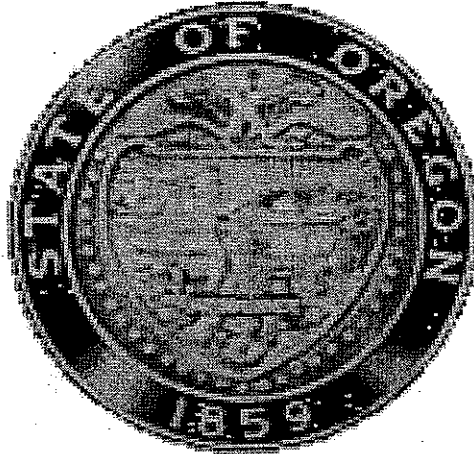


STATE OF OREGON



Department of Administrative Services  
State Procurement Office  
1225 Ferry Street SE U140  
Salem, Oregon 97301-4285

**EXHIBIT A**  
**PRICE AGREEMENT**  
**BETWEEN**  
**STATE OF OREGON,**  
**ACTING BY AND THROUGH ITS**  
**DEPARTMENT OF ADMINISTRATIVE SERVICES ("STATE")**

**AND**

Coastwide

**("Contractor")**

A. The State issued RFP # 102-5031-5 seeking offers from qualified and responsible Proposers to provide the Goods and Services, described in this Price Agreement; and

B. Contractor submitted a Proposal in response to the RFP offering to provide the Goods and Services pursuant to the terms and conditions set forth herein; and

C. The State desires to award the Price Agreement to Contractor.

**AGREEMENT:**

In consideration of the foregoing recitals and subject to the covenants, terms and conditions set forth below the parties agree as follows:

**1.0 DEFINITIONS**

**"Authorized Agency"** means any person authorized pursuant to OAR 125-246-0170 to conduct a procurement or take other actions on an agency's behalf.

**"Authorized Purchaser"** means Authorized Agencies, Independent Agencies, ORCPP, and WSCA Participants that have chosen to purchase Goods under this Price Agreement.

**"Contract"** means the agreement between the Authorized Purchaser and the Contractor formed by the acceptance of the firm offer of the Contractor by issuance of a Purchase Order or other means of order to purchase Goods and Services under this Price Agreement. The terms and conditions of a Contract include the terms and conditions of the Purchase Order issued by the Authorized Purchaser as set forth herein.

**"Contractor"** means the person or organization entering into this Price Agreement with the State for the purchase of Goods and Services by an Authorized Purchaser.

**"DAS/SPO"** means the State of Oregon acting by and through its Department of Administrative Services - State Procurement Office.

**"Independent Agencies"** means those State Agencies with independent procurement authority pursuant to ORS 279A.050, and other provisions of applicable State law.

**"ORCPP"** means the Oregon Cooperative Purchasing Program. Participants in ORCPP include but are not limited to: cities, counties, school districts, special districts, Qualified Rehabilitation Facilities (QRF's), residential programs under contract with the Oregon Department of Human Services, United States governmental agencies, and American Indian tribes or agencies.

**"Participant"** means members of ORCPP and WSCA.

**"Price Agreement"** means this agreement for the Procurement of Goods and Services at a set price with:

- (a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services.

**"Purchase Order"** means a purchase order or other ordering document including but not limited to delivery orders and notices to proceed that are submitted to Contractor by Authorized Purchaser initiating the purchase and delivery of Goods and Services under this Price Agreement.

**"Services"** if any means the services to be performed by Contractor in accordance with the Price Agreement.

**"Solicitation Document"** means Request for Proposal #102-5031-5 and all other documents, either attached or incorporated by reference, and any changes thereto, issued by the State to establish a Price Agreement.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for State government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

## **2.0 Term of The Price Agreement**

2.1 The initial Price Agreement Term shall be three (3) years beginning on the date that the State signs the Price Agreement. The State may extend the term of the Price Agreement as set forth in Section 2.2 for additional periods not to exceed a cumulative total of five (5) years, unless terminated earlier in accordance with the termination provisions set forth herein.

2.2 The State shall notify Contractor in writing if the State intends to extend the Price Agreement ("Renewal Notice") at least thirty (30) days prior to the expiration of the then current term. If Contractor consents to the extension, it shall sign and return the Renewal Notice to the State within the time period specified therein. If the Contractor does not consent, the Price Agreement shall expire according to its terms, unless earlier terminated.

2.3 Notwithstanding the foregoing, the State reserves the right in its sole discretion to extend the Price Agreement for a maximum of one (1) calendar month beyond the end of any term. The State shall notify Contractor in writing of the one-month extension prior to the expiration of the then current term. Consecutive one-month extensions obtained under this Section are not allowed.

## **3.0 Pricing, Invoicing and Payment**

3.1 Contractor shall be paid for the Goods in accordance with the prices set forth in Appendix A. Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due as a result of the issuance of a Purchase Order. Authorized Purchaser is solely responsible

for payment under a Contract. Payment is due by Authorized Purchaser within thirty (30) days after the date of the invoice.

**3.2** Invoices for payment will be provided to Authorized Purchaser within thirty (30) calendar days of delivery and acceptance, by the Authorized Purchaser of the billed Services. No interest charges or late payment charges shall accrue, though, until forty-five (45) calendar days have passed following State receipt of Contractor's invoice. After forty-five (45) calendar days, Contractor may assess overdue account charges up to a maximum rate of two-thirds (2/3) of one percent (1%) per month on the outstanding balance. At Contractor's option, it may assess overdue account charges to Authorized Purchaser, in accordance with the provisions of ORS 293.462(3), up to a maximum rate of two-thirds of one percent per month (8% per annum) in accordance with the provision of ORS 293.462(4).

