

CITY OF PORTLAND
PRICE AGREEMENT NO. 31001226

for

ANNUAL SUPPLY OF FUEL

This Price Agreement ("Contract") is between the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called "City" and **Associated Petroleum Products**, an Oregon corporation, hereinafter called "Contractor". This Contract may refer to the City and Contractor individually as a "Party" or jointly as the "Parties."

RECITALS:

- The City of Portland, Bureau of Revenue and Finance, Fleet Division ("CityFleet") desires to obtain delivery of motor fuels (the "Goods and Services");
- Contractor shall provide all Goods and Services specifically described herein and in the Specifications in accordance with the terms, covenants, and conditions of the Contract and its Exhibits related to Goods and Services provided, and Invitation to Bid #00000560, addenda, and bid.

THE PARTIES AGREE:

1. SPECIFICATIONS

Contractor shall supply the following motor vehicle fuels for consumption in City and generators.

Ethanol and regular grade gasoline blended fuels

Biodiesel

Ultra-low sulfur diesel (ULSD) blends

Technical specifications are outlined in **Attachment 1, Specifications**. All specified products shall be purchased directly from authorized distributor of specified products.

These products are to be delivered to various locations within the City and a few locations outside the City of Portland. The biodiesel blends may be requested in a variety of blends from B99 (99% biodiesel and 1% ULSD) to B1 (1% biodiesel and 99% ULSD).

This Contract authorizes Contractor to provide and the City to procure these Goods and Services, and establishes the terms and conditions for the City to obtain said Goods and Services from Contractor. Contractor shall provide Goods and Services described herein, in accordance with the prices listed, on an as needed basis, and the City will receive and pay for the Goods and Services based upon the terms and conditions stated herein.

2. DELIVERY

All Goods and Services shall be FOB delivered and unloaded at the designated location(s). Shipments will be complete and partial shipments will be avoided unless the City agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon Contractor until Product is received by the City at the delivery site.

Goods and Services shall be delivered to locations throughout the City of Portland and shall be provided to Contractor in writing.

Contractor shall immediately notify the City, in writing, if delivery cannot be completed as intended. Contractor shall email such notifications to: Paula Peterson, CityFleet, at Paula.peterson@portlandoregon.gov.

- Contractor must have adequate stock available to furnish the items requested within twenty-four (24) hours after receipt of an order.
- Contractor shall use best efforts to deliver Products on time, in accordance with the scheduled delivery date as set forth in this Contract or an individual order from this Contract. If Contractor delivers Products more than five (5) Days later than the scheduled delivery date as listed in this Contract, the City, at its sole discretion, may purchase that same item(s) from other sources and the Contractor shall be liable for the excess costs incurred, including the difference in unit price and freight charges. If deliveries are repeatedly late, the City may cancel the Contract without penalty.
- Delivery of the requested Goods and Services shall not be considered complete until all discrepancies have been corrected. Items not meeting Contract specifications shall be returned at Contractor's expense.

- Acceptance occurs when the City authorizes payment of the invoice. Acceptance of Goods and Services shall not relieve Contractor from its responsibility under any representation or warranty.

3. CONTRACT TERM

This Contract shall become effective on January 1, 2018 and shall expire on **December 31, 2022** unless terminated sooner as provided herein ("Contract Term").

4. COMPENSATION

The City agrees to pay Contractor a sum not to exceed \$6,400,000 per year for a total not to exceed value of **\$32,000,000** for receipt and acceptance of the Goods and Services in accordance with pricing listed herein. Prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor upon request.

Compensation shall be according to Attachment 2 – Pricing.

5. GENERAL DEFINITIONS

These definitions apply to the entire Contract and subsequent Amendments:

Amendment means a written document required to be signed by both Parties when in any way altering the terms and conditions, Contract period, or cost provisions of the Contract or changing, adding to, or substantially altering a Scope of Work.

City Confidential Information means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work Products produced for the City.

Contract Terms and Conditions means this portion of the Contract, the body of text from the preamble through the signature page.

Day means a calendar day of twenty-four (24) hours unless otherwise stated in the Contract.

Delivery of Products means Product has been received at the location specified in this Contract or subsequent Amendment. Delivery of Products shall not be construed to represent final acceptance following delivery of the Product.

Documentation means user manuals and other written materials in any form that describe the features or functions of the Products and System, including but not limited to published specifications, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

Intergovernmental Cooperative Procurement means the Contractor will consider, on a case by case basis and in its sole discretion, whether to extend the Goods and Services provided under this Contract with the same terms and conditions to all public agencies. Quantities stated in this bid reflect the City of Portland usage only. A public agency wishing to purchase items will execute its own contract with the awarded Contractor for its requirements. Participating Entities may utilize City contracts through Intergovernmental Cooperative Procurement if the Contract is determined by the Participating Agency to have been awarded in compliance with their bidding requirements and there is no statutory provision prohibiting such purchase.

Knowledge Transfer means information and know-how regarding technological or general business issues, including, without limitation, Products, identified or foreseeable problems, personnel, resources, or costs, as may relate to the Project or any component thereof which Contractor may be required under this Contract or any subsequent Amendment to pass on to the City.

Material Breach means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching Party; or (b) substantially deprives the non-breaching Party of the benefit it reasonably expected under this Contract.

Price Agreement means the Contract and all documents referenced within.

Product(s) means Goods, materials, Equipment, Documentation, and Services including installation, warranty Services, and Maintenance and Services, which may include installation, modification and training.

Project means the overall collection of activities required for delivery, installation and support of the system including, without limitation, design, development, integration, testing, support and Maintenance, any of which Contractor may be providing in whole or in part.

Update means a change, modification, or enhancement to the Equipment and related Documentation, which improves its performance or efficiency, but does not alter its core functionality.

Use means the City's right to install, integrate, configure, implement, test, access, maintain and operate the Equipment, any Contractor-provided tools to customize the Equipment; Documentation listed in the Contract; training materials City may acquire to provide internal training on the Equipment to City Users; any enhancements produced by or in collaboration with Contractor to develop the Equipment to City's unique business processes and/or programming environment for purposes of installing, operating, configuring or using the Equipment.

User means any person employed or working on behalf of the City, its bureaus, divisions, offices, directors, and any person or entity under contract or authorized by the City to provide it with Goods and Services and to use the City's resources in whole or in part, in the course of assisting the City.

6. ORDER OF PRECEDENCE

In the event there is a conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict will be resolved by designating which portion of the Contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Contract the order of precedence shall be:

- Amendments
- Contract Terms and Conditions
- Attachment 1, Specifications
- Attachment 2, Pricing
- Appendix A, Applicable State Laws
- Appendix B, Federal Grant Requirements

7. AMENDMENTS

All changes to this Contract, including changes to the specifications and compensation, must be made by written Amendment and approved by the Chief Procurement Officer to be valid. The City's Chief Procurement Officer is authorized to execute Amendments to this Contract without the City's further approval, provided such Amendments are in writing, signed by both Parties, and approved by the City Attorney's Office. Contractor understands that City employees have no actual or apparent authority to enter into Amendments, except as may be specifically granted by the City Council to the Chief Procurement Officer, or to waive the approval of the City Attorney's office.

8. INVOICING AND PAYMENT

Fuel charges shall be based on the Portland, OR OPIS #935 UNBRANDED LOW RACK price listed at 10:00 am Eastern time. Contractor must show this price, contracted mark-up price, and contracted delivery price for each fuel type and each location delivered to.

Within three (3) business days after delivery the Contractor shall invoice the requestor either by U.S. Mail or email, or both. If invoicing by email the requestor will provide the address(es) to send the invoice to. It is imperative that the requestor receive the invoice in a timely manner. Invoices submitted for payment shall identify the goods and services, the unit price, quantity, extended

Invoices shall be provided to the City within ninety (90) Days of successful delivery of the billed Goods and Services and shall identify Contractor's name, address, phone number, invoice number, date of invoice, Contract number, description of Goods and Services, quantity, unit price, (where appropriate), extended price, order number (if applicable) and invoice total. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to Contractor.

