

ORDINANCE NO. 1146

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH RECREATION RESOURCE FOR THE PURCHASE OF PLAYGROUND EQUIPMENT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby wishes to purchase playground equipment for 13th Avenue Park; and

WHEREAS, the contract will be made in compliance with ORS 279.015 (1)(g) utilizing an existing solicitation for the State of Oregon under Contract No. 3227; and

WHEREAS, in accordance with ORS 279.015 (1)(g), the City of Canby, as a member of the Oregon Cooperative Purchasing Plan, finds that the original contract met the requirements of ORS chapter 279, the contract allows other public agencies to use the solicitation; and the purchase will be placed against State of Oregon solicitation # 3227 in compliance with the State of Oregon Department of Administrative Services Purchasing Division price agreement for this product; and

WHEREAS, Recreation Resource, of Salem, Oregon submitted the low bid in the State Purchasing Division solicitation process; now therefore

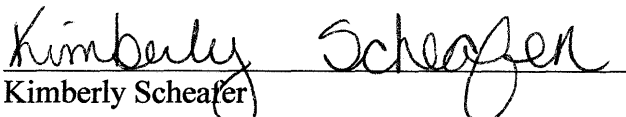
THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: The Mayor and City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with Recreation Resource, of Salem, Oregon, for the bid amount of \$74,744.76.

Section 2: Emergency Declared

It being necessary for the health, safety, and general welfare of the citizens of Canby that this equipment be put to use as soon as possible, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.


SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, June 2, 2004, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, June 16, 2004, commencing at the hour of 7:30 PM in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.



Kimberly Scheafer
City Recorder Pro Tem

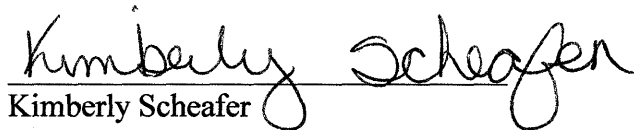
PASSED on second and final reading by the Canby City Council at a regular meeting thereof on June 16, 2004, by the following vote:

YEAS 6 NAYS 0



Melody Thompson
Mayor

ATTEST:



Kimberly Scheafer
City Recorder Pro Tem

Fax Cover Sheet

RECREATION RESOURCE, INC
Business Office
PO Box 4508 Salem OR 97302
503-585-5777 ~ 503-581-7863 (fax)

Date: 5/6/2004
Pages with cover: 3
To: Jeff Snyder
Fax Phone: 503-266-7238
From: Jenni

Subject: Canby Parks & Rec

COMMENTS: Hello Jeff. Following is the quote that I have revised for you regarding the 2-5 year old playground and poured in place surfacing.

If you have any questions please feel free to give us a call at 1-800-635-2525.

Thank you & have a great day!

Jenni



Quotation

Quote Number: 24094-R1
5/6/2004

From:
Recreation Resource, Inc.
Jack Dalton
PO Box 4508
Salem OR 97302
Phone: (800) 635-2625
Fax: (503) 581-7863
info@recresource.com

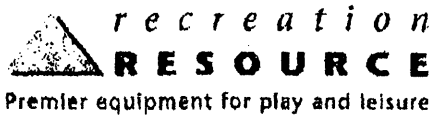
*All purchase orders,
contracts, and checks
to be made out to:*
Recreation Resource, Inc.

To:
Canby Parks & Rec Dept
Beth Saul
PO Box 930
Canby OR 97031
Phone: (503) 266-4021
Fax: (503) 266-7961

Job Name: 13th Ave Park
Est Delivery: 4-6 Weeks ARO
Prices FOB: Canby OR 97031

Quote Valid: 30 Days
Terms: Net 30 OAC

<i>Item</i>	<i>Quantity</i>	<i>Price</i>	<i>Extension</i>
2-5 YEAR OLD SITE			
Landscape Structures Custom PlayShaper for children 2-5 years old with 5 square tenderdecks, 2 tri tenderdecks, ADA transfer module, super square poly shingle roof, curved poly slide, double poly slide, double swirl poly slide, 28" crawl tunnel, arch bridge, belt bridge, cozy climber, step ladder, talk tubes, wiggle ladder, horizontal ladder, 2 benches with end panel, table panel, bubble panel, driver panel, gear panel, 176 block image panel, house panel, periscope panel, slant window panel, slant entrance panel, sound chimes panel, storefront panel, 2 wire barrier walls, zoo panel	1	\$29,868.00	\$29,868.00
Landscape Structures #100014B Turtle Tuffrider, direct bury	1	\$626.00	\$626.00
Landscape Structures #100041A curved balance beam, direct bury or surface mount	1	\$420.00	\$420.00
Landscape Structures #100033A spring see-saw, 4-seats, red and yellow seats, color choice on two posts and beam	1	\$2,008.00	\$2,008.00
Landscape Structures #100048A arch swing, 2 place w/tendertuff-coated chain	1	\$1,372.00	\$1,372.00



Quotation

Quote Number: 24094-R1
5/6/2004

Landscape Structures	1	\$367.00	\$367.00
#100105A age appropriate sign w/playshaper posts. 2-5 years			34,659.

SURFACING

No Fault SAF DEK	3,432	\$11.68	\$40,085.76
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Pour-in-place rubber safety surfacing. 3432 sq ft Saf Dek, 2.75" depth with 7' fall height, 50% black / 50% color (no graphics or patterns). Project quoted using Davis Bacon wage rates, owner responsible for security during install and cure time, must be 40 degree and rising for installation. Based on owner providing a containment curb around entire play area. Customer must provide site ready for installation which includes 90% compacted crushed rock base and on-site dump area for debris. If square footage, depth or color changes, so may the price per square foot. Includes installation by factory.

Subtotal:	\$74,744.76
Freight:	Included
Sales Tax:	
TOTAL:	\$74,744.76

Materials only. Credit approval required except for established accounts and government agencies. Deposit may be required. No retainage. Customer is responsible for unloading the shipment. Returned goods must be pre-authorized and are subject to a 20% re-stocking fee and return shipping charges.

