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| Form C010-G062617 |

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| SAMPLE GOODS and SERVICES PRICE AGREEMENT  Price Agreement Number: XXXXX  Price Agreement Title: Emulsified Asphalt and Recycling Agents | http://intranet.odot.state.or.us/comm/logoFolder/flying%20t%20with%20words.jpg |

# 1. CONTRACT PARTIES and OVERVIEW

This Price Agreement (“PA”) is between the State of Oregon, acting by and through its Department of Transportation (“ODOT”) and **XXXXX** hereafter called “Contractor.” ODOT and Contractor together are also referred to as “Parties” and individually referred to as “Party.” The primary contacts for this PA are identified in the table below. Each Party may change their respective PA Administrator designee by promptly sending written notice (e-mail acceptable) to the other Party’s PA Administrator.

**Non-Exclusive Agreement.** This PA is one of a series of PAs established for the convenience of ODOT. ODOT makes no guarantee of any minimum or maximum purchases under this PA or the PA series. ODOT reserves the right to contract for the purchase of similar services outside of this PA and the PA series in accordance with applicable law, including conducting additional solicitations at any time to add PAs to the PA series.

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| Project/Delivery Location: Will be indicated in each Purchase Order | Associated Invitation to Bid Number: 33145 |
| **ODOT’s Price Agreement Administrator:**  Joanne Robinson  ODOT Procurement Office  455 Airport Rd SE, Bldg B.  Salem OR 97301  503-986-2665  Joanne.m.robinson@odot.state.or.us | **Contractor’s Price Agreement Administrator:** |

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ATTACHMENT A - PRICES

# 2. DEFINITIONS

The following terms have the meaning provided in [OAR 125-246](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_125/125_246.html)-0110: “Business Day”, “Price Agreement (“PA”)”, “Contractor”, “Goods”, “OAR”, “ORS”, “Services”, “Purchase Order” (“PO”), “Specification”, “State”.

# 3. CONTRACT TERM

**3.1 EFFECTIVE DATE AND EXPIRATION.** This PA is effective on the date it has been signed by the Parties and all required approvals have been obtained. No work or compensation under the PA is authorized until a PO has been issued (email acceptable) by ODOT. Unless otherwise extended or terminated, this PA shall expire 5 years from its effective date. Expiration of the PA will not relieve Contractor of its obligations to complete the requirements of any outstanding POs.

**3.2 EXTENSIONS.** Contingent upon ODOT’s need, availability of approved funding, and Contractor’s performance, ODOT may extend the PA for up to 5 additional years. The maximum term of this PA shall be 10 years . ODOT will notify Contractor in writing of ODOT's intent to extend the PA at least 30 calendar days prior to the expiration of the then-current term. If Contractor consents to the extension, ODOT will process an amendment to extend the term. If Contractor does not consent, the PA will expire according to its terms, unless earlier terminated.

# 4. DELIVERY LOCATION, SCHEDULE and PRICING

**4.1 DELIVERY LOCATION AND SCHEDULE:** The delivery location and schedule will be specified in any POs issued under the PA.

**4.2 PRICES:**

Contractor’s distribution prices, freight/transportation prices, miscellaneous prices and product prices are set forth in Attachment A.

**4.3** **MOST FAVORABLE PRICES AND TERMS.** Contractor represents that all prices, terms and benefits offered by Contractor 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.

**4.3.1** 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 will thereupon be deemed amended to provide the same price or prices, terms and benefits to ODOT. This provision applies to comparable services, and to purchase volumes by ODOT 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.

**4.3.2** 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, are not considered contracts, agreements, or arrangements with other government units or commercial customers that call for the application of this paragraph.

**4.4 PRICE CHANGES.** Prices listed in the PA are the maximum prices Contractor may charge under any PO (not including escalation – see 4.5 below). Contractor may charge less than the listed prices. Contractor may also request the prices listed in the PA to be decreased at any time by requesting the change from ODOT’s PA Administrator. Contractor may request a unit price increase reflecting increased operating or raw material costs by submitting a written request to ODOT’s PA Administrator including sufficient price documentation to substantiate the request. Provided, however, no more than one unit price increase shall be allowed during any 12-month period for product and distribution prices, and any 6-month period for freight prices, and any approved price increases shall generally be limited to the most recent (at the time of the request) year-over-year increase in the [Portland Consumer Price Index](http://www.bls.gov/regions/west/news-release/ConsumerPriceIndex_Portland.htm) (or other similar index as determined by ODOT).

