduling on the scheduled delivery day. This includes a notice to Authorized Purchaser whenever a particular Good will be short-shipped. Notice of unavailability for services or projected short-shipment of Goods will not eliminate Authorized Purchaser's right to pursue all available remedies.
- 3.6 UNAUTHORIZED WORK:** Goods or services provided without or prior to receipt of written authority (i.e. without a Purchase Order duly issued under the Price Agreement) will be considered unauthorized and may not be paid for by Authorized Purchaser.
- 3.7 PRICE QUOTES:** Contractor price quotes will be considered a firm offer (or maximum price) for a set time period of 90 days after issuance. Upon any negotiations with an Authorized Purchaser, Contractor will update the quote, or provide a new "not-to-exceed" final price quote for desired Goods and Services prior to Authorized Purchaser placing an order. Price Quotes must include all costs, including but not limited to, additional options, taxes (including privilege tax and corporate activity or vehicle use tax for State of Oregon), fees, and delivery and registration costs.

Section 4 – Signature of Contractor’s Duly Authorized Representative

4.1 The undersigned represents:

- (a) Signee is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Contractor;
- (b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
- (c) Contractor will furnish the Goods in accordance with Contracts under this Agreement; and
- (d) Contractor shall furnish federal identification number or social security number under a separate document.
- (e) All Contractor affirmations contained in its bid or proposal related to this Agreement are true and correct.
- (f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.
- (g) Contractor has a written policy and practice that meets the requirements, described in ORS279A.112, of preventing sexual harassment, sexual assault, and discriminating against employees who are members of a protected class. Contractor agrees, as a material term of the Price Agreement, to maintain the policy and practiced in force during the entire Price Agreement term.
- (h) Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
- (i) Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor’s compliance with this Section constitutes a material element of this Price Agreement and a failure to comply constitutes a default that entitles Agency to terminate this Price Agreement for cause.
- (j) Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

Agreed:

*

Contractor's Name: DSU Peterbilt & GMC

Authorized Signature: *Jan W. Yost*

Printed Name of Authorized Signature: JAN W YOST

Title of Authorized Signature: CEO OWNER

Date: 4/19/2021

Contractor Administrative Contact (also referred to as Contract Administrator):

Name	<u>Vincent Curletto</u>
Address	<u>4810 N. BASIN ave</u>
Telephone	<u>503-535-3027</u>
E-mail	<u>vcurlitto@dsu-trucks.com</u>

Section 5 – Signature of DAS PS

Agreed:

Authorized Signature: Darwin Kumpula Digitally signed by Darwin Kumpula
Date: 2021.04.28 14:29:56 -07'00'

Date: 28 April 2021

DAS PS Contract Administrator (Type or Print):

Name	Brent Lutz
Address	1255 SE Ferry Street, Salem, OR 97301
Telephone	(971) 719-3436
E-mail	brent.l.lutz@oregon.gov

Legal Review:

Approved pursuant to ORS 291.047

Approved by Marc S. Bocci, Senior Assistant Attorney General

Per email dated March 11, 2021

Exhibit B


	STATE OF OREGON	PURCHASE ORDER (PO) NO.	PAGE #		
Authorized Purchaser's Authorized Representative		Purchase Order Date	Requisition No.		
Contractor Name and Address		Authorized Purchaser's Invoicing Address			
Contractor FEIN	Price Agreement number	Authorized Purchaser's Authorized Representative Email Address			
Deliver to Address		Authorized Purchaser's Authorized Representative Phone and Fax Number			
		Delivery Schedule or Delivery Date			
Item	Description	Quantity	U/M	Unit Price	Net Price
				Sub Total	
				Freight	
				Total	
<p>This Purchase Order, in addition to any exhibits or addenda attached, is placed against State of Oregon Solicitation # DASPS-2295-20 and Price Agreement #1639. The terms and conditions contained in the Price Agreement apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.</p>					
Agency's Authorized Representative to Make Purchase				Date	

Exhibit C

INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor's expense the insurance specified in **this Exhibit C** prior to performing under this Price Agreement and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than **\$2,000,000** per occurrence. Annual aggregate limit shall not be less than **\$4,000,000**.

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than **\$2,000,000** for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Price Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

SPECIFICATIONS

1. GENERAL PROVISIONS:

- 1.1 **SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be interpreted as requiring that Contractor shall perform to only the best commercial practice and that Contractor shall supply and incorporate into Goods only materials and workmanship of first quality. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, and Contractor failed to seek a formal request for change during the solicitation process for the Agreement, then Contractor shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification.
- 1.2 **ADHERENCE TO THE SPECIFICATIONS:** Deviations from specifications discovered after purchase shall be corrected by Contractor at no cost to the Authorized Purchaser.

2. SPECIFICATIONS:

Specifications below provide a minimum requirement.

- 2.1 All Base Model Vehicles must include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications. All Vehicle Base Models must include two (2) sets of keys and all user manuals.
- 2.2 Additional equipment packages, factory installed options and aftermarket options may also be offered. Cab and Chassis optional Body Upfit may also be offered. Contractor shall provide all sub-contractors for Body Upfits to DAS PS.
- 2.3 All required installation services must be completed by the manufacturer or a manufacturer authorized installer and Contractor must certify completed vehicle conforms to all Federal Motor Vehicle Safety Standards ("FMVSS") and all body modifications must have National Highway Traffic Safety Administration ("NHTSA") certification.
- 2.4 Unless otherwise DAS PS approved, all Vehicles must be no older than 1 year beyond the current Manufacturer's model year, new and unused, free of damage, rust and other defects that may affect appearance or serviceability.
- 2.5 All Vehicles must comply with all federal and State laws, requirements, and regulations applicable to the type and class of Vehicles and contractual services. This includes, but is not limited to, FMVSS, Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State laws, requirements, and regulations. In addition, if any applicable federal or State legislation becomes effective during the term of the Contract regarding the Goods and related services, including but not limited to requirements concerning specifications and safety, and environmental requirements, those requirements shall immediately become a part of the Agreement and each Contract. The Contractor shall meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor shall contact the Contract Administrator immediately.
- 2.6 Vehicles must not contain Dealer's advertising or identification (name, logos, etc.) including all Base Equipment; OEM Options, Accessories, & Implements; OEM & Replacement Parts; and their components. Manufacturer's advertising or identification (name, model, logos, etc.) will be permitted on the respective Vehicles if such

advertising or identification is a Manufacturer's standard on the specific Vehicle.

- 2.7 Acceptable Vehicle fuel and alternative fuel options include gasoline (E-10), diesel, bio-diesel, natural gas (compressed or liquefied), ethanol flex fuel (E-85), liquefied petroleum gas, Hydrogen Fuel Cell Electric Hybrid, Plug-in Hybrid Electric and Plug-in Electric Vehicle. Additional fuel options may be accepted upon DAS PS approval.