Invoices shall be emailed to Paula Peterson, CityFleet, at paula.peterson@portlandoregon.gov. or mailed to:

CityFleet
2835 N. Kirby
Portland, OR 97227

Payment(s) shall be in accordance with the payment schedule set forth in COMPENSATION. Payment shall be issued by the City net thirty (30) Days from receipt of a complete and acceptable invoice from Contractor. Payment of any invoice, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.

Contractor is at all times solely responsible for billing accuracy and timeliness. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of Contractor has been attained. Invoice payment terms including any offered prompt payment discounts shall start on the date of a correct invoice.

Revised invoices or billing adjustments shall apply only to Goods and Services that can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within six (6) months of acceptance of the Goods and Services, shall reference the original invoice in which the error was made, and shall contain the level of detail defined above. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on Contractor billing errors, Goods and Services that fail to comply with this Contract, or disputed charges shall not constitute default under this Contract.

It is the City's policy to pay its vendor invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, vendors shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at: <http://www.portlandoregon.gov/bfrs/article/409834>.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for Goods and Services provided directly into vendor accounts with financial institutions. All payments shall be in United States currency.

9. WORK PERFORMED BY THE CITY

The City shall make available sufficient hours of staff personnel as required to meet with Contractor and provide such information as required. A project manager has been assigned who will oversee the work and provide support as needed.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

10. CITY FURNISHED PROPERTY

No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

11. INSURANCE

Work under this Contract shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor. Contractor shall obtain, at Contractor's expense, the required insurance coverage identified below. Insurance must be maintained in full force, throughout the duration of the Contract and any warranty or extension periods. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract.

- A.** Workers' compensation insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Contractor and all subcontractors shall maintain coverage for all subject workers.
- B.** Commercial General Liability Insurance – Public Liability and Property Damage Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence/\$2,000,000 aggregate that protects the Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from Contractor's work under this Contract

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees using ISO Form CG2010 or its equivalent. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) Days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Contract, the Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract.

- C.** Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

Subcontractor(s). Contractor shall provide evidence that subcontractor(s), if any, performing work or providing services under the Contract has the same types and amounts of coverages as required herein or that the subcontractor is included under Contractor's policy.

Additional Insured. The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland, its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Contractor's activities to be

performed, or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

Continuous Coverage; Notice of Cancellation or Change. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) Days written notice from Contractor or its insurer(s) to the City. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with the reporting provisions of this clause shall constitute a Material Breach of Contract and shall be grounds for immediate termination of this Contract.

Certificate(s) of Insurance. As evidence of the insurance coverages required by this Contract, Contractor shall provide proof of insurance through acceptable certificate(s) of insurance and additional insured endorsement form(s) to the City prior to the award of the Contract if required by the procurement document, but in all events prior to Contractor's commencement of work under this Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City. Contractor shall pay for all deductibles and premiums. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

12. TIME IS OF THE ESSENCE

Contractor shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of Goods and Services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and Contractor shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In the event Contractor does not meet the established delivery dates or other deadlines and Contractor has failed to cure such breach within ten (10) Days of written notice by the City, the City may obtain the undelivered Goods and on-performed Services from another source, and no recurring charges, one-time charges, or termination charges or other penalties.

13. ACCESS TO CITY FACILITIES

Contractor agrees that Contractor's physical or remote access to City facilities shall be subject to the security interests and controls necessary to protect public property. The City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or Systems.

14. COMPLIANCE WITH APPLICABLE LAW

Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Contract; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Contract, and that it shall fully comply with all laws, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile. The following additional conditions apply to this Contract: Appendix A as attached hereto.

Contractor must be in compliance with the laws regarding conducting business in the City before an award may be made and shall be responsible for the following:

- A. Certification as an EEO Affirmative Action Employer. Contractor is certified as an Equal Employment Opportunity Employer as prescribed by Chapter 3.100 of the Code of the City of Portland.
- B. Non-Discrimination in Employee Benefits (Equal Benefits). Contractor has complied by completing the Equal Benefits Compliance Worksheet/Declaration Form indicating full compliance.
- C. Business License Tax Account. Contractor's Tax Account #722358 is in compliance with the City of Portland Business License Tax requirements as prescribed by Chapter 7.02 of the Code of the City of Portland and will be maintained throughout the duration of this Contract.
- D. Notification to State of Nonresident Contractor. If the Contract Price exceeds \$10,000 and Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract (PCC 5.33.695) https://www.oregon.gov/DOR/forms/FormsPubs/nonresident-bidder_800-020.pdf.
- E. Nondiscrimination. Contractor shall comply with all applicable federal, state and local laws and regulations. Contractor agrees it is currently in compliance with all tax laws. Contractor shall comply with Title VI

of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/brrs/?c=27353&a=446806>.

- F. **Grant Terms and Conditions.** In connection with its activities under this Contract, Contractor shall comply with all applicable Grant Terms and Conditions. This includes all terms and conditions contained in this Contract, Appendix B, and, for a contract involving a grant, the Grant Terms and Conditions as further described at: <http://www.portlandoregon.gov/brrs/?c=45663&a=455735>

15. GOVERNING LAW / VENUE

The provisions of this Contract shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Multnomah County Oregon.

16. INDEPENDENT CONTRACTOR STATUS

Contractor is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its subcontractors, and their employees are not employees of the City and are not eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

17. NO THIRD PARTY BENEFICIARIES

Contractor and City are the only Parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

18. OWNERSHIP OF PROPERTY

Contractor agrees the City will, upon completion of the Initial Term of this Contract, have full ownership of the System. Should the Contract be terminated prior to the completion of the Initial Term of the Contract, the City shall negotiate in good faith with Contractor to resolve the disposition of the System. Contractor warrants that, with the exception of property that is leased or subject to a properly perfected security interest, it shall at all times own Equipment and Software proposed for this Contract, with the exception of Third Party Software, telecommunications services and buildings, and shall keep such property free and clear of any and all security interests, liens, charges, levies, assessments or encumbrances. Any work Products produced or created by Contractor for the City shall be understood to be, to the fullest extent of the law, works made for hire unless the Parties have expressly agreed otherwise in writing.

19. SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns.

20. SURVIVAL

The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

21. INDEMNIFICATION

Contractor shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents including intentional acts, of its subcontractors, agents or employees under this Contract. Contractor is not responsible for any damages caused solely by the actions of the City, its officers, employees and agents.

22. ASSIGNMENT OF ANTI-TRUST RIGHTS

By entering into this Contract, Contractor, for consideration paid to Contractor under the Contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any Goods and Services provided to Contractor by any person, which Goods and Services are used, in whole or in part, for the purpose of carrying out Contractor's obligation under this Contract.

In the event Contractor hires subcontractors to perform any of Contractor's duties under Contract, Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any Goods and Services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by Contractor in pursuance of the completion of the Contract.

In connection with this assignment, it is an express obligation of Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to Contractor, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

23. SEVERABILITY

In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Contract, or any provision of this Contract, is unlawful, this Contract, or that provision of the Contract to the extent it is unlawful, shall terminate. If a provision of this Contract is terminated but the Parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Contract shall continue in effect.

24. FUNDING

In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the Projects identified herein, Contractor agrees to abide by any such decision including revision or termination of Contract.

25. ASSIGNMENT AND SUBCONTRACTING

This Contract or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City. In the event of transfer without prior written consent, the purported transfer is void and Contractor remains liable for performance of the Contract. Notwithstanding City approval of a subcontractor, Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Contract, Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

Contractor shall not subcontract any work, assign any rights (including, without limitation, in connection with the sale of all or substantially all of Contractor's assets, stock, or the line(s) of business applicable to any Amendment, or delegate any obligations under this Contract, cancel or change any previously approved subcontract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its subcontractors at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its subcontractors for services authorized under this Contract.

All subcontractors/suppliers identified in Contractor's proposals as certified by the Certification Office for business Inclusion & Diversity ("COBID") shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any COBID certified subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In the event that Contractor shall subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior consent.

26. CONTRACTOR PAYMENT TO VENDORS AND SUBCONTRACTORS

The Contractor shall timely pay all subcontractors and suppliers providing Goods and Services for this Contract. The Contractor shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the City to Contractor.