**3.3** Payment shall be sent to Contractor at the address specified on the invoice.

**3.4** Contractor shall invoice Authorized Purchaser specified on the Purchase Order. Contractor shall include in its invoice the Price Agreement #, Services ordered and volume or quantity of Services delivered, the price per item or quantity of Services, the total amount due, and address to which payment is to be sent.

**3.5** This Price Agreement constitutes a firm offer by the Contractor regardless of whether any order or purchase has been made or any performance has been tendered under the Price Agreement. A Price Agreement is enforceable for the period stated in the Price Agreement and notwithstanding ORS 72.2050; obligations there under are not revocable by the Contractor. See ORS 279B.140.

#### **4.0 Contractors Representations and Warranties**

**4.1 Authority; Binding Obligation.** Contractor represents and warrants that Contractor has the power and authority to enter into and perform the Price Agreement and that the Price Agreement, when executed and delivered, shall be a valid and binding obligation of Price Agreement or enforceable in accordance with its terms.

**4.2 Warranty, 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 manufacturer's standard warranty period. Where specifications have been made a part of the RFP, Contractor further warrants that all Goods shall conform to the specifications and meet or exceed all quality and safety standards set in the RFP.

**4.3 Warranty on Service Standards.** Contractor warrants that all Services to be performed under this Price Agreement shall be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Price Agreement.

**4.4 Manufacturer Warranties.** Contractor shall have all manufacturer warranties covering Goods, if any, transferred to Authorized Purchaser at time of delivery at no charge.

**4.5 Warranty of Title.** Contractor warrants that all Goods, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such 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 Authorized Purchaser hereunder.

**4.6 Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Price Agreement. All warranties provided in the Price Agreement shall be cumulative, and shall be interpreted expansively so as to afford the State the broadest warranty protection available.

## **5.0 Termination.**

**5.1 Mutual Consent.** The Price Agreement may be terminated at any time by mutual written consent of the parties.

**5.2 Termination by State.** DAS/SPO shall act on behalf of the State in terminating the Price Agreement under the following circumstances.

**5.2.2(a) For Convenience.** DAS/SPO may without penalty to the State, and at its sole discretion, terminate the Price Agreement at any time, in whole or in part, for convenience.

**5.2.2(b) Lack of Funding/Legal Prohibition.** DAS/SPO may without penalty to the State terminate the Price Agreement, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS/SPO may establish in such notice, upon the occurrence of any of the following events: (i) Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Goods to be purchased and/or the services to be provided under the Price Agreement; or (ii) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of Services and/or Goods under the Price Agreement is prohibited, or the Authorized Purchaser is prohibited from paying for such Services and/or Goods from the planned funding source. Pursuant to this section, upon receipt of written notice of termination, Contractor shall stop performance under the Price Agreement as directed by DAS/SPO.

**5.2.2(c) Event of Default.** DAS/SPO may terminate the Price Agreement, in whole or in part, immediately upon an event of default by Contractor. In the event a court of competent jurisdiction determines that insufficient evidence of Contractor's default has been established, the termination shall be deemed for the State's convenience.

**5.2.2(d) Return of Documents/Deliverables.** Upon termination of the Price Agreement by DAS/SPO, Contractor shall deliver to Authorized Purchaser all documents, information, works-in-progress, and other property that are or would be deliverables had the Price Agreement been completed. Contractor shall also deliver to Authorized Purchaser all property in Contractor's possession or subject to its control required to complete the Price Agreement.

## **6.0 Default**

**6.1 Contractor.** Contractor shall be in default under the Price Agreement if:

**6.1(a)** Contractor commits any material breach or default of any covenant, warranty, certification, or obligation it owes under the Price Agreement;

**6.1(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 in Contractor's obligations under the Price Agreement; or

**6.1(c)** Contractor attempts to assign rights in, or delegate duties under, the Price Agreement, or sells or otherwise transfers title or an ownership interest in rented Goods.

## **7.0 Remedies**

**7.1 State.** In addition to the remedies afforded elsewhere herein, the State shall be entitled to recover for any and all actual and incidental damages suffered as the result of Contractor's breach of Price Agreement. The State shall also be entitled to any equitable remedies to which it may show itself entitled.

**7.2 Attorney's Fees.** with the exception of defense costs and expenses pursuant to Section 15.0 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 for damages arising out of or relating to the Price Agreement.

## **8.0 Access to Records.**

**8.1** Contractor shall retain, maintain, and keep accessible all records relevant to Contractor's performance of the Price Agreement (collectively, "Records") for a minimum of three (3) 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. Price Agreement or shall maintain all fiscal Records during the Record-retention period in accordance with generally-accepted accounting principles. DAS/SPO, as well as its duly authorized representatives, shall have access to Records for purposes of examination and copying.

## 9.0 Compliance with Applicable Laws and Standards.

9.1 The State's agreement to maintain this Price Agreement in effect is conditioned upon Contractor's compliance with the obligations of contractors contemplated under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein. In addition, Contractor shall comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Price Agreement and any resulting Price Agreement, all of which are incorporated herein by reference to the extent applicable. Contractor shall, to the maximum extent economically feasible in the performance of this Price Agreement, use recycled paper as defined in ORS 279A.010(1)(ee), recycled PETE products as defined in ORS 279A.010(1)(ff), and other recycled plastic resin products and recycled products as "recycled product" is defined in ORS 279A.010(1)(gg).

## 10.0 Foreign Contractor

10.1 If the amount of a Price Agreement with an Oregon Authorized Purchaser 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 the Price Agreement. The Oregon Authorized Purchaser shall be entitled to withhold final payment under the Price Agreement until Contractor has met this requirement.

## 11.0 Time Is Of The Essence.

11.1 Time is of the essence in the performance of every obligation of this Price Agreement.

## 12.0 Force Majeure

12.1 Neither the 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 a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Price Agreement. The State may terminate the Price Agreement upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Price Agreement.