**4.5 ASPHALT CEMENT MATERIAL ESCALATION/DE-ESCALATION.** Monthly price adjustments for Goods will occur based on changes in ODOT’s Monthly Asphalt Cement Material Price (MACMP) index, which is published on ODOT’s website each month: <http://www.oregon.gov/ODOT/Business/Pages/Asphalt-Fuel-Price.aspx>. Adjustments will occur based on the month in which the Goods are **delivered** (or picked up), regardless of when they are ordered.

**The February 2018 MAMCP is the Base MACMP for this PA:**

Poten Boise Idaho (when any portion of a project is in District 13 or 14): $380

Poten Pacific Northwest (all other projects): $382

The monthly price adjustment will be calculated as follows, and will be added to the price listed in the PA. **“Current MACMP” in the calculations below means the MACMP for the month PRIOR to the month in which the Goods are delivered (i.e. adjustments for Goods delivered in August 2018 will be based on the July 2018 MACMP).**

* If the Current MACMP is within ± 5% of the Base, there will be no adjustment.
* If the Current MACMP is more than 105% of the Base, then:

Adjustment amount = (MACMP) - (1.05 x Base)

* If the Current MACMP is less than 95% of the Base, then:

Adjustment amount = (MACMP) - (0.95 x Base)

# 5. SPECIFICATIONS

The apparent silence of the Specifications (including any supplemental Specifications) as to any detail, or the apparent omission of a detailed description concerning any point, shall be regarded as meaning that Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the Goods and Services to be provided under the PA.

1. Goods and services provided under this PA will only be requested by ODOT for emergency work, minor and ordinary repairs and maintenance necessary to preserve its roads.

1. All Goods provided under the PA must comply with the current edition of the ODOT’s publication “Asphalt Material Standard Specifications” which is incorporated herein by reference: <http://www.oregon.gov/ODOT/Construction/Pages/Pavement-Services-Index.aspx>
2. **Asphalt Distributor** – Contractor shall provide an asphalt distributor designed, equipped, maintained and

operated so the emulsified asphalt material may be applied uniformly at even heat. The distributor

shall be capable of applying the asphalt on variable surface widths up to 16 feet, at readily

determined and controlled rates from 0.05 - 2.0 gallons per square yard, and with uniform pressure.

The variation allowed from any specified rate shall not exceed 0.02 gallons per square yard.

The distributor equipment must include a tachometer, pressure gauges, accurate volume

measuring devices and a thermometer for measuring temperature of tank contents. Distributor must be equipped with a positive power unit for the asphalt pump, and full circulation spray bars

adjustable both laterally and vertically. Contractor shall set the bar height for triple lap coverage.

1. Contractor shall apply emulsified asphalt at the rates specified below and according to the following:

• Leave a minimum of 200 gallons of emulsified asphalt in the distributor tank at all times.

• Apply the emulsified asphalt at a temperature between 140 °F and 185 °F as recommended by

the manufacturer.

**Application Rates** - Apply the Emulsified Asphalt and spread the Aggregate within the

following ranges of rates for the specified surface treatment design. The exact application and

spread rate will be determined by the ODOT Engineer.