Prices include State Contract discount and freight to Canby, OR. Freight for independent items based on shipping with the playground structure.

Signature below accepting this quotation will constitute a purchase order only upon approval by Recreation Resource, Inc. Please include shipping address, contact, phone and fax if different from above.

Customer Signature	Print Name	Date	PO#
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Fax Cover Sheet**RECREATION RESOURCE, INC.**

Business Office

P.O. Box 4508 Salem, OR 97302

503.585.5777 ~ 503.581.7863 (fax)

1.800.635.2525 (toll free)

E-mail: info@recresource.comWeb: www.recresource.com**Date:** 5/21/2004**Pages with cover:** 4**To:** Beth Saul, City of Canby**Fax Phone:** 503-266-1709**From:** Kathy Dalton**Subject:** State Contract for purchasing play equipment

COMMENTS: Beth, here is a letter and summary page that should provide you with the information you need. Your purchase order just needs to reference the Price Agreement number and the RFP number. The complete contract can be found at the DAS web site.

<http://www.oregon.gov/DAS/PFSS/SPO/index.shtml>

Click on Vendor Information.

Click on Connect to VIP.

Follow the instructions.

Please let me know if there is anything else I can do for you.



Oregon

Tim W. Kotze, Governor

Department of Administrative Services
Procurement, Fleet and Surplus Services Division
Administration Office

1225 Ferry Street SE U130
Salem, Oregon 97301-4284
Phone (503) 378-4697
FAX (503) 378-4476

FAX LETTER

FAX # (503) 581-7863

NUMBER OF PAGES 1

(NOTE: Hard copy of this faxed letter to follow by mail)

DATE: September 25, 2003

Recreation Resource, Inc.
Jack Dalton
PO Box 4508
Salem, OR 97302

RE: Award of Price Agreement for Playground Equipment
Notice to Proceed and Instruction for Quarterly Volume Reports and VCAF Remittances

The State of Oregon has awarded Price Agreement # 3227 to your firm for the purchase of Playground Equipment. This Price Agreement award is based on your response to the State of Oregon RFP # 10200030-03. You are authorized to proceed in accordance with the terms, and conditions of the original solicitation, which will remain in full force and affect during the contract period, including any extensions. The initial Price Agreement period is October 1, 2003 through September 30, 2004 with annual renewals from October 1 to September 30 each year thereafter to the end of the five year Price Agreement period.

As agreed to in paragraph G.9, Administrative Fees and Volume Sales Reports, of the Request for Proposal, the administrative instructions herein are provided for your timely compliance.

- (1) Initial sale(s) period begins October 1, 2003 and ends December 31, 2003. As required by paragraphs G.9.2 and G.9.2.A, a volume sales report is due in the format described therein.
- (2) The VCAF remittance for the initial period is due to my office for the amount of the sales times 1 % not later than January 31, 2003.
- (3) The volume sales report and the remittance may be transmitted separately. Both must be received not later than January 30, 2003.
- (4) Interest payable by the Contractor for any VCAF payment not received at our office by the due date (item # 2, above) and will be computed to be 18 percent per annum compounded daily or the maximum rate allow by law, whichever is less, from the due date until the receipt date. Contractor shall remit accrued interest with next quarterly payment.

(5) Contractor must indicate the following contract/price agreement information within volume sales report header information and payment explanation:

Contract #: _____

Contractor: _____

Fed Tax ID#: _____

(6) Volume sales reports and VCAF Fees (remittances) shall be due and owing thirty (30) days following the end of each quarter. Quarters end March 31, June 30, September 30, and December 31.

I am enclosing a copy of the "Price Agreement Summary" reference document. This document contains information from the awarded Price Agreement that has been loaded onto the State's Vendor Information Program (VIP). The VIP "Price Agreement Summary" document is available at: [tps.das.state.or.us/purchasing](https://das.state.or.us/purchasing)

We appreciate your cooperation in this matter. Please contact me at (503) 378-4647 or e-mail at jan.i.evans@state.or.us for further clarification related to this contract/price agreement.

Sincerely,



Jan Evans
DAS State Procurement Office

cc: Dan Clem, DAS State Procurement Office
Jennetta Fennell, DAS State Procurement Office

Attachments: 1. Signature page of RFP/Price Agreement (mailed with Original Letter)

STATE OF OREGON
DEPARTMENT OF ADMINISTRATIVE SERVICES
PURCHASING DIVISION
PRICE AGREEMENT SUMMARY

PAGE: 1
PA NUMBER: 3227

COMMODITY CODE: 93165
BUYER NAME: J. EVANS (503) 378-4647

ITEM: PLAYGROUND EQUIPMENT

AGENCY: STATE AGENCIES AND ORCPP MEMBERS

CONTRACTOR: RECREATION RESOURCE, INC
PO BOX 4508
SALEM OR 97302

PH#: (800) 635-2525 FAX:50358178630000 CONTACT:JACK DALTON

BRAND/TRADE NAME: LANDSCAPE STRUCTURES

PRICE: 5% OFF CATALOG PRICES

TERMS: NET 30
FOB: FOB DESTINATION

CONTRACT PERIOD: OCT 1 2003 THROUGH SEP 30 2004

DAYS REQUIRED FOR DELIVERY: 60 DAYS FROM RECEIPT OF ORDER
MINIMUM ORDER: NONE
TRANSPORTATION CHARGES: SHIPPING FEES BILLED SEPARATELY
OTHER CONDITIONS:

THIS CONTRACT COVERS ONLY THOSE ITEMS LISTED.