## 13.0 Insurance Requirements

13.1 During the term of the Price Agreement, including warranty periods, if any, Contractor shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and are acceptable to the State.

**13.2 COMMERCIAL GENERAL LIABILITY:** Commercial General Liability Insurance covering Bodily injury and property damage in a form and with coverage that is satisfactory to the DAS/SPO. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Price Agreement, and is made on an occurrence basis. 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.

**13.3 AUTOMOBILE LIABILITY INSURANCE:** Not applicable to this Price Agreement.

**13.4 EMPLOYERS' LIABILITY:** Not applicable to this Price Agreement.

**13.5 WORKERS' COMPENSATION:** All employers, including Contractor, that employ subject workers who work under this Price Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

**13.6 Professional Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Professional Liability Insurance, including Errors & Omission covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$ 1,000,000 or the equivalent. Annual aggregate limit shall not be less than \$ 1,000,000

**13.7 Reserved.**

**13.8 ADDITIONAL INSURED:** The insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Price Agreement shall include the State of Oregon, and its departments divisions, commissions, branches, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under this Price Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**13.9 "TAIL" COVERAGE:** If any of the required liability insurance is 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 reasonably available in the marketplace. Contractor shall furnish 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. If Continuous "claims made" coverage is used, Contractor shall be required to keep the coverage in effect for a duration of not less than twenty-four (24) months from the end of the Contract. This will be a condition of the final acceptance of work or Services.

**13.10 NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from the Contractor or its insurer(s) to DAS/SPO. 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 Price Agreement by the State.

**13.11 CERTIFICATE(S) OF INSURANCE:** Prior to performing under the Price Agreement, as evidence of the insurance coverage required by this Price Agreement, the Contractor shall furnish Certificate(s) of Insurance for all required insurance to the DAS/SPO prior to the award of the Price Agreement if required by the RFP, but in all events prior to Contractor's commencement of work under this Price Agreement. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insured (or Loss Payees). Insurance coverage required under this Price Agreement shall be obtained from insurance companies acceptable to DAS/SPO. The Contractor shall pay for all deductibles, self-insured retention and/or self-insurance included hereunder.

**14.0 Independent Contractor; Responsibility for Taxes and Withholding.**

**14.1** Contractor shall perform all required Services as an independent contractor. Although Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**14.2** If Contractor is currently performing work for the State or the federal government, Contractor warrants and certifies that: Contractor's performance of Services under the Price Agreement creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing Authorized Purchaser (state or federal) would prohibit Contractor's performance of Services under the Price Agreement. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser, as those terms are used in ORS 30.265.

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

## 15.0 Indemnification.

CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE AND ITS OFFICERS, DAMAGES, LIABILITIES, AWARDS AND COSTS OF EVERY KIND AND DESCRIPTION (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES AT TRIAL, ON APPEAL AND IN CONNECTION WITH ANY PETITION FOR REVIEW) (COLLECTIVELY, "CLAIM") WHICH MAY BE BROUGHT OR MADE AGAINST THE STATE, OR THEIR AGENTS, OFFICIALS, EMPLOYEES AND ARISING OUT OF OR RELATED TO (I) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ALLEGED ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF CONTRACTOR, ITS EMPLOYEES, AGENTS, RELATED TO THIS PRICE AGREEMENT, (II) ANY ACT OR OMISSION BY CONTRACTOR THAT CONSTITUTES A MATERIAL BREACH OF THIS PRICE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY BREACH OF WARRANTY, OR (III) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY BY DELIVERY OR USE OF THE GOODS. AUTHORIZED PURCHASER SHALL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF ANY CLAIM THAT THE STATE BECOMES AWARE. CONTRACTOR'S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM SOLELY CAUSED BY (I) THE NEGLIGENT OR WILLFUL MISCONDUCT OF THE STATE, OR THEIR AGENTS, OFFICIALS OR EMPLOYEES, OR (II) AUTHORIZED PURCHASER'S MODIFICATION OF GOODS WITHOUT CONTRACTOR'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.

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 OR ABLE TO DEFEND 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 THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

## 16.0 Notices

All notices required under the Price Agreement shall be in writing and addressed to the party's authorized representative. For Authorized Purchasers, the authorized representative shall be identified in the Purchase Order. Contractor's authorized representative shall be the individual identified in Section 57. Mailed notices shall be deemed received five (5) days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Faxed notices shall be deemed received upon electronic confirmation of successful transmission to the designated fax number. Personal delivery shall be effective upon delivery.

#### **17.0 Governing Law**

This Price Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to the conflict of law principles thereof, and applicable federal law.

#### **18.0 Venue; Consent To Jurisdiction**

Any claim between the parties that arises from or relates to the Price Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. 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.

#### **19.0 Survival**

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

#### **20.0 Severability**

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

#### **21.0 Assignment/Subcontractor/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 the State. Further, no such written approval shall relieve Contractor of any obligations under the Price Agreement, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of the Price Agreement shall be binding upon, and shall inure to the benefit the parties to the Price Agreement and their respective successors and permitted assigns.

## 22.0 Merger Clause; Amendment; Waiver

The Price Agreement constitutes the entire agreement between the parties 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, or amendment shall bind either party unless in writing and signed by both parties, and all necessary approvals have been obtained (including that of DAS/SPO). Waivers and consents 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 Authorized Purchaser of that or any other provision.