**Emulsified Asphalt Aggregate**

**Chip Seal Design Application Rate Spread Rate**

**(gal./sq. yd.) (cu. yd./sq. yd.)**

Fine 0.25 - 0.40 0.004 - 0.009

Single Size Medium 0.40 - 0.65 0.005 - 0.015

Graded Medium 0.40 - 0.65 0.005 - 0.015

Coarse 0.33 - 0.70 0.009 - 0.018

1. When ODOT picks up Goods, the Goods shall be supplied F.O.B. to ODOT trucks, at Contractor’s plant. Contractor agrees to accommodate ODOT trucks with a height of up to at least 12 feet. If Contractor’s plant has a vertical clearance of less than 12 feet, it shall provide assistance to assure safety while backing under the plant and retention of their appropriate turn to load.
2. Contractor’s distribution equipment must be in good working order, and Contractor must provide experienced, competent distributor drivers who perform Services meeting the following standards:
   1. Hit a start without having to overlap by more than a foot.
   2. Maintain a line of travel so as not to miss the edge of the road or match the meet line.
   3. Paint in radius timely enough to allow the oil to be covered and rolled before it sets up.
   4. Keep the screen clean so the truck will be able to flow at the proper shot rate.
   5. Keep the nozzles clean so as not to leave streaks.
3. ODOT’s Project Manager for each PO will determine, in his or her sole discretion, if Contractor’s distribution equipment is in good working order, and if the distributor driver(s) is meeting the listed standards, and may direct Contractor to replace any equipment or personnel that do not conform. ODOT will not pay for any Contractor time that lapses while waiting for Contractor to send replacement equipment or personnel. Failure to meet the required standards may result in Contractor not being selected for future POs, and repeated failure to meet the standards may result in cancellation of any PO or the PA.
4. Upon request by ODOT’s Project Manager, Contractor shall provide ODOT, at least 10 calendar days prior to the start of work under a PO, a list of distributor drivers that are scheduled to perform Services under the PO, including a list of at least 3 references for each driver that can be contacted regarding Services the driver performed on previous projects of a similar nature. ODOT reserves the right to reject any distributor driver based on reference check or previous knowledge by the ODOT Project Manager of poor performance by the driver on similar projects for ODOT.
5. Contractor must have certified weight scales to determine the weight of each load. Certified weight slips shall be furnished to ODOT for each load.

# 6. STANDARD TERMS AND CONDITIONS

6.1 CONFLICT OF INTEREST (COI): Contractor shall comply with the ODOT COI Guidelines (as may be revised from time to time) available at: <http://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. Contractor shall immediately submit to ODOT an accurate and complete Conflict of Interest Disclosure Form (available at the above website) if any disclosures are required per the ODOT COI Guidelines.

**6.2** **DELIVERY TERMS.** All Goods shall be provided F.O.B. destination with all transportation and handling charges paid by Contractor, unless otherwise agreed to in writing by ODOT. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance.

**6.3 INSPECTIONS.** Goods and Services furnished under this PA shall be subject to inspection and test by ODOT at times and places determined by ODOT. ODOT may request to have a pre-delivery inspection at Contractor's location to ensure specification compliance PRIOR TO DELIVERY. If ODOT finds Goods and Services to be incomplete, not in compliance with PA requirements, or deficient in any way, ODOT, at its sole discretion, may either reject the Goods and Services, require Contractor to correct any deficiencies without charge, or negotiate with Contractor to sell the Goods and Services to ODOT at a reduced price, whichever ODOT deems equitable under the circumstances. ODOT will provide written notice of any rejected Goods and Services that, at a minimum, itemizes the apparent deficiencies. If Contractor is unable or refuses to cure any deficiencies within a time deemed reasonable by ODOT, ODOT may reject the Goods and Services and cancel the PA, the PO, or both, in whole or in part. Nothing in this paragraph shall in any way affect or limit ODOT’s rights as Buyer under the Uniform Commercial Code including but not limited to the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080. ODOT’s review, approval or acceptance of, or payment for, the Goods and Services required under the PA shall not be construed to operate as a waiver of any rights under the PA or of any cause of action arising out of the Contractor’s performance, and Contractor shall be and shall remain liable to ODOT in accordance with applicable law for all damages to ODOT caused by Contractor’s performance or failure of any of the Goods furnished under the PA.

**6.4 INVOICES.** Contractor shall submit a separate invoice for each PO to the address (or email address) as indicated in the PO. Contractor’s invoice must include:

* PA number and PO number;
* Name of ODOT employee who placed the order and their ODOT District
* The description and quantity of Goods ordered, the quantity of Goods delivered, the date Goods were delivered, the price per unit, including escalation or de-escalation if applicable; and the total cost for the Goods.
* A detailed description of Services provided, the dates Services were performed, the unit price for Services performed, and the total cost of Services;
* The total amount due and the payment address.

ALL CHARGES OR CREDITS pertaining to an order must be included on the same invoice. Contractor shall not submit separate invoices for escalation/de-escalation, demurrage, or any other charges on an order.

Any invoice that does not comply with the requirements of this section, or contains errors, will promptly be returned to Contractor to be re-submitted. An invoice will not be considered “received” unless it conforms with all requirements.

**6.5 COMPENSATION**

**6.5.1 Payment terms; Funds Available.** Payment to Contractor for Goods and Services provided will normally be made within 30 calendar days following the date the invoice (prepared in conformance with PA requirements) is received. After 45 calendar days, Contractor may assess overdue account charges to ODOT on unpaid invoices only in accordance with ORS 293.462. Contractor shall not be compensated by any other agency or department of the State for Goods or Services provided under the PA.