27. LIENS

Contractor shall not permit any claim to be filed or prosecuted against the City or any lien against the property purchased in connection with this Contract and agrees to assume responsibility should such lien or claim be filed.

28. SUSTAINABLE PROCUREMENT

Pursuant to the City's Sustainable City Principles, (<http://efiles.portlandoregon.gov/record/7477188/file/document>) which direct City bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these principles into their scope of work with the City wherever possible. Therefore, in accordance with the principles and the City's Sustainable Procurement Policy (<http://www.portlandoregon.gov/shared/cfm/image.cfm?id=204110>), it is the policy of the City to encourage the use of Products that help to minimize the negative human health and environmental impacts of City operations. "Environmentally preferable" means Products that have a lesser or reduced negative effect on human health and the environment when compared with competing Products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, Maintenance, or disposal of the Products.

Packaging should be minimized to the maximum extent possible without compromising Product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the Contractor for reuse/recycling.

29. FORCE MAJEURE

Neither City nor Contractor shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the Party's reasonable control, including, but not limited to, acts of God, fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

If delay in delivery due to a Force Majeure Event does not exceed thirty (30) Days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) Days.

If delay in delivery due to Force Majeure Event is longer than thirty (30) Days, the City shall have the right to terminate this Contract, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this Section.

Either Party may terminate this Contract due to a Force Majeure event as set forth herein.

30. NON-WAIVER

No waiver, consent, modification, or change of terms of this Contract shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

31. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES

Contractor shall cooperate fully with other contractors and City employees providing systems or support to the City during installation, operation, or Maintenance of the Services. This includes planning for and integration of the Services provided under this Contract with those provided by others. Further, Contractor shall make every reasonable effort to cooperate with City to minimize and/or prevent any degradation of the other computer and telecommunications systems, Equipment, or Services of the City by the installation, operation, or Maintenance of the Services. Contractor's failure to cooperate with the City and other contractors may be grounds for termination as provided herein.

32. ACCESS TO RECORDS

Contractor shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of these records shall be made available upon request. Payment for the reasonable cost of requested copies shall be made by the City.

33. AUDITS

The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Goods and Services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City.

Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows acquisition of Goods and performance of the Services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, Contractor agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by Contractor for a minimum of five (5) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

34. EMPLOYEES NOT TO BENEFIT

No City employee or elected official of the City shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

35. CONFLICT OF INTEREST

Contractor hereby certifies that, if applicable, its Contract bid was made in good faith without fraud, collusion or connection of any kind with any other bidder of the same solicitation or other City procurement solicitation(s), that Contractor as a bidder has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Contractor certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Contractor, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the Contract or Project to which this Contract pertains; ii) has or will participate in evaluation or management of the Contract; or iii) has or will have financial benefits in the Contract. Contractor understands that should it elect to employ any former City official/employee during the term of the Contract then that the former City official/Contractor employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

36. PRICES AND PRICE CHANGES

Initial Contract prices shall be as established herein. Unit prices shall remain firm through the first year of the Contract. At the end of the one-year period following the date of acceptance, price changes may be allowed herein. Contractor agrees to provide pricing for all Products for which Contractor is an authorized distributor for the duration of this Contract if and when requested by the City. Following the end of the one-year period referenced above, City and Contractor acknowledge that prices for Goods and Services furnished by Contractor under this Contract may need to be adjusted during the term of the Contract due to changes in Contractor's prices or Product offerings.

Contractor shall submit any proposed pricing revisions in writing to the Project Manager for consideration at least thirty (30) Days before the proposed effective date. All proposed price adjustments shall be calculated consistent with the methodology used to calculate the prices set forth in the Contractor's original proposal, and the Contractor shall certify this in its request for price adjustments.

Following receipt by the Project Manager of the requested price adjustment, price changes shall only become effective in accordance with the AMENDMENTS section of this Contract. Price adjustments shall become effective thirty (30) Days from the date of last signature on the Contract Amendment document or as otherwise stated therein.

37. ADDITIONAL PURCHASES

The City reserves the right to procure additional Goods and Services beyond those stated in the Invitation to Bid documents at the same prices submitted by Contractor. Price increases will be allowed, but shall be in keeping with Pricing in this Contract. Such additional Goods and Services are not guaranteed and will be made at the City's sole discretion based upon the requirements of City bureaus.

38. RIGHT TO CHANGE

The City reserves the right to order changes to the Goods and Services, materials, Equipment and Services outlined herein. The City and Contractor shall determine a fair and equitable cost and if required, additional time for such changes. All such changes shall be ordered in writing and agreed to by the Parties.

39. EARLY TERMINATION OF CONTRACT

The City and Contractor, by mutual written agreement, may terminate the Contract at any time. The City, on thirty (30) Days written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or Contractor may terminate this Contract in the event of a Material Breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice of the breach and the Party's intent to terminate. If the Party has not entirely cured the breach within thirty (30) Days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

40. SUSPENSION OF THE WORK

The City may at any time give notice in writing, by electronic mail, or by facsimile to Contractor to suspend this Contract. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

41. PAYMENT ON EARLY TERMINATION

In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay Contractor for Goods and Services in accordance with the Contract prior to the termination date and delivered to City provided that such Goods and Services conform to Contract specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF CONTRACT hereof, by the City due to a breach by Contractor, then the City shall pay Contractor for Goods and Services delivered in accordance with the Contract prior to the termination date subject to set off of excess costs, as provided for in REMEDIES. In the event of early termination all of Contractor's work Product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for Goods and Services that the City cancels during the term of this Contract.

42. REMEDIES

The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other. In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by Contractor, then the City may purchase Goods and Services outstanding from another contractor and Contractor shall be liable for additional re-procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Contract, the remedies for a breach of this Contract shall not be exclusive, or construed as a limitation on any other equitable and legal remedies that are available, including without limitation rights or remedies that are or may become available under its records according to ORS Chapter 72.7010 to 72.7250.

43. DISPUTE RESOLUTION

Contractor shall cooperate with the City to assure that all claims and controversies which arise during Contractor's provision of Goods and performance of Services under this Contract or a task/change order subject to this Contract and which might affect the quality of such Goods and Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- A. Any dispute between the City and Contractor arising prior to completion of delivery of Goods and Services or the earlier termination of the Contract shall be resolved, if possible between authorized representatives of the City and the Contractor.
- B. Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- C. Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- D. Unless ordered by the City to suspend all or any portion of Contractor's delivery of Goods and Services, Contractor shall proceed with delivery of Goods and performance of Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon Amendments that the City may issue regarding the acceleration of all or any portion of the Goods and Services. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute, in accordance with the provisions of the Contract or Amendment.

44. PERMITS AND LICENSES

Contractor shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the Goods and Services to be provided.

45. INTELLECTUAL PROPERTY

Except Customizations, all trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in or related to the Product or Service are and will remain the exclusive property of Contractor or its designees. City shall not decompile, disassemble, or otherwise reverse engineer the Software. The City requires the following regarding copyrighting and patent pending on work Products pertaining to this Contract:

- A. Copyright. All work Products of Contractor which result from this Contract are the exclusive property of the City. If this Contract results in a copyright, the City reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Contract and any rights of copyright to which the Contractor or its sub-vendor, purchases ownership with grant support.
- B. Patent. If this Contract results in the production of patentable items, patent rights, processes, or inventions, the Contractor or any of its sub-vendors shall immediately notify the City. The City will provide the Contractor with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

46. WARRANTY

The Contractor represents and warrants that (i) Contractor shall perform all Services set forth herein in a good and workmanlike manner, in conformance with the Specifications and requirements of the Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) Contractor warrants that each of Contractor's employees assigned to perform Services has the proper skill, training, and background to be able to perform Services in a competent, timely, and professional manner and that all Services shall be so performed; and (iii) Contractor shall, at all times during the term of the Contract, maintain and keep current all licenses and certifications required to perform the work set forth in the Contract.