DATE OF ISSUANCE: 09/24/2003
BID NO.: 10200030 03

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BUYER NAME: J. EVANS (503) 378-4647

ITEM: PLAYGROUND EQUIPMENT

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MINIMUM ORDER: NONE

TRANSPORTATION CHARGES: SHIPPING FEES BILLED SEPARATELY

OTHER CONDITIONS:

THIS CONTRACT COVERS ONLY THOSE ITEMS LISTED.

DATE OF ISSUANCE: 09/24/2003

BID NO.: 10200030 03

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ITEM - 00001 UNIT - EA COMMODITY - 93165 PRICE - \$0.0000

LANDSCAPE STRUCTURES PLAYGROUND EQUIPMENT at 5% off catalog price
NOT INCLUDING SHIPPING.

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CONTRACT SUMMARY

This agreement is intended to serve as a summary of the contractual agreement between the State of Oregon, OCPP members and Recreation Resource, Inc. The actual contract documents consist of the original Request for Proposal (RFP), all Addenda and Playground Equipment Company's Proposal.

All terms and conditions as originally agreed upon in the RFP documents shall apply and be enforced for the term of this contract, including any extensions, whether or not they are directly referenced herein. Contractor should consult original proposal documents for complete specifications and terms and conditions.

In the following Sections the letters and numbers are not consecutive because all parts referencing proposal information has been removed.

SECTION E SPECIFICATIONS

E.1 SPECIFICATIONS:

E.2.2 NEW AND UNUSED: All Goods shall be new, unused, produced from current production components, and shall be delivered ready for installation. No components may be used that are not offered in the manufacturer's current catalog for the Goods.

E.2.2.a. Contractor shall make no substitutions to an order without prior approval from the Authorized Purchaser. Upon receipt of such notice from the Contractor, the Authorized Purchaser reserves the right to cancel the order and purchase from another Playground provider under contract with the State. Repeated documented failures to provide product or notification may result in contract cancellation.

E.2.6. PLAYGROUND EQUIPMENT SPECIFICATIONS:

- a. Posts - All posts shall be a Min. 4.5 inches diameter x 12 gauge galvanized steel or aluminum wall thickness inside and out, w/powder coated finish.
- b. All Decking shall slip resistant one piece punched heavy gauge steel flush mounted with a Minimum 12 gauge including all stairs and decking which shall be PVC coated after fabrication. Expanded Steel is not acceptable. All deck heights shall be a minimum of 40 inches in height.

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- c. Finish - Baked-on Polyester Powder Coat.
- d. Slides: All slides shall be double-wall construction, with smooth seams with no gaps, and bolted directly to the deck with no gaps between slide and deck.
 - 1. All Tube Slides shall be a Minimum of 27 inches inside diameter available in straight, curved or s-shaped configurations that attach to decks 3 ft to 6 ft high. Oval tube slides shall be a minimum of 24 inches wide and 30 inches high and will be considered the same as or equal to the 27 and 30 inch round crawl tubes.
 - 2. Wave Slides must be double wall construction with a one piece bedway that attaches to decks from 4 ft to 6 ft deck heights.
- e. All Plastics (Slides, panels & roofs) shall be UV stabilized polyethylene non toxic plastic with a 1/4 inch nominal wall thickness.
- f. Octagon or Hex Roofs shall be double wall construction. A single wall Octagon or Hex roof will be acceptable as long as the thickness is equal to or better than double wall construction.
- g. Swing Beam top rail shall be a minimum 5 inches in diameter.
- h. Recycled plastic and steel wherever applicable.
- i. All equipment shall be easy to assemble.
- j. Bubble windows shall be of Polycarbonate or high density polyethylene or equal.
- k. All edges, seams and corners shall be smooth with all bolts semi recessed or covered. All corners shall be rounded with edges smoothed to prevent clothing from being caught.
- l. All hardware, including clamps, nuts, bolts and washers, shall be rust and vandal resistant.
- m. A minimum of six (6) color options shall be available including dark green, brown and tan.
- n. Replacement parts shall be available within 30 days. Parts for all play equipment shall be available for a minimum of 10 years.
- o. All equipment shall offer maximum play durability and safety.

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- p. All chains shall be galvanized or PVC coated on part or all of the chain.
- q. All graphics shall be molded-in, routed or imbedded to prevent peeling or rubbing off.
- r. Crawl tubes shall have a minimum 30 inch inside diameter with spy holes.

E.2.7 DELIVERY: Contractor shall complete delivery within sixty (60) calendar days of date of fax or written purchase order, unless Contractor obtains a written extension from the Authorized Purchaser. within ten (10) calendar days after date of order.

E.2.8. F.O.B. DESTINATION: All products shall be shipped F.O.B. to the address and location designated on the Purchase Order. Acceptance shall not be deemed complete until final inspection by Authorized Purchaser. A copy of all product information and instructions shall accompany the Goods on delivery.

E.2.10 CATALOGS AND PRICE LISTS: Contractor shall provide a copy of the manufacturer's current catalog and price list referenced in the Price Agreement to Authorized Purchasers without charge upon request. Contractor shall update the material as necessary and keep it current throughout the term of the Price Agreement. For any price changes see Section G.3.

E.2.11 SALE ITEMS: The State shall be given the benefit of any special sales, rebates, or promotions offered by Contractor or manufacturer to any of their other customers during the term of the Price Agreement. The Contractor shall be responsible for promptly notifying the Authorized Purchasers of any Sale/Rebate/Promotion, and shall apply the sale price to any order placed by the Authorized Purchaser during the sale/rebate/promotion period.

SECTION G PRICE AGREEMENT TERMS AND CONDITIONS

G.1 TERM OF PRICE AGREEMENT: The initial term of the Price Agreement shall be one year, beginning on the date the Price Agreement is awarded. Upon concurrence of the parties, the Price Agreement may be extended for additional terms ("Extension Terms"). Provided, however, that the maximum duration for the Price Agreement, including all extensions, shall be five (5) years.

G.2 EXTENSIONS: DAS shall notify Contractor in writing of the State's intent to extend the Price Agreement ("Renewal Notice") at least thirty (30) days prior to the expiration of the then-current term.