**6.5.2 Basis of Payment.** Full completion. ODOT will pay all amounts due upon approval of Contractor’s invoice, but only after ODOT has determined that Contractor has provided and ODOT has accepted all Goods and Services required and in conformance with PA and PO requirements.

**6.5.3 Expenses.** All Contractor travel and other expenses, if any, are included in the fixed-price amount(s) established in the PA and are not separately reimbursable under the PA.

**6.5.4 Retainage.** ODOT may initiate, at any time, withholding of payment equal to 5% of the amount of each invoice submitted. ODOT will make final payment of any balance due to Contractor promptly upon verification by ODOT of completion and acceptance of all deliverables and will pay interest as required on retainage.

**6.6 REPRESENTATIONS AND WARRANTIES.**

**6.6.1** **Contractor represents and further warrants that:**

**a.** Contractor has the power and authority to enter into and perform the PA and that such PA and any POs entered into under the PA, when executed and delivered, shall be valid and binding obligations of Contractor enforceable in accordance with their terms.

**b.** All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to any Goods delivered under this PA. Any materials provided under the PA shall be free from defects in materials and manufacture and shall meet the requirements of the Specifications/statement of work under the PA and any POs entered into under the PA.

**c.** Contractor is duly licensed to provide the Goods and Services specified in the PA, and if there is no licensing requirement, Contractor is duly qualified and competent to perform in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Goods and Services to be provided under the PA.

**d.** Contractor shall have all manufacturer warranties covering any Goods (and component parts, where applicable) supplied under the PA transferred to ODOT at time of delivery at no charge. Contractor shall be responsible for completing and processing any warranty registration paperwork required by manufacturer. If a conflict or inconsistency exists between a manufacturer’s warranty and Contractor’s warranty, the warranty that provides the greatest benefit and protection to State shall prevail.

**e.** Any materials delivered under the PA are free and clear of any liens and encumbrances, that Contractor has full legal title to the materials, and that no other person has any right, title or interest in the materials which shall be superior.

**6.6.2 Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the PA. All warranties provided in the PA shall be cumulative, and shall be interpreted broadly to give ODOT the greatest warranty protection available.

**6.7 REMEDIES.** In addition to the remedies afforded elsewhere herein, ODOT shall be entitled to recover any and all damages suffered as a result of Contractor's breach of the PA and any POs entered into under the PA, including but not limited to direct, indirect, incidental and consequential damages. ODOT may also be entitled to any equitable remedies to which it may show itself entitled.

**6.8 TERMINATION:**

**6.8.1 Mutual Consent:** This PA or any PO entered into under the PA may be terminated at any time by mutual written consent of the Parties.

**6.8.2 ODOT’s Right To Terminate For Convenience:** ODOT may, at its sole discretion, terminate this PA or any PO entered into under the PA upon 30 calendar days prior written notice by ODOT to Contractor.

**6.8.3 ODOT’S Right To Terminate For Cause:** In addition to any other rights and remedies ODOT may have under the PA, ODOT may terminate this PA or any PO entered into under the PA immediately upon written notice by ODOT to Contractor, or at such later date as ODOT may establish in such notice, or upon expiration of the time period specified in such notice, upon occurrence of the following events:

**a.** ODOT fails to receive appropriations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for the Goods and Services to be provided under the PA; or

**b.** Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of Goods and Services under the PA is prohibited or ODOT is prohibited from paying for such Goods and Services from the planned funding source; or

**c.** Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under the PA and such breach is not cured within 14 calendar days after ODOT's notice to Contractor, or such longer period as ODOT may specify in the notice. Pursuant to this section, **upon receipt of** **written notice of termination, Contractor shall stop performance under the PA (or any PO entered into under the PA) as directed by ODOT.**

**6.8.4 Contractor:** Contractor may terminate the PA, in whole or in part, upon 30 calendar days written notice to ODOT’s PA Administrator, or at such later date as Contractor may establish in such notice, upon ODOT's default of a material provision of the PA.

**6.9 SURVIVAL.** Termination of the PA shall not extinguish or prejudice ODOT's right to enforce the following provisions: 6.6 Representations and Warranties; 6.10 Compliance with Applicable Laws and Standards, 6.11 Governing Law; 6.12 **Venue, Consent to Jurisdiction**; 6.13 Indemnification; 6.18 Access to Records; 6.7 Remedies; and all other remedy provisions included in the PA.