Contractor shall guarantee its Products to be the latest model and free from material defects in materials and workmanship, given normal Use and care, over the period of the Manufacturer's Warranty. The Contractor shall agree to repair and/or immediately replace without charge (including freight inbound and outbound) to City Users any Product or part thereof, which proves to be defective or fails within the warranty period as specified,

If Contractor proposes to provide refurbished, reclaimed or remanufactured parts or Products to the City, Contractor shall request the City's acceptance in writing in advance of delivery and the City retains the right to accept or refuse Contractor's use of refurbished, reclaimed or remanufactured parts. If the City accepts the use of refurbished, reclaimed, or remanufactured parts or Products, Contractor warrants such Products have the same warranty as that of new and current Products and are subject to all the same provisions of this Contract. If Contractor uses refurbished, reclaimed or remanufactured parts without the prior consent required by the City, Contractor may be required, at the City's sole discretion, to replace such parts and Products with new and current manufactured parts and Products at Contractor's sole expense.

47. PROPRIETARY AND CONFIDENTIAL INFORMATION

The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Contract.

- A. Maintenance of Confidentiality. Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit and in furtherance of the Products and/or Services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees and agents of Contractor who need to know the City Confidential Information in connection with the City Project, (2) exercise reasonable care with respect to the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use Confidential intellectual property of the City without the City's prior written consent.
- B. Scope. This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to City Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor; (2) Contractor lawfully receives from a third party; (3) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any City Confidential Information, or (4) is required to be disclosed under operation of law. Contractor's confidentiality obligations under this Contract shall survive termination.
- C. Equitable Remedies. Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of a City computer system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.
- D. Contractor's Confidential Information. During the term of the Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (1) Contractor's Confidential Information later becomes part of the public domain through no act or omission of the City; (2) is required to be disclosed under operation of law; (3) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality; or (4) was developed independently by and was reduced to writing by the City prior to the earlier of the date of this Contract or the date of any access or exposure to any Contractor Confidential Information.
- E. Public Records Request. Contractor acknowledges that the City is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

- F. Release of Public Information. All information submitted by Contractor shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions for which Contractor requests exemption from disclosure consistent with federal or Oregon law. Any portion that the Contractor claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501, 192.502, 646.461 or other state or federal law. Documents with Copyright must be clearly marked.
- G. Discovery of Documents. In the event a Party to litigation seeks discovery of information submitted by Contractor in confidence, the City will notify Contractor of the request. The City shall allow Contractor to participate in the response at its own expense. The City will comply with any effective order issued by the court having jurisdiction over the matter.

48. INFRINGEMENT INDEMNITY

Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whosoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City's continuing Use of the Software/Products shall be made without the City's prior written consent. If any third party claim causes the City's Use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City license fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

49. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS

The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, the City seal or other representations of the City, any data, pictures or other representations of the City, except with prior specific written authorization from the City.

Contractor shall not issue any news release or public announcement pertaining to this Contract or the Project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum notice of three (3) City business days is required for a response to a request for such approval. If approval is not issued within that period, the request shall be deemed denied.

50. INTERGOVERNMENTAL COOPERATIVE PROCUREMENT

The Contractor having submitted a bid or proposal agrees to extend identical prices and Goods and Services under the same terms and conditions to all public agencies. Quantities stated in this Contract reflect the City usage only.

Any public agency that wishes to purchase items will execute its own contract with the awarded Contractor for its requirements. If the Contractor enters into a contract with any public agency on terms or prices other than that outlined in this Contract or in conjunction with a competitive bid process, then there is no reporting requirement to City.

51. INTERGOVERNMENTAL COOPERATIVE ADMINISTRATIVE FEE (CAF)

A 1.0% annual cooperative administrative fee ("CAF") on Eligible Revenues will be paid to the City for any Intergovernmental Cooperative Procurement contracts that Contractor agrees to enter into under identical prices and terms and conditions to this Agreement and which did not result from a competitive bid process ("Eligible Contracts"). The pricing extended to Participating Entity shall be the purchase price before promotional discount as outlined in COMPENSATION charged to the City under this Contract (#31001226) for each Product. Eligible Revenues shall mean the revenues on Eligible Contracts. In the event that the City exercises its unilateral right to Early Termination under clause 33(b), then Contractor will no longer be liable to City for any CAF otherwise due and payable to City.

- A. Volume Sales Reports. When other Participating Entities are offered the same terms and conditions as the original Contract between Contractor and the City, Contractor shall provide a twice yearly Volume Sales Report to the City. The reports shall include the complete and accurate details regarding all transactions pertaining to sales under the Contract Terms and Conditions for that Reporting Period. Contractor shall provide the Volume Sales Reports regardless whether or not any sales have been conducted. When no sales have been recorded for the period a report must be submitted by so stating "NO SALES FOR THIS PERIOD".

Volume Sales Reports may be submitted either by email, US post or electronically and submitted on the City's standard document. Contractor will submit the Volume Sales Reports to:

City of Portland, Procurement Services
Jeff Blade, Procurement Supervisor
1120 SW Fifth Avenue, Room 750

Portland, OR 97204
Email: Jeff.Blade@portlandoregon.gov

City reserves the right to terminate this Contract if the Volume Sales Reports are not received on a timely basis as described herein, provided however that Contractor is granted the right to cure any breach in this regard within thirty (30) Days of written notice by the City of said breach.

The sales information shall be supplied to the City's, Procurement Services Division for the following Reporting Period of January 1 - June 30 and July 1 – December 31. All reports are due by the 30th Day following the end of the Reporting Period.

During the term of this Contract and for the sales during the previous Reporting Period, Contractor shall remit CAF payments to the City within thirty (30) Days of City's receipt of Volume Sales Report. Contractor shall be responsible for timely reporting and payment. The City reserves the right, at its own expense, to audit Contractor's records and other pertinent data as indicated herein in AUDITS.

- B. CAF Payments.** All payments shall be due thirty (30) Days after the City's receipt of the Volume Sales Report. The CAF will NOT be reflected as a separate line item charge to authorized purchasers. Contractor's bid prices shall reflect all of Contractor's charges to authorized purchasers.

City CAF shall be calculated based upon Participating Entity Volume Sales Report limited to paid-for purchases, net of returns, discounts and credits made by the Participating Entity. The calculation will be as follows:

City Price \$100.00 Markup 1% Participating Entity pays \$101.00; rebate to be paid to the City
= \$1.00 (\$101-(\$101/1.01))

Contractor shall remit CAF payments in the form of a check to:

Procurement Services, Operations
1120 SW Fifth Avenue, Room 750
Portland, OR 97204

- C. Definitions.** These definitions shall apply to the CAF provisions as follows:

Participating Entity shall be any public/governmental organization utilizing this Agreement in accordance with purchasing procedures mandated by Local and State procurement statutes and regulations.

Reporting Period means the twice yearly reporting of sales as conducted via cooperative procurement under this Agreement/Contract.

52. UNIFORM COMMERCIAL CODE

The provisions of this Contract are not to be construed as exclusive remedies or as a limitation upon rights or remedies that may be or may become available under ORS Chapter 71-83 (Uniform Commercial Code).

53. OREGON HAZARD COMMUNICATION RULES

Contractor must comply with all provisions of OAR 437, Subsection H: Hazardous Materials. Inquiries concerning compliance should be directed to any office of the Accident Prevention Division or the Workers' Compensation Department central office in Salem

Material Safety Data Sheets (MSDS) shall be provided along with delivery of the Product to each Bureau or Division that receives merchandise. The City does not have a centralized Hazard Communication Rules program and supplying MSDS's to one location does not qualify as compliance.

The City reserves the right to refuse and withhold payment for shipments that are not properly labeled or for which an MSDS has not been provided. Noncompliance with OAR 437 is violation of this Contract and justifiable cause for cancellation.

54. NON-EXCLUSIVE AGREEMENT

The City may, but is not required, to purchase any Goods and Services under this Contract. Goods and Services will be requested on an as needed basis, therefore there is no guarantee of Goods and Services to be purchased under this Contract. Payment shall be made only for Goods and Services actually ordered, delivered, and accepted, whether greater or less than the original estimated quantities. This Contract does not establish an exclusive arrangement between the City and Contractor, and the City retains the right to purchase the same or similar Goods and Services from other providers.