## 23.0 Reports and Administrative Fees

23.1 Contractor shall deliver to the State quarterly reports of sales made under the Price Agreement ("Volume Sales Reports"). The Volume Sales Reports (VSR) will be delivered electronically to the following e-mail address: [vcaf.reporting@state.or.us](mailto:vcaf.reporting@state.or.us) and in a format approved by the DAS/SPO which provides the following information:

- 23.1.1 The Price Agreement number.
- 23.1.2 Name of Authorized Purchaser.
- 23.1.3 Purchase Order or Transaction Order number.
- 23.1.4 Date ordered.
- 23.1.5 Quantity of each Bid item ordered.
- 23.1.6 Unit purchase price and extended total for each Bid item ordered.
- 23.1.7 Tax collected by transaction.

23.2 DAS/SPO may request more detailed reports for any quarter. These reports may be required to include detailed information such as individual invoices.

23.3 Volume Sales Reports are due by the 15th day following the end of each calendar quarter during the Term of the Price Agreement. Calendar quarters end March 31, June 30, September 30 and December 31. THE STATE RESERVES THE RIGHT TO TERMINATE THE PRICE AGREEMENT IF CONTRACTOR DOES NOT SUBMIT SALES REPORTS AS SCHEDULED.

23.4 Contractors shall supply reports in a format approved by DAS/SPO. The following format examples are preferred for sales information reports

- a. Excel Spreadsheet
- b. MS Word

All other report formats and methods of delivery (other than electronically to the above e-mail address) must be approved and agreed upon by DAS/SPO and Contractor before submission of the first report

**23.5 Administrative Fee - State of Oregon.**

23.5.1 Contractor shall pay to the State of Oregon, a fee in an amount equal to 1.0% on this Price Agreement sold to Authorized Agencies, Independent Agencies and ORCPP Participants. (the "Vendor Collected Administrative Fee" or "VCAF"). The VCAF shall be calculated based on the Volume Sales Report submitted by Contractor.

23.5.2 Upon receipt of the Volume Sales Report, the State shall generate an invoice to the Contractor for the VCAF and Contractor shall pay the VCAF within (15) calendar days after receipt of the invoice.

23.5.3 Contractor shall remit the VCAF in immediately available funds to:

State of Oregon  
Department of Administrative Services/PFSS  
Attn: State Procurement Office  
1225 Ferry Street SE, U140  
Salem, Oregon 97301-4285

23.5.4 Any payments Contractor makes or causes to be made to DAS/SPO after the due date as indicated on invoice shall accrue interest at a 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/SPO's right to interest on late payments shall not preclude DAS/SPO from exercising any of its other rights or remedies pursuant to this Price Agreement or otherwise with regards to Contractor's failure to make timely remittances.

23.5.5 DAS/SPO, at its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's records, as defined herein, and other pertinent data, to determine and verify the figures reported in any administrative reports, or Volume Sales Reports, furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall forthwith pay the amount of deficiency, together with interest thereon at the rate provided in Section 2.29.5. At DAS/SPO'S request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by DAS/SPO.

23.5.6 The contractor shall report contract utilization and pay a 0.5% WSCA administration fee in accordance with the terms and conditions of the Price Agreement. The WSCA directors approved the level of the WSCA administration fee. The WSCA administration fee is not negotiable. Some WSCA and non-WSCA States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of the Price Agreement. The contractor may adjust SES pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the procuring agencies outside the jurisdiction of the WSCA State requesting additional fee.

Contractor shall remit WSCA administration fee in immediately available funds to:

WSCA/NASPO  
c/o AMR Management Services  
Attn: Program Manager  
201 East Main Street, Suite 1405  
Lexington, KY 40507

#### 24.0 INCORPORATION OF TERMS AND CONDITIONS BY REFERENCE IN ORDERING DOCUMENTS

24.1 The following Sections of the Price Agreement are incorporated by reference into any Purchase Order or other ordering document issued under this Price Agreement. When these provisions are incorporated into an Ordering Document, "Price Agreement" is deemed to mean "Contract", and "State" or "DAS/SPO", is deemed to mean "Authorized Purchaser" in all instances unless the context requires otherwise.

Sections Incorporated by Reference 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53.

24.2 When an Authorized Purchaser is an ORCPP Participant, Section 18 shall be modified to provide that any claim arising between Contractor and such Authorized Purchaser shall be brought and conducted solely and exclusively in the Circuit Court of the county where the Participant is headquartered. All other provisions of that Section remain unchanged.

24.3 When an Authorized Purchaser is a WSCA Participant, Section 18 shall be modified to provide that any claim arising between Contractor and such Authorized Purchaser shall be brought and conducted solely and exclusively as provided in the Participating Addendum of the Participant.

25.0 Purchase Orders.

25.1 Purchase Orders shall specify the description and quantity of Goods ordered, the location and schedule for delivery of the Goods and the identification of the invoicing address and authorized representative of the ordering Authorized Purchaser.

25.2 Purchase Orders shall incorporate by reference, the provisions identified in Section 24 of the Price Agreement and notwithstanding Sections 25.3, 25.4 or 25.5, no Purchase Order term may vary, amend, or modify these incorporated provisions.

25.3 Authorized Agencies shall use the DAS/SPO-approved Purchase Order forms to order Goods under the Price Agreement unless otherwise authorized by DAS/SPO.

25.4 Except as set forth in Section 25.6, Independent Agencies shall use their own Purchase Order forms to order under the Price Agreement.

25.5 Except as set forth in Section 25.6, ORCPP Participants shall use their own Purchase Order forms to order under the Price Agreement.

25.6 Purchase Orders issued by Independent Agencies and ORCPP Participants must display the following language on the front page of each Purchase Order:

"THIS PURCHASE IS SUBMITTED PURSUANT TO STATE OF OREGON SOLICITATION # 102-5031-5 AND PRICE AGREEMENT # [ORDERING ORGANIZATION WILL INSERT PRICE AGREEMENT #]. THE PRICE AGREEMENT INCLUDING CONTRACT TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T'S & C'S) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S AND C'S, EXPRESS OR IMPLIED."