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If Contractor consents to the extension, it shall sign and return the Renewal Notice to DAS within the time period specified therein. If Contractor does not consent, the Price Agreement shall expire according to its terms, unless earlier terminated.

G.3 EXTENSION TERM PRICE ADJUSTMENTS:

G.3.1 Contractor may seek unit price increases reflecting increased Manufacturer's published list prices for an Extension Term by submitting a written request to DAS, including all appropriate price documentation, within the period specified in the Renewal Notice. If approved, the unit price increases shall be firm for the duration of the Extension Term. Provided, however, no more than one price adjustment shall be allowed during any twelve-month period regardless of the number of Extension Terms entered into during that time.

G.4 ONE MONTH EXTENSION OPTION: Notwithstanding the foregoing Sections G.1 through G.3, the State reserves the right in its sole discretion to extend the Price Agreement for a maximum of one (1) calendar month beyond any term. DAS shall notify Contractor in writing of the one-month extension prior to the expiration of the then-current term. Price adjustments are not available for one-month extensions obtained pursuant to this Section G.4. Consecutive one-month extensions under this Section are also not allowed.

G.5 GOODS AND SERVICES TO BE FURNISHED: During the term of the Price Agreement Contractor agrees to deliver all Goods and provide all services ordered by Authorized Purchasers in accordance with the terms and conditions of the Price Agreement and any Contract made thereunder.

G.6 PURCHASE ORDERS: Contractor shall not accept any Purchase Order that does not comply with the following requirements:

G.6.1 **STATE AGENCIES:** Purchasing Agencies shall use the DAS-approved Purchase Order forms to order Goods and/or services under the Price Agreement unless otherwise authorized by DAS. Purchase Orders shall reference the Price Agreement number, the RFP number, and the Unit serial or identification number, if any. However, no language in a Purchase Order submitted by a State Agency shall vary, amend, modify, or add terms or conditions to the Price Agreement. Operative provisions in Purchase Orders shall be limited to: designation of the State Agency and its authorized representative; order quantities; optional services, equipment and accessories offered under the terms of the Price Agreement; delivery schedules in accordance with the terms of the Price Agreement; and Delivery Destination and invoicing address.

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G.6.2 ORCPP: The Mandatory Purchase Authorization Language set out in Section G.6.3 shall be required on the front page of each Purchase Order submitted to Contractor by an ORCPP Participant for Goods ordered under the Price Agreement.

G.6.3 ORCPP MANDATORY PURCHASE ORDER LANGUAGE:

THIS PURCHASE IS PLACED AGAINST STATE OF OREGON SOLICITATION #10200030-03 AND PRICE AGREEMENT # ¼ORDERING ORGANIZATION WILL INSERT PRICE AGREEMENT #|. THE CONTRACT TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T'S & C'S) CONTAINED IN THE PRICE AGREEMENT APPLY TO THIS PURCHASE AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S AND C'S, EXPRESSED OR IMPLIED.

G.7 SALES TO UNAUTHORIZED PURCHASERS: It is the Contractor's responsibility to verify purchasers' authority to contract pursuant to the Price Agreement. If Contractor is found to have entered into two or more Contracts pursuant to this solicitation with an entity other than Authorized Purchasers, Contractor will be deemed to be in material breach of the Price Agreement.

G.8 VERIFICATION OF PARTICIPANT AUTHORITY:

G.8.1 ORCPP: ORCPP Participants can be verified via on-line Vendor Information Program (VIP), Menu Option #6, Directories. VIP can be accessed by: (A) Personal Computer (PC)/Modem connection using VIPCOMM communication software available at no charge. Call DAS Purchasing @ (503) 378-4649 to obtain copy; or (B) PC/Modem connection using Contractor's own communication software (read only); or (c) Worldwide Web: <http://tpps.das.state.or.us/purchasing>; or (D) Procurement Centers (located throughout Oregon). Call (503) 378-4649 for information or to view list of centers identified on DAS Purchasing's Web page.

G.9 ADMINISTRATIVE FEES AND VOLUME SALES REPORTS:

G.9.1 ADMINISTRATIVE FEES/PAYMENT: Contractor shall pay to the Department of Administrative Services (DAS) Purchasing, Administrative fees in an amount equal to one Percent (1%) of Contractor's total receipts collected from Authorized Purchasers using this Price Agreement during the proceeding quarter (the Administrative Fees).

G.9.2 PAYMENTS: Monthly payments and Exchange rate. Following receipt of the Quarterly Report by DAS, DAS will invoice the Contractor for Administrative Fees due for that quarter. Contractor shall make or cause to be made, the payments required ("Administrative Fee Payment") not later than 15 days from the end of each quarter. For the purposes of this Section, quarters end March 31, June 30, September 30, and December 31.

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All payments shall be in the form of a check made payable to the Department of Administrative Services Procurement Office at the address stated under "Pay To" on the invoice.

G.9.2.A. If the total Administrative Fee to be paid for any quarter does not exceed \$100.00, Contractor shall not be required to remit the fee, but shall add such fee to the amount owed for the next succeeding quarter. These deferred Administrative Fees shall not be subject to the interest accrual terms set out in Section G.9.3.

G.9.3. INTEREST: Any Administrative Fee Payments not paid by the due date shall accrue interest at the rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DAS'S right to interest on late Administrative Fee Payments shall not preclude DAS from exercising any of its other rights or remedies pursuant to this Contract or otherwise with regards to Contractor's failure to make timely remittances.

G.9.4. ACCOUNTING AND REPORTING REPORTS: Contractor shall submit a report with each Administrative Fee Payment ("Administrative Report") which contains (i) complete and accurate details of the gross Receipts for the relevant Administrative Period; (ii) Contractor's corresponding calculation of the Administrative Fees due to Department for such Administrative Period; and (iii) such other information as Department shall, from time to time, reasonably require. Contractor shall send an Administrative Report each quarter whether or not there are reportable Administrative Fees.