**6.10 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this PA or to Contractor’s obligations under this PA, as they may be adopted or amended from time to time. All rights and remedies available to ODOT under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the PA. Without limiting the generality of the foregoing, ODOT’s performance is conditioned upon Contractor’s compliance with the following laws, regulations and executive orders to the extent they are applicable to the PA:

1. (Non-discrimination) Titles VI and VII of Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; Executive Order 11246; The Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975; The Vietnam Era Veterans’ Readjustment Assistance Act of 1974;
2. ORS 279B.020 Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules;
3. ORS 279B.220 – Prompt payment to suppliers and subcontractors; payment of contributions or amounts due the Industrial Accident Fund; liens or claims against the State on account of any labor or material furnished; payment of withholding to the Department of Revenue under ORS 316.167;
4. ORS 279B.230 – Payment for medical care and providing workers’ compensation;
5. 279B.235 Condition concerning hours of labor; prohibitions set forth in ORS 652.220 regarding discriminatory wage rates (failure to comply is a breach that entitles ODOT to terminate the PA for cause); and non-prohibition of employee discussions regarding compensation;
6. all regulations and administrative rules established pursuant to the foregoing laws.
7. Contractor must certify, in accordance with House Bill 3060 (2017 Oregon Laws, chapter 212), that it has in place a policy and practice of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class.  A contractor’s policy and practice must include giving employees a written notice of a policy that both prohibits, and prescribes disciplinary measures for, conduct that constitutes sexual harassment, sexual assault, or unlawful discrimination.

**6.11 GOVERNING LAW.** The PA shall be governed by and construed in accordance with the internal laws of the State without regard to principles of conflicts of law. To the extent not modified by the terms of this PA, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs any Goods sold under this PA.

**6.12 VENUE; CONSENT TO JURISDICTION.** Any claim, action, suit or proceeding (collectively, "Claim") between ODOT and Contractor that arises from or relates to the PA shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State; 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.

**6.13 INDEMNIFICATION.** ***Contractor shall defend, save, hold harmless, and indemnify the state, the Oregon Transportation Commission, ODOT, and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including attorney fees, of any nature whatsoever resulting from, arising out of, or relating to the contract, including but not limited to (1) the activities of Contractor or its officers, employees, subcontractors, or agents, and (2) the Goods and Services provided by Contractor. However, the Oregon Attorney General must give written authorization to Contractor or 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 that of officers, employees, and agents under (i) and (ii) above.***

**6.14 FALSE CLAIMS.** Contractor understands and acknowledges it is subject to the Oregon False Claims Act ([ORS 180](http://www.leg.state.or.us/ors/180.html).750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the PA, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the PA or the Goods and Service being provided, including but not limited to Contractor’s Bid and any invoices, correspondence, reports, or other deliverables.

**6.15 NOTICES**. Except as otherwise expressly provided in the PA, any notices between the Parties shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to the PA Administrator listed for each Party in Section 1, or to such other person and address as either Party may hereafter indicate in writing to the other. Any communication or notice sent by e-mail during normal business hours on a Business Day shall be deemed received the Business Day it is sent.  **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine.

**6.16 SAFETY AND HEALTH REQUIREMENTS.** Goods and Services provided under this PA must comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon Occupational Safety and Health Administration requirements, including those of the State Workers’ Compensation Division. Contractor shall take every precaution to instruct employees about and otherwise safeguard them against any possible injuries associated with chemicals or equipment as well as other potential hazards within the facility.

**6.17 SAFETY DATA SHEET (SDS) AND PRODUCT LABELING.** Contractor shall provide ODOT with an SDS [as defined by the Occupational Safety and Health Administration (OSHA) and the Globally Harmonized System of Classification and Labelling of Chemicals (GHS)] for any Goods provided or products used under the PA which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. Contractor shall keep SDS on file at the location where products that include classified chemicals are used or stored by Contractor, as required by OAR 437-002-0005 (adopting by reference 29 CFR 1910). In addition, Contractor must label, tag or mark such products with the following information:

**6.17.1** Identity of the hazardous chemical(s) which must include the product identifier used on the SDS;

**6.17.2** Appropriate signal word, hazard statement(s), pictogram(s), and precautionary statement(s) specified in applicable regulations for each hazard class and associated hazard category; and

**6.17.3** Name and address of the chemical manufacturer, importer or other responsible entity.

**6.18 ACCESS TO RECORDS.** Contractor shall maintain all fiscal and other records relevant to Contractor's performance under the PA (collectively, "Records") in accordance with generally-accepted accounting principles. ODOT, its duly authorized representatives, and the federal government 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 PA, or until the conclusion of any audit, controversy or litigation arising out of or related to the PA, whichever date is later.