25.7 In lieu of a Purchase Order, Authorized Purchasers may place orders over Contractor's web order page or by telephone using a credit card. In such circumstances, Contractor's order acknowledgement document will evidence the Contract and the requirements of Sections 25.1 and 25.2 shall be deemed to be incorporated by reference into the resulting Price Agreement.

25.8 In the event a court of competent jurisdiction determines that a Purchase Order constitutes an offer rather than an acceptance, then acceptance by Contractor shall be limited to the terms and conditions of the Price Agreement as set forth in this Section.

25.9 It is the Contractor's responsibility to verify Authorized Purchasers' authority to contract pursuant to the Price Agreement. If Contractor is found to have entered into two or more Contracts with an entity other than an Authorized Purchaser, Contractor will be deemed to be in material breach of the Price Agreement. ORCPP Participants can be verified on the DAS/SPO website on the Worldwide Web at <http://procurement.oregon.gov>.

## 26.0 Amendments

This Price Agreement may be amended, modified, or supplemented only by a written amendment signed by the parties ("Amendment").

**26.1 Anticipated Amendments.** The parties anticipate that they might amend this Price Agreement to purchase or acquire additional Goods and Services directly related to the scope of the Goods and Services described in the RFP. At such time as either party proposes any such Amendment, and to the extent necessary, State and Contractor shall negotiate to finalize the terms of and costs, if any, associated with the Amendment and shall reduce those terms and costs to writing upon mutual agreement.

**26.2 Add/Delete Items.** The State reserves the right to add or delete items during the term of the Price Agreement. Adding or deleting items can only be done by written amendment between the parties to the Price Agreement. In the event that new product(s) become available during the term of the Price Agreement, the Contractor may offer new products to the State. These items shall be provided at the same discount off manufacturer's list price from Contractor costs provided for similar items in published list price.

## 27.0 ADJUSTMENT OF THE PRICES

### 27.1 Price Adjustments Requested by Contractor.

Contract prices are to remain firm for a period of six (6) months after the date of execution of the Price Agreement. Contractor may request semi-annual price adjustments. Requests for price adjustments must be in writing and must be received no later than thirty (30) days prior to the proposed adjustment date. Price adjustment requests must be accompanied by supporting documentation. Price adjustments, if granted, shall not exceed the percentage change in the U.S. Department of Labor Producer Price Index (PPI) for the applicable categories identified below. The State reserves the right at its discretion to grant or reject any proposed price adjustment request in the best interest of the State.

The applicable PPI for products in the Industrial Paper category of Attachment A is Pulp, Paper, and Allied Products, series ID WPU091501. The applicable PPI for all other products is Chemicals and Allied Products, series ID WPU0671. Contractor to provide all documentation for verification purposes as per the example below:

The calculation for price changes will be done by using the simple percentage method. In using this method, the base price is changed on each item by the same percentage as the percentage change for the selected price index. Here is an example.

Escalation Factor = (Index at time of calculation) / (Index at time  
Price Agreement prices were set)

Index at price adjustment	115.0
Divided by index when bid price (base price) was set	110.0
Escalation Factor = (115.0/110.0)	1.050

This calculation indicates that the Price Agreement price should be increased by 5% on each item listed on the appropriate in Appendix A of the Price Agreement.

The new base number (115.0) will be used in the event of subsequent requests for price adjustment.

#### **28.0 Most Favorable Prices and Terms**

28.1 Should Contractor, during the term of the Price 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, the Price Agreement shall be deemed amended to provide the same price or prices, terms and benefits to the State and to Authorized Purchasers purchasing under this Price Agreement. This provision applies to comparable Goods and Services, and to purchase volumes by the Authorized Purchaser 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.

28.2 Donations of Goods 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 require the application of this paragraph.

#### **29.0 Price Decrease**

The State shall be given the immediate benefit of any price decrease from manufacturer's list price. Contractor shall promptly notify the State of the amount and effective date of each decrease. This decrease shall apply to orders placed on or after the effective date of the decrease. Invoices shall reflect prices in effect on the date the Authorized Purchaser's Purchase Order document was written.

### 30.0 Trade Secrets

Contractor shall label the information and documentation qualifying as trade secrets under ORS 293.501(2) that it wishes to protect from disclosure to third parties with the following:

"This data constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law." Authorized Purchaser will take reasonable measures to hold in confidence all such labeled information and documentation. Provided, however, the State shall not be liable for release of any information when authorized or required by law or court order to do so, whether pursuant to Oregon Public Records Law or otherwise. Further, the State shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

### 31.0 Cure

**31.1 SERVICES.** Authorized Purchaser may elect to have the Contractor perform remedial Services that comply with the Contract specifications and warranties.

**31.2 GOODS.** 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 10 (ten) calendar days of receipt of notice of rejection and opportunity to cure. Failure to complete cure within the 10 (ten)-calendar-day period shall constitute default.

**31.3** Nothing in this Section 31.2 shall preclude Authorized Purchaser from other remedies to which it may be entitled.

### Special Terms and Conditions

#### 32.0 Environmental Requirements

Contractor shall provide products and services which help to minimize environmental impact. Such products, referred to as "Environmentally Preferable Products" (EPPs), include, but are not limited to, those which contain recycled content, conserve energy or water, minimize waste or reduce the amount of toxic material used and disposed of. EPP's shall have the Green Seal certification or EPA Design for the Environment (DfE) recognition. Contractors are encouraged to provide information on other environmental initiatives, which may be relevant to Oregon's environmental objectives.

**32.1** The State's first choice is products with Green Seal certification. Information on this certification program is available at the following websites:

GS-37 Green Seal standard for Industrial and Institutional Cleaners (for general purpose cleaners).