55. NOTICE

Except as otherwise stated in this Contract, any notice or demand to be given under this Contract shall be delivered in person, by email, or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

CONTRACTOR:

Associated Petroleum Products
Attn: Katie Justin
Email: kjustin@gotoapp.com
9270 NE Glisan St.
Portland, OR 97220
(503) 807-7466

CITY:

City of Portland, Procurement Services
Attn: Cate Antisdal
Email: cate.antisdal@portlandoregon.gov
1120 SW 5th Avenue, Room 750
Portland, OR 97204
(503) 823-6850

If either Party changes its address or if a Party's representative changes, the other Party shall be advised of such a change in writing, in accordance with this section.

56. ENTIRE CONTRACT

This Contract and its Attachments, Appendices, and Exhibits represent the entire Contract between the Parties. This Contract is a final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Contract, understanding, or representation between the Parties with respect thereto, whether written or oral.

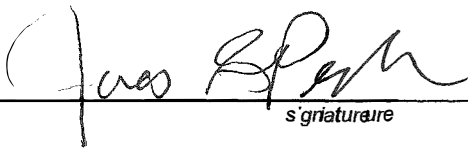
This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. It is understood and agreed by the Parties hereto that:

- A. Any reference in this Contract to the scope of work or specifications is intended as a convenience to the Parties in administration of the Contract. Therefore, in the absence of an express statement to the contrary herein, any restatement or partial restatement in this Contract of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.
- B. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Contract.
- C. The Parties agree the City and Contractor may conduct this transaction, including any Contract Amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, Contractor and City have caused this Contract to be executed by their duly authorized representative(s), on the date stipulated in EFFECTIVE DATE AND DURATION.

ASSOCIATED PETROLEUM PRODUCTS

By: _____


Signature

Date: _____

1/19/18

Name: _____

JAMES S. PEDERSON

Title: _____

GM West

Initials: LP:ca

Date: December 27, 2017



CITY OF PORTLAND, OREGON

Contract No. 31001226

Amendment/Change Order No. 0

Contract Description: ANNUAL SUPPLY OF FUEL

CITY OF PORTLAND SIGNATURES:

By: N/A

Date: _____

Bureau Director

By: 

Date: 02/21/2018

Purchasing Agent

By: N/A

Date: _____

Elected Official

Approved:

By: 

Date: 02/22/2018

Office of the City Auditor

Approved as to Form:

By: 

Date: 02/15/2018

Office of City Attorney

ATTACHMENT 1

SPECIFICATIONS

1. SCOPE OF WORK

Contractor shall supply the following motor fuels to the City of Portland, Bureau of Revenue and Finance, Fleet Division ("CityFleet") according to the specifications herein:

Ethanol and regular grade gasoline blended fuels
Biodiesel
Renewable Diesel
Ultra-low sulfur diesel (ULSD) blends

These products are to be delivered to various locations within the City and a few locations outside the City of Portland. The diesel blends may be requested in a variety of blends from 99% bio/renewable diesel and 1% ULSD to 1% bio/renewable diesel and 99% ULSD.

2. DEFINITIONS

ASTM - the American Society of Testing and Materials. The standards organization that develops standards for fuel products as well as other products.

Biodiesel - a domestic, renewable fuel for diesel engines comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils, or animal fats, designated B100, and which meets the specifications of ASTM # D6751-11a "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels" or revised ASTM specifications.

Biodiesel Blend - a blend of biodiesel fuel meeting ASTM # D6751-11a or revised ASTM specifications and ASTM # D5453 "Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence", or revised ASTM specifications, comprised of biodiesel and low sulfur diesel fuels blended by a percentage of each individual component. B5 is 5% biodiesel and 95% diesel fuel. B20 is 20% biodiesel and 80% diesel fuel. B50 is 50% biodiesel and 50% diesel fuel. B99 is 99% biodiesel and 1% diesel fuel. B100 is 100% biodiesel.

BQ-9000 - a voluntary quality control program for producers and distributors that is managed by the National Biodiesel Accreditation Commission. This program accredits the individual producer or distribution firm, not the fuel.

Diesel - ASTM # D975-05 or revised ASTM specifications with less than 5,000 parts per million (ppm) sulfur. ASTM grade no. 2-D S5000 or ASTM grade no. 1-D S5000.

Ethanol - a nominally anhydrous, denatured, domestically produced, renewable fuel comprised of ethyl alcohol which meets or exceeds ASTM D-4806-11a "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" specifications.

Ethanol Blend - a cleaner burning renewable fuel for gasoline type engines consisting of a blend of ethanol and gasoline. Common blends include E10 (10% ethanol & 90% gasoline), E85 (85% ethanol & 15% gasoline). Ethanol blends are blended by the fuel product distributor and delivered in blended form.

Gasoline - Unleaded gasoline meeting minimum octane rating of 87, calculated by RON minus MON divided by 2.

Renewable Diesel - a conventional diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under the 2007 42 U.S.C. 7545, and includes fuel derived from biomass (Reference OAR 603-027-0410) and animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater, except that the term does not include biodiesel as defined in OAR 603-027-0410, complies with ASTM International D975 Standard Specification for Diesel Fuel Oils or other applicable ASTM product specifications, can be used as a finished fuel or fuel blending component, and designated "100% Biomass-Based Diesel".

Renewable Diesel Blend - a fuel comprised of a blend of biomass-based diesel fuel with conventional petroleum-based diesel fuel, designated "XX% Biomass-Based Diesel Blend", and complies with ASTM International D975. In the abbreviation, "XX%", the XX represents the volume percentage of biomass-based diesel in the blend.

Ultra-Low Sulfur Diesel - ASTM # D975-11 or revised ASTM specifications with less than or equal to 15 parts per million (ppm) sulfur. ASTM grade no. 2-D S15 or ASTM grade no. D-1 S15A.

3. GENERAL SPECIFICATIONS FOR ALL FUEL TYPES

All fuel shall be filtered and free from impurities, including dirt, water, and harmful oils that might cause damage or impairment of vehicle operation. In case of damage directly traceable to contamination, the Contractor shall be responsible for the resulting

repair costs. Material Safety Data Sheets (MSDS) shall be provided to each delivery site that receives these products. The City of Portland does not have a centralized Hazard Communication Rules program and supplying MSDS to only one location does not qualify as compliance. The City of Portland reserves the right to refuse and withhold payment for shipments that are not properly labeled or for which a current MSDS has not been provided. Non-compliance with Oregon Administrative Rules (OAR) 437, Division 155 is a violation of any agreement that may result from this solicitation and justifiable cause for termination or cancellation of any resulting agreement. Proposers agree to verify and meet the demand rules and regulations of the State of Oregon, Department of Environmental Quality (DEQ), including Volatile Organic Compounds (VOC) Rules, OAR 340-22-100, applicable to supplier operations and user storage tank locations and facilities.

3.1. MANUFACTURING

The City of Portland wishes to encourage local and regional businesses. With regard to this project, the City is asking Proposers to indicate the City and State of refining for all fuel products and the City and State location for all blending processes.

3.2. BLENDING

The blending of fuels for the various biodiesel blends shall be completed just prior to delivery of the blended fuel products.

Only in-line, side stream, or ratio blending methods shall be used. Indicate on the Price Form, Item #5, which method you will use during performance under the Price Agreement.

3.3. TRANSPORTATION

Delivery of the fuels included in this solicitation shall be performed promptly following any required blending procedures.

4. SPECIFICATIONS FOR FUEL BY TYPE

4.1. GASOLINE

All gasoline furnished shall be standard commercial grade, in compliance with current regulations for such fuel as regulated by the U.S. Environmental Protection Agency (EPA), suitable for the intended use, formulation adjusted for Winter, Transition, and Summer conditions. Gasoline grade (regular) shall have minimum octane ratings (determined and calculated by the Research Octane Number (RON) plus Motor Octane Number (MON) divided by two) of 87 octane. A list of current gasoline tank locations follows.

4.2. ETHANOL BLENDS

Ethanol blend fuels will be purchased in various mixes. The Ethanol blend fuels will be blended from Ethanol and unleaded regular grade gasoline. Upon request by the purchaser, the distributor shall supply the sample for testing purposes. As fresh a product as practical shall be provided, but in no case shall the Ethanol product be older than four (4) months from the date of manufacture.