G.9.5. QUARTERLY VOLUME/SALES REPORTS:

G.9.5.A. The reports shall clearly indicate the RFP and or Price Agreement award number.

G.9.5.B. Reports shall provide information in the following specific categories:

- G.9.5.B.1. RFP item number,
- G.9.5.B.2. Recycled/non-recycled content,
- G.9.5.B.3. Customer name (Separate Report for State Agencies and ORCPP Participants) (State Agencies report must list each agency separately),
- G.9.5.B.4. Purchase Order number,
- G.9.5.B.5. Date ordered,
- G.9.5.B.6. Quantity ordered (Price List Items),
- G.9.5.B.7. Unit price and extended total,
- G.9.5.B.8. Total Dollar Amount for ending Quarter.

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G.9.6. ALL REPORT COPIES: Contractors shall supply reports in a format approved by both parties. Reports on 3.5 inch diskette or by e-mail are preferred; however, hard copy reports are acceptable. The following format examples are preferred for sales volume reports:

G.9.6.A. Excel Spreadsheet

G.9.6.B. Lotus Spreadsheet

G.9.6.C. All other report formats must be approved and agreed upon by DAS Contract Administrator and Contractor prior to submission of the first report.

G.9.7. REPORT RECEIPT/ACCEPTANCE: The Department of Administrative Service's (DAS) receipt or acceptance of any of the reports furnished pursuant to this Price Agreement, or any sums paid hereunder, shall not preclude DAS from challenging the validity thereof at any time.

G.9.8. THE STATE OF OREGON RESERVES THE RIGHT TO CANCEL THIS PRICE AGREEMENT IF SALES/VOLUME REPORTS ARE NOT RECEIVED AS SCHEDULED.

G.9.10. COMPLIANCE AUDITS: Contractor will be monitored by DAS for compliance through Price Agreement volume sales reports required throughout the term of the Price Agreement. DAS reserves the right to audit Contractor's Price Agreement and Contract files.

G.9.11. REPORTING DATES: Volume sales reports are due by the 15th day following the end of each calendar quarter. Calendar quarters end March 31, June 30, September 30 and December 31.

G.10. LIMITATION OF LIABILITY: Contractor acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Goods and services and the resulting contractual relationship, if any, with each such contracting party.

G.11. INDEMNIFICATION: Contractor shall defend, save, hold harmless, and indemnify the State and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to Contractor's performance of the Price Agreement and Contracts entered into thereunder, including but not limited to (1) the activities of Contractor or its officers, employees, subcontractors, or agents, (2) the quality, condition, and other attributes of the Goods sold, and (3) the services provided.

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G.11.1 Provided, however, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State and/or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State and/or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and/or that of officers, employees, and agents under (i) and (ii) above.

G.12. TERMINATION OF PRICE AGREEMENT:

G.12.1 The Price Agreement may be terminated at any time by mutual written consent of Contractor and the State.

G.12.2 The State may at its sole discretion terminate the Price Agreement for Convenience upon 30 days' notice.

G.12.3 The State may terminate the Price Agreement immediately upon notice to Contractor, or at such later date as it may establish in such notice, upon the occurrence of either of the following events: (i) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the purchase of Goods and/or services offered under the Price Agreement is prohibited; or (ii) Contractor breaches any material provision of the Price Agreement or Contract(s) entered into thereunder.

G.12.4 Upon receipt of written notice of termination, Contractor shall stop performance under the Price Agreement as directed by the State.

G.13. REMEDIES: In the event of any dispute arising out of the Price Agreement, the State shall be entitled to recover only incidental and actual damages incurred. The Contractor's remedy shall be limited to reinstatement of the Price Agreement, if improperly terminated. Neither party shall be entitled to recover indirect or consequential damages. Further, with the exception of defense costs and expenses recoverable by the State pursuant to G.12, neither party shall be entitled to attorney's fees, costs, or expenses of any kind.

G.14 NOTICES: All notices required to be given by Contractor under the Price Agreement shall be in writing and addressed to the DAS point of contact identified in the RFP. All notices required to be given by the State shall be in writing, addressed to the Contractor's

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representative, and sent to the address specified in the RFP.

Mailed notices shall be deemed given five (5) days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Faxed notices shall be deemed given upon electronic confirmation of successful transmission to the designated fax number.

G.15. ACCESS TO RECORDS: Contractor shall maintain all fiscal records relating to the Price Agreement in accordance with generally-accepted accounting principles, and shall maintain all other records relevant to Contractor's performance of the Price Agreement (collectively, "Records"). The State and its duly authorized representatives shall have access to Records for purposes of examination and copying. Contractor shall retain and keep accessible all Records for a minimum of 6 years, or such longer period as may be required by applicable law following expiration or termination of the Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Price Agreement, whichever date is later.

G.16. SEVERABILITY: If any provision of the Price Agreement is declared by a court of competent jurisdiction to be invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Price Agreement did not contain the particular provision held to be invalid.

G.17. SURVIVAL: Termination of the Price Agreement shall not extinguish or prejudice the State's right to enforce the warranty, access to records, indemnification, governing law, venue, consent to jurisdiction, and remedies provisions.

G.18. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights or delegate responsibilities under the Price Agreement, in whole or in part, without the prior written approval of DAS. Any attempted transfer (by any of the above means) of rights or delegation of duties shall be void. Further, no such written approval shall relieve Contractor of any obligations under the Price Agreement, and any delegate shall be considered the agent of Contractor. The provisions of the Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and permitted assigns.

G.19. GOVERNING LAW: The Price Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without regard to principles of conflicts of law.