<http://www.greenseal.org/standards/g37.pdf>

GC-11 Green Seal standard for Powdered Laundry Bleach

<http://www.greenseal.org/standards/powderedlaundrybleach.htm>

32.2 EPA Design for the Environment (DfE) If Green Seal certification for a product is not available, the State's second choice is products with DfE recognition. Information on this program is available at the following website:

<http://www.epa.gov/dfe/projects/formulat/formpart.htm>

32.3 For products that are not certified by Green Seal or DfE, the State has a preference for products that:

1. Are the least toxic product available for the given application, and
2. Are readily biodegradable, and
3. Have minimal and recyclable packaging, and Effectively and efficiently clean soils and surfaces in its category.

### 33.0 Minimum Order

33.1 Authorized Purchasers reserve the right, in the best interests of the Authorized Purchaser, to make purchases amounting to less than \$200.00 either from Contractor or from other sources of supply.

33.2 Reserved.

34.0 The Contractor shall not substitute for any item on Appendix A without the written approval of DAS/SPO.

35.0 All Goods shall be delivered in the manufacturer's standard packaging containers. Containers shall clearly indicate the commodity, brand, quantity and size and must be capable of protecting and preserving their contents, both in transit and after arrival at the destination.

36.0 All products must be prominently and clearly labeled, including dilution rate, instructions for proper use and personal protective requirements and disposal.

37.0 The Contractor shall, and at no additional charge, provide training to personnel of the State and Authorized Purchasers with respect to ordering and order processing, shipping, billing and receiving, materials management and product safety issues. Training shall be provided at the location of the Authorized Purchasers and shall also be available online and in a variety of languages.

38.0 Delivery Date Required By State. Contractor shall deliver to Authorized Purchaser all Goods ordered within ten(10) CALENDAR DAYS after Contractor receives the Purchase Order.

39.0 Contractor shall maintain a monthly statewide average Fill Rate of 96%. Items that are reordered, backordered or partially filled are not considered filled items when calculating this service level. Orders not filled and partials shall be indicated on the packing slip. The packing slip shall indicate the availability date of non-filled and partial orders. Should the Contractor fail to meet the agreed-upon delivery schedule, making it necessary for an agency to purchase urgently needed items from another source, the Contractor, upon notice from the Contract Administrator, shall be required to pay the difference between the Contract price and the Agency's purchase price. If the Fill Rate falls below 96% for three consecutive months and the Contractor fails to provide an explanation for the reduction which is satisfactory to the State in its sole discretion, the State may cancel the Contract with a 30-day written notice to the Contractor. Contractors shall discuss their ability to meet the above requirements.

40.0 All deliveries, including backorders, shall be made in accordance with the instructions on the Purchase Order and shall be completed within TEN (10) CALENDAR DAYS after Proposer receives the Purchase Order. In all cases, Proposer shall confirm the anticipated delivery date with Authorized Purchaser within five (5) calendar days after Proposer receives the Purchase Order. Failure to make complete delivery within the aforementioned ten (10) calendar days shall give Authorized Purchaser the right to cancel the order in total, or in part and make the needed purchase(s) elsewhere. Repeated failure to meet delivery requirements may result in Price Agreement termination.

41.0 Contractor shall provide products free-of-charge for demonstration of performance.

42.0 **Safety and Health Requirements.** Contractor warrants that Goods and Services provided under the Price Agreement 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.

43.0 **Materials Safety Data Sheet.** Contractor shall provide the Authorized Purchaser with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Price Agreement which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag or mark such Goods.

44.0 **Inventory.** Contractor agrees to maintain reasonable inventories to insure that back orders will be kept to a minimum and delivery can be accomplished according to the terms of this Price Agreement. Repeated back-ordering may be cause for Price Agreement cancellation. Back orders shipped from other locations to fulfill and or to meet deadlines will not result in additional cost to the State.

**45.0 Delivery Destination For Goods.** Goods, provided in conjunction with the Services identified in the RFP, shall be delivered F.O.B. destination to the Authorized Purchaser specified in the Purchase Order, together with all warranty documentation, inspection reports, and certifications, where applicable. However, maximum number of CALENDAR DAYS for delivery to Authorized Purchaser is ten (10) days

**45.1** Provide a packing slip with all shipped orders to include the following:

Representative's name, section or unit name, location (street address, building, floor, and room number).  
Designated contact/name of ordering person (if different than representative).  
Billing address  
Ship-to address  
Contractor order number  
Authorized Purchaser order number (purchase order number), if applicable  
Description of items  
Additional information required by each participating entity

**46.0** Material Safety Data Sheets (MSDS) must be provided for all quoted items to be considered. MSDS sheets must also be provided for disclosure to all delivery locations at the time of award. All products must be prominently and clearly labeled, including dilution rate, instructions for proper use and personal protective requirements and disposal.

**47.0** Contractors shall provide, at no additional cost to the Authorized Purchaser, a sufficient number of chemical blending dispensers, paper goods dispensers, and laundry dispensers as needed for use with a variety of Goods supplied under the Price Agreement. Dispensers for product distribution shall be equivalent to the manufacturer and product number. The chemical dispensing equipment must be permanent, wall-mounted, tamper-resistant and anti-backflow. Such equipment shall be manufactured in a manner which prevents chemical backflow and has the following features: key lock, metal construction adjustable dilution ratios and flow rate dispensing of four (4) gallons per minute under high flow and one (1) gallon per minute under low flow conditions. All dispensing equipment and laundry dispensers shall be replaced or repaired as needed to work with Contractor's product. Section 47.1, 47.2, 47.3, 47.4, 47.5, and 47.6 are provided to give Contractor an estimated number of chemical dispensers and laundry dispensers required.