4.3. BIODIESEL

Biodiesel must meet or exceed ASTM # D6751-11a and ASTM # D5453 or revised specifications. Contractors may be requested to provide test results to verify product meets ASTM specification requirements. The Contractor or fuel provider shall take a sample of the biodiesel product from each batch and seal, label, and store the samples for a period not less than seven (7) months. Upon request by the purchaser, the Contractor shall supply the sample for testing purposes. Biodiesel blends must also be sampled, sealed, labeled and stored for testing purposes. Contractors will provide to the purchaser verifiable quarterly test results confirming the fuel meets the full spectrum of ASTM6751 or if the producer is BQ-9000 certified the test results shall be provided every six (6) months. Fuel is required to be free from contamination resulting in bacteria or condensation. If bacteria are present, the appropriate treatment shall be applied to the fuel at the expense of the Contractor. The fuel will rotate from tanks within a six (6) month period. Biodiesel must be filter-cleaned to five (5) microns or less upon transfer from storage tanks to the local transport vehicle. Blending and handling of biodiesel shall conform to the most current Biodiesel Handling and Use Guidelines as defined by the U. S. Department of Energy. Biodiesel is known to degrade due to age. As fresh a product as is practical shall be provided, but in no case shall the biodiesel product be older than four (4) months from the date of manufacture.

4.4. BIODIESEL BLENDS

Biodiesel blends will be purchased in various mixes. The biodiesel blend fuels will be blended from biodiesel fuel and ultra-low sulfur diesel fuels. Fuels shall meet or exceed ASTM # D975-11 or current revised ASTM specifications and ASTM # D6751-11a or current revised ASTM specifications. The Contractor or fuel provider shall take a sample of the biodiesel blend product from each batch and seal, label, and store the samples for a period not less than seven (7) months. Upon request by the purchaser, the Contractor shall supply the sample for testing purposes. Blending and handling of biodiesel shall conform to the most current Biodiesel Handling and Use Guidelines as defined by the U. S. Department of Energy. Biodiesel is known to degrade due to age. As fresh a product as practical shall be provided, but in no case shall the biodiesel product be older than four (4) months from the date of manufacture.

4.5. RENEWABLE DIESEL

Renewable Diesel must meet the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under the 2007 42 U.S.C. 7545, comply with ASTM International D975 Standard Specification for Diesel Fuel Oils or other applicable ASTM product specifications. This can be used as a finished fuel or fuel blending component, and designated "100% Renewal Diesel".

4.6. RENEWABLE DIESEL BLENDS

Renewable Diesel Blends must comply with ASTM D975 Standard Specification for Diesel Fuel Oils.

4.7. ULTRA-LOW SULFUR DIESEL

The City of Portland has requirements for Ultra Low Sulphur Diesel (ULSD) fuel (ULSD, ASTM D97593, <15 ppm sulphur, meeting SLBOCLE 3110 grams, ASTM D6078) on an as-needed basis.

5. CURRENT TANK LOCATION INFORMATION

All quantities stated in this section are the City's total estimated annual requirements. The actual quantities for orders placed under the Price Agreements may be more or less than these estimated quantities.

[5.1 begins on next page]

5.1. GASOLINE TANKS

<u>Bureau and Location</u>	<u>Address</u>	<u>Tank Size (each tank)</u>	<u>Vapor Recovery System</u>	<u>Estimated Gallons Used per Year</u>	<u>Fuel Type</u>
BUREAU OF PARKS & RECREATION					
RedTail Golf Course	8200 SW Scholls Ferry Rd	500	Vent-Tee	4,000	Unleaded
Eastmoreland Golf Course	2425 SE Bybee Blvd	550	Vent-Tee	4,000	Unleaded
Rose City Golf Course	2200 NE 71 st Ave	550	Vent-Tee	4,000	Unleaded
West Delta Golf Course	3500 N Victory Blvd	500	Vent-Tee	4,000	Unleaded
East Delta Forestry	10850 N Denver	675	Vent-Tee	10,000	Unleaded
OMF, CITYFLEET					
Columbia Blvd Treatment Plant (two tanks)	5001 N Columbia	5,000 and 8,000	EMCO	65,000	Unleaded
Mt Tabor Yard (two tanks)	6437 SE Division	6,000 and 10,000	EMCO	115,000	Unleaded
Stanton Yard (two tanks)	2835 N Kerby Ave	7,000 and 8,000	EMCO	127,000	Unleaded
Interstate Garage	1850 N Interstate Ave	5,000	EMCO	95,000	Unleaded
1 st Ave Garage (two tanks)	1221 SW 1 st Ave	10,000 and 10,000	None	270,000	Unleaded
East Precinct	737 SE 106 th Ave	2,000	EMCO	90,000	Unleaded
Southeast Precinct	4735 E Burnside	10,000	EMCO	61,000	Unleaded
Southwest Annex (two tanks)	2731 SW Multnomah Blvd	7,000 and 8,000	None	70,000	Unleaded
MULTNOMAH COUNTY					
Motor Pool	530 SW 2nd Ave	12,000	EMCO	75,715	Unleaded
Road Shop	10814 NW Quarry Rd	2,000	EMCO	5,702	Unleaded
Road Shop	32620 SE Hurlburt Dr.	2,000	EMCO	7,302	Unleaded
Fleet Garage	301 N. Dixon	12,000	EMCO	96,805	Unleaded
Yeon Shop	1620 SE 190th Ave	12,000	EMCO	59,500	Unleaded
BUREAU OF WATER WORKS					
Sandy River Station	10991 SE Lusted Rd	1,000 and 1,000	None	15,000	Unleaded
Headworks	50105 SE Rock Cut Rd	1,000	None	5,000	Unleaded

5.2. DIESEL TANKS

<u>Bureau and Location</u>	<u>Address</u>	<u>Tank Size (each tank)</u>	<u>Vapor Recovery System</u>	<u>Estimated Gallons Used per Year</u>	<u>Fuel Type</u>
BUREAU OF PARKS & RECREATION					
RedTail Golf Course	8200 SW Scholls Ferry Rd	420	None	4,000	Diesel
Eastmoreland Golf Course	2425 SE Bybee Blvd	400	None	4,000	Diesel
Rose City Golf Course	2200 NE 71 st Ave	275	None	4,000	Diesel
West Delta Golf Course	3500 N Victory Blvd	400	None	4,000	Diesel
East Delta Forestry	10850 N Denver	1,000	None	60,000	Diesel
OMF, CITYFLEET					
Columbia Blvd Treatment Plant	5001 N Columbia	8,000	None	35,000	Diesel
Mt Tabor Yard	6437 SE Division	6,000	None	40,000	Diesel
Stanton Yard	2835 N Kerby Ave	7,000 and 8,000 and 15,000	None	482,000	Diesel
Interstate Garage	1850 N Interstate Ave	12,000	None	95,000	Diesel
1 st Ave Garage	1221 SW 1 st Ave	2,000	None	3,000	Diesel
Southwest Annex (two tanks)	2731 SW Multnomah Blvd	7,000 and 8,000	None	130,000	Diesel
MULTNOMAH COUNTY					
Road Shop	10814 NW Quarry Rd	2,000	None	11,260	Diesel
Road Shop	32620 SE Hurlburt Dr.	2,000	None	8,295	Diesel
Fleet Garage	301 N. Dixon	2,500	None	18,500	Diesel
Yeon Shop	1620 SE 190th Ave	12,000	None	50,500	Diesel
BUREAU OF WATER WORKS					
Sandy River Station	10991 SE Lusted Rd, Sandy, OR	1,000 and 1,000	None	15,000	Diesel
Head Works, Bull Run Watershed	50105 SE Rockcut Rd Corbett, OR	1,000, 1,000, and 1,000	None	6,000	Diesel
BGS, FACILITY SERVICES					
Portland Communications Center	3732 SE 99 th Ave	4,000	None	2,000	Diesel
The Portland Building	1120 SW 5 th Ave	1,000	None	2,000	Diesel
BUREAU OF ENVIRONMENTAL SERVICES					
Gresham Transfer Terminal (two tanks)	24001 NE Sandy Boulevard Wood Village, OR	20,000 and 13,000	None	120,000	Diesel

6. FUEL DELIVERY PROCESS

All requests for fuel delivery will be made by email to the Contractor. Upon receipt of the request, the Contractor will have 24 hours to deliver the product requested. If the delivery is not possible within 24 hours, Contractor will immediately notify the requestor as to when the delivery will be made.