G.20. VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between Contractor and the State that arises from or relates to the Price Agreement shall be brought and conducted solely and exclusively within the Circuit Court of

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Marion County for the State of Oregon. If any Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **CONTRACTOR HEREBY CONSENTS TO THE PERSONAM JURISDICTION OF SAID COURTS.** Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

G.21. MERGER CLAUSE; AMENDMENT; WAIVER: The Price Agreement constitutes the entire agreement between the Contractor and State on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified therein regarding the Price Agreement. No waiver, consent, modification or change of terms of the Price Agreement (collectively, "Amendment") shall bind either party to: (a) the Price Agreement or (b) Contracts entered into thereunder, unless such Amendment is in writing, is signed by both parties to the Price Agreement, and all necessary approvals have been obtained. Amendments shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of the Price Agreement shall not constitute a waiver by the State of that or any other provision.

SECTION H - STANDARD CONTRACT TERMS AND CONDITIONS

H.1 STANDARD AND SPECIAL TERMS AND CONDITIONS; ORDER OF PRECEDENCE:

These printed Terms and Conditions are the Standard Terms and Conditions for State of Oregon contracts, including price agreements. The State may also provide "Special Terms and Conditions" elsewhere in the RFP which apply only to Contract(s) entered into under a particular Price Agreement. Whenever possible, all terms and conditions are to be harmonized. In the event of a conflict between the Standard and Special Terms and Conditions, the "Special Terms and Conditions" take precedence, unless the Standard term in question is/are required by law. In the event of any other conflict, the Contract shall be interpreted utilizing the following order of precedence, which documents collectively constitute the Contract: (i) the Special Terms and Conditions, (ii) these Standard Terms and Conditions, (iii) the Request for Proposal, (iv) the Proposal, (v) the Purchase Order, and (vi) Authorized Purchaser written confirmation of delivery date extension approval. Contractor agrees that all the terms and conditions of this Contract supersede all terms and conditions, if any, included on any order acknowledgment, delivery, invoice, and other form(s) used by the Contractor in connection with transactions entered into herein.

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H.2. SOURCE OF PAYMENT: Contractor shall look solely to Authorized Purchaser for payment for Goods or services provided under this Contract. Contractor understands and agrees that if Authorized Purchaser is a State Agency, payment of amounts due under this Contract for purchases made after the last day of the current biennium is contingent on State Agency's receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow State Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract. State Agency will only pay for Goods and Services that are delivered and accepted by it.

H.3 PURCHASE ORDERS: Purchase Orders shall reference the RFP numbers and the Unit identification number, if any. No language in a Purchase Order shall vary, amend, modify, or add terms or conditions to the Contract documents, as listed in Section H.1, with the exception of the following operative provisions: Operative provisions in Purchase Orders shall be limited to: designation of Authorized Purchaser and its authorized representative; order quantities; optional services, equipment and accessories offered under the terms of the Price Agreement; delivery schedules in accordance with the terms of the Price Agreement; and Delivery Destination and invoice address. Should a court of competent jurisdiction determine that a Purchase Order submitted is an offer, rather than an acceptance, Contractor's acceptance shall be limited to the terms of the Contract as set out in the RFP.

H.4 DELIVERY DESTINATION: Goods, including all delivery components, options, and attachments, if any, shall be delivered F.O.B. destination to the address or location specified in the Purchase Order ("Delivery Destination"), together with all warranty documentation, inspection reports, and certifications (where applicable).

H.5 PAYMENT; OVERDUE ACCOUNT CHARGES: Payment shall be due and owing no later than thirty (30) days from date of acceptance or expiration of inspection period, whichever occurs first. Contractor may only assess overdue account charges, in accordance with the provisions of ORS 293.461(3), up to a maximum rate of two-thirds of one percent per month (8% per annum).

H.6 INVOICES: Contractor shall invoice the Agency upon expiration of the inspection, testing, and acceptance period. Each invoice shall include the Purchase Order number and shall itemize all Goods sold and services performed, if any. Each invoice shall also include the address to which payment shall be sent.

H.7 INSPECTIONS/ACCEPTANCE: The Authorized Purchaser shall have 15 calendar days from date of delivery of the Goods within which to inspect and accept or reject them. If the Goods are rejected,

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Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection shall include itemization of apparent defects (including late delivery). Notice of rejection shall also indicate whether cure will be allowed.

H.7.1 CURE: The Authorized Purchaser may elect to have the Contractor deliver substitute Goods that comply with the Contract specifications and warranties, or have the Goods repaired, at Authorized Purchaser's option. The Contractor shall either deliver substitute conforming Goods or make all corrections reasonably deemed necessary by the Authorized Purchaser within ten (10) calendar days of receipt of notice of rejection and opportunity to cure. Failure to complete cure within the ten (10) calendar-day period shall constitute default.

H.7.2 REMOVAL/REIMBURSEMENT: If the Goods are rejected or acceptance is revoked, the Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within ten (10) calendar days of receiving notice of rejection or revocation of acceptance. Nothing contained in this Section H.7.2 shall preclude the State from other remedies to which it may be entitled upon rejection or revocation of acceptance.

H.8. CONTRACTOR WARRANTIES: Contractor represents and warrants to State that: (i) Contractor has the power and authority to enter into and perform this Contract; (ii) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (iii) Contractor shall perform the work set forth in this Contract in the most highly professional manner and in accordance with the utmost industry standards; and (iv) Contractor shall, at all times during the term of this Contract, be qualified, competent, and current with any necessary licenses to perform the work set forth in this Contract.

H.8.1 WARRANTY ON MATERIALS, DESIGN, MANUFACTURE: Contractor warrants that all Goods shall be new, unused, current production models, where applicable, and shall be free from defects in materials, design and manufacture for warranty period in Section E.3.1.E. Where specifications have been made a part of the RFP, Contractor further warrants that all Goods shall be in compliance with and meet or exceed standards of quality and safety established in the RFP.

H.8.2 WARRANTY ON SERVICE STANDARDS. Contractor warrants that all services, where provided, shall be performed in a good and workmanlike manner, and in accordance with the highest applicable professional and/or industry standards.