**47.1** A minimum of 124 Quick Mix 4 button units or equivalent are required. Description of this unit is as follows:  
Dispenses quickly, accurately and automatically. Sealed cartridge of concentrate makes up to 1024 gallons of RTU product.  
Approved air gap backflow preventer; meets strict plumbing codes of the Pacific NW. Mounts easily to wall, countertop or cart.  
Durable stainless steel construction. Selfdraining drip tray.  
Keylocks to prevent unauthorized use.

- 47.2 A minimum of 143 Quick Mix 2 button units or equivalent are required. Description of this unit is as follows: Dispenses quickly, accurately and automatically. Sealed cartridge of concentrate makes up to 1024 gallons of RTU product. Approved air gap backflow preventer; meets strict plumbing codes of the Pacific NW. Mounts easily to wall, countertop or cart. Durable stainless steel construction. Self-draining drip tray. Keylocks to prevent unauthorized use.
- 47.3 A minimum of 63 Handy Mix Wall Mounted Dispensers or equivalent are required. Description of this unit is as follows: Handy Mix-Multi-Product Dispensing System. The Handy Mix-Chemical Dispensing System offers the latest in convenience and safety for automatically diluting concentrated commercial cleaners.
- 47.4 A minimum of 47 Handy Mix Portable Dispensers or equivalent are required. Description of this unit is as follows: Handy Mix-Multi-Product Dispensing System. The Handy Mix-Chemical Dispensing System offers the latest in convenience and safety for automatically diluting concentrated commercial cleaners.
- 47.5 Metering tips must be factory sealed inside the container so that manual adjusting of proportions cannot occur.
- 47.6 A minimum of 300 Dishmachine Detergent Dispenser  
A minimum of 300 Rinse Additive Dispenser  
A minimum of 575 Control Tower - diluted dispensing  
A minimum of 250 Solid Pot and Pan Detergent Dispensers  
A minimum of 130 Liquid or Powdered Pot and Pan Detergent Dispensers  
A Minimum of 380 Third Sink Sanitizer Dispensers

48.0 Training on Dispensers. Contractors shall provide training to Authorized Purchasers for dispensing and proper mixing of the product to achieve the dilutions ratios as submitted in the Contractor's proposal. Contractor shall provide manuals, sizes and models for Dispensers used for disbursement of Janitorial Chemical proposed.

49.0 Contractor shall Provide training for proper installation and use of all products proposed. Training should be available online and in a variety of languages.

50.0 Palletizing shall be required on large orders, and Proposer agrees to provide palletizing on non-returnable pallets when requested to do so and at no additional charge to the Authorized Purchaser.

51.0 Chlorine Free; all paper products offered shall be Processed Chlorine-Free or Totally Chlorine-Free. "Processed Chlorine-Free" (PCF) means all recycled fibers that have not been re-bleached with chlorine-containing compounds. In the case of paper containing any virgin fiber, "PCF" means fiber that is totally free of chlorine. All submitted items containing virgin fiber must have been processed without any chlorine or chlorine-based chemicals. All submitted items containing recycled fibers must not have been re-bleached with chlorine containing compounds.

52.0 Postconsumer Recovered Fiber Materials; all Paper Products offered (with the exception of Colorado Industrial Paper) shall contain the minimum % Postconsumer Recovered Fiber Material content. The minimum % Postconsumer Recovered Fiber Material content is:

- 20% for Toilet Tissue and Facial Tissue
- 30% for Napkins
- 30% for Center Pull Towels
- 40% for Roll and Folded Towels

53.0 Customer service is expected and required as part of this Price Agreement(s). Contractor or manufacturer representatives are expected to be trained and experienced in the products and their use, and to be available for prompt response (phone call returned within four hours and a site visit within 24 State recognized business hours of request) to address issues. Service is to include scheduled stop-ins at Agency locations at a frequency mutually agreed to between Contractor and Agency to assist in training, answer questions, resolve issues, etc.

Contractor to assign a Contract Manager to manage the WSCA Account and shall be responsible for:

- The Price Agreement's overall performance requirements, ongoing unresolved issues, overall customer service,
- Providing any additional documentation necessary, as requested by the State for performance audits conducted periodically to evaluate areas of service required (i.e., delivery, fill rate, variance reports, customer representatives).
- Meet with the State of Oregon at a minimum of every six (6) months or as otherwise specified to maintain the partnership between the State and the Contractor. Meetings may involve, but not be limited to, the following:
  - o Contractor performance
  - o Problem resolution
  - o Mandatory and custom reports
  - o Improvement opportunities (i.e., cost savings opportunities, use of enhanced service features etc.)

Reporting shall be provided in electronic format via e-mail or CD in Excel, with hardcopies available upon request at no extra charge. Usage reports will be submitted on a quarterly basis to each Authorized Purchaser and Contract Administrator at DAS/SPO.

54.0 The Contractor shall report Price Agreement utilization and pay a WSCA administration fee. The WSCA directors approved the level of the WSCA administration fee. The WSCA administration fee is not negotiable. Some WSCA and non-WSCA States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of the Price Agreement. The Contractor may adjust SES pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the procuring agencies outside the jurisdiction of the WSCA State requesting additional fee.

55.0 Reserved.

56.0 Reserved.

**57.0 SIGNATURE OF CONTRACTOR'S DULY AUTHORIZED REPRESENTATIVE:**

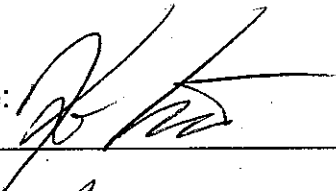
**THIS PRICE AGREEMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR; ANY ALTERATIONS OR ERASURES TO THE BID MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.**

The undersigned acknowledges, attests and certifies individually and on behalf of the Contractor that:

- (1) He/she is a duly authorized representative of the Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Price Agreement, if any, issued, and to execute this Price Agreement on behalf of Contractor.
- (2) Contractor is bound by and will comply with all requirements, Specifications, and terms and conditions contained in this Price Agreement (including all listed attachments and Addenda, if any, issued).
- (3) Contractor will furnish the designated Services in accordance with the Price Agreement Specifications and requirements, and will comply in all respects with the terms of the resulting Price Agreement upon award; and
- (4) CONTRACTOR WILL PROVIDE/FURNISH FEDERAL EMPLOYEE IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WITH BID.