Standard hours for acceptance of deliveries in most locations are 7:30 a.m. to 4:30 p.m. However, the Stanton and Interstate locations can accept deliveries 24 hours a day.

After delivery of the product, Contractor shall send an email to the City requestor the same day which includes:

- Type of fuel
- Quantity delivered
- To which station and which tank
- Any other information, if applicable, of issues with the fuel station which may have hindered delivery of the fuel.

All materials shall be provided FOB Destination to property locations as indicated in the solicitation and as updated by the City within the Portland metro area. Delivery prices shall be inclusive of all shipping and delivery costs. Time is of the essence. Deliveries of goods and/or services must be made no later than the time stated above.

Contractor shall comply with the [City's Idle Reduction Policy](#) while making fuel deliveries by limiting idle time of diesel-powered vehicles to no more than five (5) minutes to the extent possible.

7. SAFETY & SECURITY REQUIREMENTS

7.1. Public Safety

Public safety may require that the City must limit access to public facilities and public offices, sometimes with little advance notice. Contractor's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. The City has the discretion to require the Contractor's employees and agents to be escorted to and from any public office or facility.

7.2. Contractor Safety

Contractor must comply strictly with all applicable local, municipal, state, and federal laws, orders, and regulations pertaining to health or safety, including without limitation the Occupational Safety and Health Act of 1970. All materials, equipment, and facilities furnished by the Contractor in connection with the performance of the Work must comply therewith.

8. PUBLIC EMERGENCY

The Contractor shall provide priority fuel delivery in the event of a declared public emergency or catastrophic event in order to provide emergency services to the community. Deliveries shall be within 24 hours after notification of need. Contractor may add a reasonable charge to cover additional delivery costs involved, if any, due to added difficulties in delivering fuel.

[END OF ATTACHMENT 1 – SPECIFICATIONS]

ATTACHMENT 2 PRICING

PART 1 - MARK-UP		
Mark-up (or mark-down) per gallon to OPIS #935 commodity costs.		
Item #	Description	Unit Price /US Gallon
1.1	10% Ethanol Gasoline	-\$0.05
1.2	85% Ethanol Gasoline	-\$0.12
1.3	B5 Biodiesel	-\$0.03
1.4	B20 Biodiesel	-\$0.03
1.5	B30 Biodiesel	-\$0.03
1.6	B99 Biodiesel	-\$0.03
1.7	R5 Renewable Diesel	-\$0.03
1.8	R20 Renewable Diesel	-\$0.03
1.9	R99 Renewable Diesel	-\$0.10

PART 2 - DELIVERY COST			
Delivery cost in terms of cost per gallon mark-up above the low rack mark-up price indicated above to each of the following locations based upon the estimated number of gallons per delivery.			
Item #	Description	Gasoline \$/gallon	Diesel \$/gallon
2.1	Stanton Yard, N Stanton & Borthwick, 2835 N. Kerby Ave, Portland - E10, E85, B5, B20, B30, R5, R20, R99		
2.1a	One (1) 7,000 Gallon UST, Gasoline - Truck/Trailer price	\$0.02	
2.1b	One (1) 8,000 Gallon UST, Gasoline - Truck/Trailer price	\$0.02	
2.1c	One (1) 7,000 Gallon UST, Diesel - Truck/Trailer price		\$0.03
2.1d	One (1) 8,000 UST, One 15,000 Gallon UST, Diesel - Truck/Trailer price		\$0.03

2.2	Interstate Garage, 1850 N. Interstate Ave, Portland, OR - E10, E85, B20, B30, B99, R5, R20, R99		
2.2a	One (1) 5,000 Gallon UST, Gasoline - Truck Only price	\$0.02	
2.2b	One (1) 12,000 Gallon UST, Diesel - Truck/trailer price		\$0.03

2.3	1st Ave. Garage, 1221 SW 1st Ave, Portland, OR - E10, E85, B5, B20, B30, R5, R20, R99		
2.3a	One (1) 2,000 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.08
2.3b	Two (2) 10,000 Gallon USTs, Gasoline -Truck/Trailer price	\$0.02	

2.4	Columbia Blvd. Treatment Plant, 5001 N. Columbia Blvd, Portland, OR - E10, E85, B20, B30, R5, R20, R99		
2.4a	One (1) 5,000 Gallon and One (1) 8,000 Gallon USTs, Gasoline- Truck/Trailer price	\$0.02	
2.4b	One (1) 8,000 Gallon UST, Diesel - Truck/Trailer price		\$0.03

PART 2 - DELIVERY COST, continued			
Delivery cost in terms of cost per gallon mark-up above the low rack mark-up price indicated above to each of the following locations based upon the estimated number of gallons per delivery.			
<i>Item #</i>	<i>Description</i>	<i>Gasoline \$/gallon</i>	<i>Diesel \$/gallon</i>
2.5	Mt Tabor Yard, 6437 SE Division St, Portland, OR - E10, E85, B20, B30, R5, R20, R99		
2.5a	One (1) 6,000 Gallon and one (1) 10,000 USTs, Gasoline - Truck/Trailer price.	\$0.02	
2.5b	One (1) 6,000 Gallon UST, Diesel- Truck/Trailer price.		\$0.03

2.6	Southeast Precinct, 4735 E Burnside, Portland, OR - E10, E85		
2.6a	One (1) 10,000 Gallon UST, Gasoline - Truck/Trailer price.	\$0.04	

2.7	Sandy River Station, 10991 SE Lusted Rd, Sandy, OR - E10, E85, B5, R5, R20, R99		
2.7a	Two (2) 1,000 Gallon Above Ground Tanks, Gasoline - Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.10	
2.7b	Two (2) 1,000 Gallon Above Ground Tanks, Diesel Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.10

2.8	East Precinct, 737 SE 106th Ave, Portland, OR - E10, E85		
2.8a	One (1) 2,000 Gallon Above Ground Tank, Gasoline - Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.12	

2.9	Redtail Golf Course, 8200 SW Scholls Ferry Rd, Portland, OR - E10, E85, R5, R20, R99		
2.9a	One (1) 500 Gallon Above Ground Tank, Gasoline - Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.35	
2.9b	One (1) 400 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.35

2.10	Eastmoreland Golf Course, 2425 SE Bybee Blvd, Portland, OR - E10, B5, B20, B30, R5, R20, R99		
2.10a	One (1) 550 Gallon Above Ground Tank, Gasoline- Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.32	
2.10b	One (1) 400 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.32

2.11	Rose City Golf Course, 2200 NE 71st Ave, Portland, OR - E10, E85, B5, B20, B30, R5, R20, R99		
2.11a	One (1) 550 Gallon Above Ground Tank, Gasoline- Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.35	
2.11b	One (1) 275 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.35