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H.8.3 MANUFACTURER WARRANTIES: Contractor shall have all manufacturer warranties covering the Goods and component parts, where applicable, transferred to the Authorized Purchaser (or the State, if Authorized Purchaser is a State Agency) at time of delivery at no charge.

H.8.4 WARRANTY OF TITLE. Contractor warrants that all Goods are free and clear of any liens or encumbrances, and that Contractor has full legal title to the Goods, and that no other person has any right, title or interest in the Goods which shall be superior to or infringe upon the rights granted to the Authorized Purchaser (or the State, if Authorized Purchaser is a State Agency) hereunder.

H.8.5 SAFETY AND HEALTH REQUIREMENTS: Contractor warrants that Goods and services provided under the Contract comply with all applicable federal health and safety standards, including but not limited to Occupational Safety and Health Administration (OSHA), and with all Oregon safety and health requirements, including, but not limited to, those of the State Workers' Compensation Division.

H.8.6 WARRANTIES CUMULATIVE. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Contract. All warranties provided in the Contract shall be cumulative, and shall be interpreted expansively so as to afford the Authorized Purchaser (or the State, if Authorized Purchaser is a State Agency) the broadest warranty protection available.

H.9. INDEMNIFICATION: Contractor shall defend, save, hold harmless, and indemnify the Authorized Purchaser (or the State, of Oregon and its agencies and their officers, employees and agents if Authorized Purchaser is a State Agency) from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Provided, however, with regard to State Agencies, that the Oregon Attorney General must give written authorize to any legal counsel purporting to act in the name of, or represent the interest of, the State and/or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State, its officers, employees and/or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and/or that of its officers, employees, or

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agents under (i) and (ii) above.

H.10. COMPLIANCE WITH APPLICABLE LAW: Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract, including without limitation the State and federal laws, rules and regulations providing civil rights or rehabilitation. Further, if Authorized Purchaser is a State Agency, its performance under this Contract is conditioned upon Contractor's compliance with the clauses required in every public Contract as set forth in ORS 279.312, 279.314, 279.316, 279.320, and 279.555 which are hereby incorporated by reference.

H.10.1. RECALL OF GOODS: In the event any Good or component part is recalled by a regulatory body or the manufacturer, or is discovered by Contractor not to be in compliance with applicable standards, Contractor shall immediately notify the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. The Authorized Purchaser may elect to cancel any order and terminate the Contract in whole or in part, based upon such recall or non-compliance, or may require Contractor to complete necessary modifications, where applicable, in a timely manner. Contractor shall be responsible for removing rejected Goods and for making any required modifications, including shipping, handling, parts, labor, and travel, and all other expenses, at no cost to the Authorized Purchaser.

H.10.2 MATERIAL SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Contract which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods.

H.11 RECYCLED PRODUCTS: Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the Contract. These products shall include recycled paper, recycled PETE products, as defined in ORS 279.545(5), and other recycled plastic resin products. Contract shall specify the minimum percentage of recycled products used.

H.12 TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence for contractor's performance of obligations under the Contract.

H.13 EVENTS OF DEFAULT:

H.13.1 CONTRACTOR. Contractor shall be in default under the Contract if:

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H.13.1(a) Contractor commits any material breach of any Contract covenant, warranty, certification, or obligation.

H.13.1(b) Contractor institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified as Contractor's obligations under the Contract.

H.13.2 AUTHORIZED PURCHASER. An Authorized Purchaser shall be in default under the Contract if it commits any material breach or default of any Contract obligation.

H.14. TERMINATION:

(A) Mutual consent. This Contract may be terminated at any time by mutual written consent of the parties.

(B) If Authorized Purchaser is a State Agency, it may, at its sole discretion, terminate this Contract, in whole or in part for Convenience, upon 30 days written notice to Contractor.

(C) Authorized Purchaser may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (i) if a State Agency, Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the services to be purchased under this Contract; (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of Goods under this Contract is prohibited or, if a State Agency, the Authorized Purchaser is prohibited from paying for such Goods from the planned funding source; or (iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, and, if cure has been authorized pursuant to H.7.1 or otherwise, such breach, default or failure is not cured within the number of days specified in a written notice from Authorized Purchaser which reasonably describes the nature of the breach, default or failure and demands that Contractor cure it.

(D) Contractor may terminate the Contract upon ten days' notice to Authorized Purchaser of Authorized Purchaser's default under the Contract

(E) With regard to Authorized Purchasers who are State Agencies, if Contractor was not in default at the time of notice of termination, the rights and obligations of the parties shall be the same as if the Contract was terminated by Authorized Purchaser for Convenience pursuant to Section H.14.B.

(F) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract.

(G) Termination under any provision of this Contract shall not extinguish or prejudice the Authorized Purchaser's right to enforce

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this Contract with respect to any breach of a Contractor warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the Authorized Purchaser to indemnification by Contractor.

H.15. REMEDIES:

H.15.1. AUTHORIZED PURCHASER'S REMEDIES. In addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of Contract, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 721.7170. Authorized Purchaser shall also be entitled to any equitable remedies to which it may show itself to be entitled.

H.15.2 CONTRACTOR. Contractor's remedy shall be limited to a claim for recovery of the unpaid purchase price for Goods sold, delivered and accepted as of the date of notice of breach, and shall exclude claims for indirect, incidental and consequential damages, and for loss of profits.

H.15.3 ATTORNEY'S FEES: With the exception of defense costs and expense pursuant to Section H.9, Indemnity, neither party shall be entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy arising out of or relating to the Contract.

H.16 ACCESS TO RECORDS: Contractor shall retain and keep accessible all records relevant to Contractor's performance of the Contract (collectively, "Records") for a minimum of 6 years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Further, Contractor shall maintain all fiscal Records relating to the Contract in accordance with generally-accepted accounting principles. During the Record Retention period, Authorized Purchaser and its duly authorized representatives shall be afforded access to Records for the purposes of examination and copying.