(5) All affirmations contained in Section C.3.1 of the RFP are true and correct.

Authorized Signature:



Title:

Contract Manager

FEIN ID# or SSN# (required)

84-1248716

Contact Person (Type or Print):

Kevin Garrison

Telephone Number:

(503) 218-4951

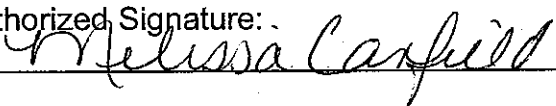
Fax Number:

(503) 218-4904

**58.0 STATE SIGNATURE: (to be completed by the State of Oregon)**

The State of Oregon hereby accepts Contractor's offer and awards a Price Agreement to the above Contractor for the item(s) and/or Service(s) designated in Appendix A.

Authorized Signature:



Date:

2/19/07

Term of Price Agreement:

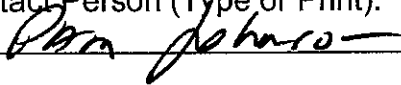
3 years up to 5 years

Purchase Order No.:

N/A

DAS/SPO Contact

Contact Person (Type or Print):



Telephone Number:

(503) 378-4731

Fax Number:

(503) 373-1626



## EXHIBIT B

### 1.0 Standard Contract Terms and Conditions - Western States Contracting Alliance

Note: Although some of the following terms and conditions are duplicates of the standard State of Oregon terms and conditions, they are required by the WSCA by-laws.

**1.1 PARTICIPANTS.** Western States Contracting Alliance (herein WSCA) is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

**1.2 QUANTITY ESTIMATES.** WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

**1.3 SPECIFICATION.** Any deviation from specifications must be clearly indicated by vendor; otherwise, it will be considered that the bid is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the bid states "No substitute". Bids will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate bids offering lower quality or inferior performance will not be considered.

**1.4 ACCEPTANCE OR REJECTION OF BIDS.** WSCA reserves the right to accept or reject any or all bids or parts of bids, and to waive informalities therein.

**1.5 BID DEMOS.** Generally, when required, demos may be requested in the bid invitation. Demos, when required, are to be furnished free of charge.

**1.6 CASH DISCOUNT TERMS.** Vendor may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

**1.7 TAXES.** Bid prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from

sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

**1.8 MODIFICATION OR WITHDRAWAL OF BIDS.** Bids may be modified or withdrawn prior to the time set for the opening of bids. After the time set for the opening of bids no bid may be modified or withdrawn.

**1.9 PATENTS, COPYRIGHTS, ETC.** The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

**1.10 AWARD.** The award will be made to the highest responsive and responsible vendor meeting specifications and all bid terms and conditions. Unless stated in the bid requirements or special terms and conditions, WSCA reserves the right to award items separately or by grouping items, or by total lot.

**1.11 NON-COLLUSION.** By signing the bid the vendor certifies that the bid submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

**1.12 CANCELLATION.** Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

**1.13 DEFAULT AND REMEDIES.** Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future bid solicitations.

**1.14 LAWS AND REGULATIONS.** Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations.

**1.15 CONFLICT OF TERMS.** In the event of any conflict between these standard terms and conditions and any special terms and conditions, which follow; the special terms and conditions shall govern.

**1.16 REPORTS.** The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each Authorized Purchaser.

**1.17 HOLD HARMLESS.** The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

**1.18 ORDER NUMBERS.** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**1.19 GOVERNING LAW AND VENUE.** This procurement shall be governed and the resulting contract(s) construed in accordance with the laws of Nevada. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the contract(s) shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

**1.20 DELIVERY.** The prices bid shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**1.21 WARRANTY.** As used herein "Buyer" refers to any WSCA state agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any special purposes that the Buyer has relied on the contractor's skill or judgment to consider.

**1.22 AMENDMENTS.** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator

**1.23 ASSIGNMENT/SUBCONTRACT.** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

**1.24 NONDISCRIMINATION.** The vendor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The vendor further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Vendor agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the vendor fails to comply with the provisions of these laws and regulations. The vendor must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

**1.25 SEVERABILITY.** If any provision of this contract is declared by a court 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.

**1.26 INSPECTIONS.** Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with bid specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

**1.27 PAYMENT.** Payment for completion of a contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".

**1.28 FORCE MAJEURE.** Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond that party's reasonable control. WSCA may terminate

this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**1.29 HAZARDOUS CHEMICAL INFORMATION.** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**1.30 FIRM PRICE.** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid opening. Bid prices must remain firm for the full term of the contract.

**1.31 EXTENSION OF PRICES.** In the case of error in the extension of prices in the bid, the unit prices will govern.

**1.32 BID PREPARATION COSTS.** WSCA is not liable for any costs incurred by the vendor in proposal preparation.

**1.33 CONFLICT OF INTEREST.** Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA Participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

**1.34 INDEPENDENT CONTRACTOR.** Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

**1.35 POLITICAL SUBDIVISION PARTICIPATION.** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**1.36 DEBARMENT.** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

**1.37 RECORDS ADMINISTRATION.** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

**1.38 AUDIT OF RECORDS.** The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to

this contract, for audit and inspection, and monitoring of services.  
Such access will be during normal business hours, or by appointment.