PART 2 - DELIVERY COST, continued			
Delivery cost in terms of cost per gallon mark-up above the low rack mark-up price indicated above to each of the following locations based upon the estimated number of gallons per delivery.			
<i>Item #</i>	<i>Description</i>	<i>Gasoline \$/gallon</i>	<i>Diesel \$/gallon</i>
2.12	West Delta Golf Course, 3500 N Victory Blvd, Portland, OR - E10, E85, B5, B20, B30, R5, R20, R99		
2.12a	One (1) 500 Gallon Above Ground Tank, Gasoline-Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.32	
2.12b	One (1) 400 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.32
2.13	Motor Pool, 501 SW 2nd Ave, Portland, OR - E10, E85		
2.13a	One (1) 12,000 Gallon UST, Gasoline -Truck/Trailer price	\$0.04	
2.14	Road District #1, 10814 NW Quarry Rd, Portland, OR - E10, E85, B5, B20, B30, R5, R20, R99		
2.14a	One (1) 2500 Gallon Above Ground Tank, Gasoline - Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.08	
2.14b	One (1) 3,000 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.08
2.15	Road District #5, 32620 SE Hurlburt Dr, Corbett, OR - E10, E85, B5, B20, B30, R5, R20, R99		
2.15a	One (1) 2500 Gallon Above Ground Tank, Gasoline - Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.08	
2.15b	One (1) 3,000 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.08
2.16	Blanchard, 301 N Dixon, Portland, OR - E10, E85 ULSD, B5, B20, R5, R20, R99		
2.16a	One (1) 10,000 Gallon UST, Gasoline -Truck/Trailer price.	\$0.04	
2.16b	One (1) 2,500 Gallon UST, Diesel- Truck Only price		\$0.08
2.17	Yeon, 1620 SE 190th Ave, Portland, OR - E10, E85, B5, B20, B30, R5, R20, R99		
2.17a	One (1) 10,000 Gallon Above Ground Tank, Gasoline - Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.08	
2.17b	One (1) 10,000 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.08
2.18	Southwest Annex, 2731 SW Multnomah Blvd, Portland, OR - E10, E85, B5, B20, B30, R5, R20, R99		
2.18a	One (1) 7,000 Gallon UST, Gasoline - Truck/Trailer price.	\$0.02	
2.18b	One (1) 8,000 Gallon UST, Gasoline - Truck/Trailer price.	\$0.02	
2.18c	One (1) 7,000 Gallon UST, Diesel- Truck/Trailer price.		\$0.06
2.18d	One (1) 8,000 UST, Diesel- Truck/Trailer price.		\$0.03

PART 2 - DELIVERY COST, continued			
Delivery cost in terms of cost per gallon mark-up above the low rack mark-up price indicated above to each of the following locations based upon the estimated number of gallons per delivery.			
<i>Item #</i>	<i>Description</i>	<i>Gasoline \$/gallon</i>	<i>Diesel \$/gallon</i>
2.19	Water Bureau Headworks, 50105 SE Rock Cut Rd, Sandy, OR - E10, B5, R5, R20, R99		
2.19a	One (1) 1,000 Gallon Above Ground Tank, Gasoline -Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.09	
2.19b	Three (3) 1,000 Gallon Above Ground Tanks, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.09
2.20	East Delta Forestry, 10850 N. Denver, Portland, OR - E10, B5, B20, B30, R5, R20, R99		
2.20a	One (1) 1,000 Gallon Above Ground Tank, Gasoline -Tank Wagon (Pumper) price. 75 feet of hose max.	\$0.15	
2.20b	One (1) 675 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.15
2.21	Leach Botanical Garden, 6704 SE 122nd Ave, Portland, OR - B5, B20, B30, R5, R20, R99		
2.21a	One (1) 550 Gallon and One (1) 650 Gallon Above Ground tanks, Diesel- Tank Wagon (Pumper) price. Need approximately 250 feet of hose.		\$0.35
2.22	Emergency Communications Center, 3732 SE 99th Ave, Portland, OR - B5, R5, R20, R99		
2.22a	One (1) 4,000 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.08
2.23	The Portland Building, 1120 SW 5th Ave, Portland, OR - B5, R5, R20, R99		
2.23a	One (1) 1,000 Gallon Above Ground Tank, Diesel- Tank Wagon (Pumper) price. 75 feet of hose max.		\$0.09
2.24	Bureau of Environmental Services - Gresham Transfer Terminal, 24001 NE Sandy Blvd, Wood Village, OR - B5, R5, R20, R99		
2.24a	One (1) 13,000 and one (1) 20,000 Gallon UST, Diesel-Truck/Trailer price.		\$0.03

PART 3 - OTHER CHARGES			
<i>Item #</i>	<i>Description</i>	<i>Rate</i>	<i>Fee</i>
3.1a	VALVTECT Brand Cold Weather additive to biodiesel and renewable.	Price/Gal	\$0.03
3.1b	Federal spill recovery fee	Price/Gal	\$0.00
3.1c	Load fee	Per invoice over 7,000 gallons	\$8.00

PART 4 - SERVICE CAPABILITIES		
<i>Item #</i>	<i>Description</i>	<i>Yes/No</i>
4.1	Able to deliver requested fuel order within 24 hours of the order being placed.	YES
4.2	Able to send email to requestor immediately upon delivery of the fuel which will indicate fuel type, quantity delivered, to which tank and to what station, while still on delivery site.	YES
4.3	Able to invoice requestor within three (3) business days after the fuel delivery which would include the bill of lading.	YES
4.4	Able to produce sample invoices to include in the bid package.	YES

[END OF ATTACHMENT 2 – PRICING]

APPENDIX A

APPLICABLE OREGON STATE LAWS

Contractor shall observe all applicable state and local laws pertaining to public contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules. ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this contract, as applicable.

- Pursuant to ORS 279B.220, on every public contract, the contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- Pursuant to ORS 279C.505, on public improvement contracts, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510 (1), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public contract and every public improvement contract for lawn and landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(1), in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.515(2), on public improvement contracts, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement contractor, if the contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in

excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

- Pursuant to ORS 279C.530(1), in every public improvement contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.

- Pursuant to ORS 279C.580(3)(a), the contractor shall include in each public improvement subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).

- Pursuant to ORS 279C.580(4), the contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

- Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

July 25, 2008

APPENDIX B

FEDERAL GRANT REQUIREMENTS

Federal Grant Requirements: This Contract may be funded, in whole or in part, by Federal funds. In addition to other provisions required by the Federal agency or City, the following provisions shall be covenants of the contract, as applicable. These provisions shall be in addition to all other provisions in this Contract, and shall prevail over any conflicting terms.

(A) **Administrative, contractual, or legal remedies.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, shall include the following provision: In the event of a breach of Contract terms by Contractor, the City may seek any remedies in this Contract, in law, or at equity. Additionally, the City may complete the project or the purchase itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the Project or purchase exceeds the amount the City would have paid Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.

(B) **Termination for Cause and Convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all deliverables accepted by the City, or Services performed by Contractor and accepted by the City, through the effective date of the termination. Additionally, the City may terminate this Contract in the event of a breach of this Contract by Contractor. Prior to such termination, however, the City shall give Contractor written notice to cure the breach and of the City's intent to terminate. If Contractor has not entirely cured the breach within thirty (30) Calendar Days of the notice, then the City shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.

(C) **Equal Employment Opportunity.** If this Contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, it shall incorporate the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** In addition to State or Oregon Bureau of Labor and Industries (BOLI) prevailing wage law requirements, if this Contract is a prime construction contract in excess of \$2,000, Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor has been included in the solicitation and is also separately available to Contractor upon request to the City. Award of the City contract or subcontract to Contractor is conditioned upon Contractor's acceptance of the wage determination. Contractor shall also comply with the Copeland "Anti-Kickback"

Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Contractor and subcontractor are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. Contractor (or subcontractor) is on notice that all suspected or reported violations of these laws shall be reported to the Federal awarding agency.

(E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** In addition to other general provisions in the Contract, if this Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, and shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) **Rights to Inventions Made Under a Contract or Agreement.** As applicable, if this Contract is funded by a Federal "funding agreement," as defined under 37 CFR §401.2(a), then a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement" must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency, and if such contracting is allowed by the City.

(G) **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** In addition to any applicable State and local environmental laws and regulations and/or provisions elsewhere in the Contract, if this Contract is in excess of \$150,000, then Contractor must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Contractor (or subcontractor) is on notice that the violations of these laws shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) **Debarment and Suspension (Executive Orders 12549 and 12689).** A party shall not be eligible for a contract award (see 2 CFR 180.220) if that party is listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMS guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189 and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. In entering into this Contract with the City, Contractor certifies that Contractor and its subcontractor(s) are not on the SAM Exclusions list; Further Contractor and any subcontractor(s) are on notice that inclusion on the SAM Exclusions list during the term of the Contract shall be a basis for material breach of the Contract.

(I) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** In addition to requirements City Code Chapter 2.12 *Regulation of Lobbying Entities*, Contractors that apply or bid for an award exceeding \$100,000 must file the required certification under the "Byrd Anti-Lobbying Amendment." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) **Compliance with 2 CFR §200.322 Procurement of recovered materials.** In addition to rules, regulations and policies providing for environmentally sound and sustainable procurement, Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.