H.17. FORCE MAJEURE: Neither State nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The State may terminate this Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of this Contract.

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H.18. NOTICES: Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, by facsimile transmission to the fax numbers indicated in the Price Agreement, or by mailing the same, postage prepaid, to the address set forth on the signature page of the Price Agreement, or to such other addresses as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against State, such facsimile transmission must be confirmed by telephone notice to the State agency's Contract Administrator. Any communication or notice by personal delivery shall be given when actually delivered.

H.19. NO THIRD PARTY BENEFICIARIES: Authorized Purchaser and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

H.20. FOREIGN CONTRACTOR(Out-of-Oregon): If the amount of this Contract exceeds \$10,000 and if Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to this Contract. If Authorized Purchaser is a State Agency, it shall be authorized to withhold payment under this Contract until Contractor has met this requirement.

H.21. SEVERABILITY: If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

H.22. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of State. Unauthorized transfers of rights by any means or delegations of duties shall be void. No such written approval shall relieve Contractor of any obligations under this Contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to the Authorized

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Purchaser under the Contract as if no such transfer or subcontract had occurred. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and permitted assigns.

H.23. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION:

H.23.1 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

H.23.2 State Venue; Consent To Jurisdiction. If Authorized Purchaser is a State Agency, any claim, action, suit or proceeding collectively, ("Claim") between the Agency State and Contractor that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

H.23.3 ORCPP Venue; Consent To Jurisdiction. Any Claims between Contractor and an ORCPP Authorized Purchaser that is not a State Agency that arise from or relate to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such Authorized Purchaser resides, or at Authorized Purchaser's option, within such other county as Authorized Purchaser shall be entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such Authorized Participant resides. **CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** Nothing herein shall be construed as a waiver of Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

H.24. SURVIVAL OF PROVISIONS: Termination of the Contract shall not extinguish or prejudice the Authorized Purchaser's right to enforce the warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, and remedies provisions.

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H.25. HEADINGS: The section headings in this Contract are included for convenience only; they do not give full notice of any portion of the terms of this Contract and are not relevant to the interpretation of any provision of this Contract.

H.26. MERGER CLAUSE; WAIVER: This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and, if Authorized Purchaser is a State Agency, all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Authorized Purchaser to enforce any provision of this Contract shall not constitute a waiver by Authorized Purchaser of that or any other provision.

H.27. PRICES AND TERMS: Contractor represents that all prices, terms and benefits offered by Contractor in this agreement are equal to or better than the equivalent prices, terms and benefits being offered by Contractor to any other state or local government unit or commercial customer. Should Contractor, during the term of this agreement, enter into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other such government unit or commercial customer, this agreement shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the State. This provision applies to comparable products, supplies and services, and to purchase volumes by the State that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits or more favorable terms. Donations of products, supplies or services to charitable, nonprofit or government entities, if the donations are recognized as such and are deductible under the federal Internal Revenue Code, shall not be considered contracts, agreements, sales or arrangements with other government units or commercial customers that call for the application of this paragraph.

SECTION I SPECIAL CONTRACT TERMS AND CONDITIONS

I.1 DELIVERY DESTINATION ADDRESS: The Delivery Destination address shall be specified in the Purchase Order.

I.2 BILLING ADDRESS: The billing address shall be specified on the Purchase Order.

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I.3 PACKAGING MATERIALS: Contractor shall ship all Goods in packaging material or containers that are reusable, returnable or recyclable. Contractor shall fill shipping containers with the minimum packaging materials necessary to ensure safe, damage-free shipment.

I.4 Contractor shall make no brand or materials substitutions to an order without notifying and obtaining approval from the Authorized Purchaser to do so. Upon receipt of notification from the Contractor, the Authorized Purchaser reserves the right to cancel the order.

SECTION J INSURANCE REQUIREMENTS

J.2 COMMERCIAL GENERAL LIABILITY. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, commercial general liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under the Contract, and products/completed operations liability coverage. Combined single limit per occurrence shall not be less than \$1,000,000. Each annual aggregate limit shall not be less than \$1,000,000, when applicable.

J.3 AUTOMOBILE LIABILITY. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, automobile liability insurance covering owned, non-owned and/or hired vehicles, as applicable. This coverage may be written in combination with the commercial general liability insurance. Combined single limit per occurrence shall not be less than \$1,000,000.

J.4 WORKERS' COMPENSATION. The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under the Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers.

J.5 "TAIL COVERAGE". If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months or the maximum time period the Contractor's insurer will provide such if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. This will be a condition of final acceptance of work or services and related warranty(ies), if any.

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PRICE AGREEMENT SUMMARY

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J.6 DURATION. All insurance will be required to be kept in effect to the end of the warranty period.

J.7 ADDITIONAL INSURED. The liability insurance coverages, except professional liability if included, required for performance of the Contract shall include the Authorized Purchaser (or the State of Oregon, its agencies, divisions, officers and employees, if Authorized Purchaser is a State Agency) as Additional Insureds, but only with respect to the Contractor's activities to be performed under the Contract.

J.8 CERTIFICATE(S) OF INSURANCE. As evidence of the insurance coverages required by the Contract, the Contractor shall furnish Certificate(s) of Insurance to the Authorized Purchaser (of DAS if Authorized Purchaser is a State Agency subject to DAS Purchasing Authority) prior to Contractor's delivery of Goods or performance of services under the Contract. The Certificate(s) will specify all of the parties who are Additional Insureds (or Loss Payees). Insurance coverages required under the Contract shall be obtained from acceptable insurance companies or entities. The Contractor shall be financially responsible for all deductibles, self-insured retentions, and/or self-insurance included hereunder.

J.9 NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to the Authorized Purchaser (or DAS if Authorized Purchaser is a State Agency subject to DAS purchasing authority).

Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided thereunder.