**6.19 FOREIGN CONTRACTOR.** If Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporations Division all information required by those agencies relative to the PA.

**6.20 RECYCLED PRODUCTS.** Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of all Contracts with ODOT.

**6.21 TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence for Contractor's performance obligations under the PA.

**6.22 FORCE MAJEURE.** Neither ODOT 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 PA. ODOT may terminate the PA upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the PA.

**6.23 CONTRACTOR PERSONNEL.** Contractor shall exercise due care to choose and manage its personnel and ensure that permitted subcontractors choose and manage their personnel so that only suitably responsible, professionally competent, and disciplined representatives will be operating in any ODOT area, many of which have sensitive and critical activities.

**6.24 SEVERABILITY.** If any provision of the PA is declared by a court of competent jurisdiction to be illegal, 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 PA did not contain the particular provision held to be invalid.

**6.25 SUBCONTRACTS AND ASSIGNMENT; SUCCESSORS AND ASSIGNS**

**6.25.1 Written Consent.** Contractor shall obtain ODOT's written consent prior to entering into any subcontracts for any of the Goods and Services required by the PA, or in any manner assigning, selling or transferring any of its rights or interest under the PA or delegate any of its duties or performance under the PA.

**6.25.2 Provisions for Subcontracts.** Contractor shall include in any permitted subcontract a requirement to comply with the following PA provisions: 6.6 Representations and Warranties, 6.10 Compliance with Applicable Laws and Standards, 6.11 Governing Law, 6.12 Venue; Consent to Jurisdiction, 6.13 Indemnification, 6.14 False Claims, 6.18 Access To Records, and, if applicable, Exhibit B – Prevailing Wage Rates. ODOT’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this PA. The provisions of this PA shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.

**6.26 THIRD PARTY BENEFICIARIES**. The State, the Oregon Transportation Commission and ODOT are intended third-party beneficiaries of the PA with express independent authority to enforce the terms and conditions of the PA.  Otherwise, there are no third-party beneficiaries of the PA.

**6.27 COUNTERPARTS.** The PA may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the PA so executed shall constitute an original.

**6.28 MERGER; AMENDMENT; WAIVER; INTERPRETATION.** The PA and any POs entered into under the PA 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 PA or any POs entered into under the PA. This PA may be amended, within the scope of this procurement, to the extent permitted by applicable statutes and administrative rules. No waiver, consent, modification or change of terms of the PA (collectively, "Amendment") shall bind either Party unless it is in writing and signed by both Parties 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 ODOT to enforce any provision of the PA shall not constitute a waiver by ODOTof that or any other provision. The characterization of provisions of the PA as material provisions or the failure to comply with certain provisions as a material breach of the PA shall in no way be construed to mean that any other provisions of the PA are not material or that failure to comply with any other provisions is not a material breach of the PA.

**6.29 CERTIFIED SMALL BUSINESSES.** Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Contractor shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by ORS 279A.107 as a material condition of the PA. If the Contractor or subcontractor was awarded the PA or subcontract, as applicable, in the course of ODOT carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, ODOT may terminate the PA, require the Contractor to terminate the subcontractor, or exercise any of remedies reserved for breach of the PA.

# 7. SPECIAL TERMS AND CONDITIONS

**7.1 ADDITION OF PRODUCTS:** Contractor may request to add products to its PA at any time during the term of the PA. The request must contain the name of the product, price per ton, and any other costs associated with the new product. If the product is not included in the latest version of ODOT’s “Asphalt Material Standard Specifications,” Contractor must submit the following product information for approval by ODOT’s pavement engineering section:

* Specifications
* Use
* Application rates

Requests must be submitted to ODOT’s PA Administrator; email is preferred. If ODOT approves the product to be added to the PA, ODOT will process an amendment which will be effective upon signatures by Contractor and ODOT.

**7.2 VOLUME SALES REPORTS:** Contractor shall furnish to the ODOT PA Administrator quarterly reports of sales made under the Price Agreement. After execution of the PA, the ODOT PA Administrator will work with the Contractor to determine the exact format for the reports, with the intention of maximizing ease of reporting for Contractor by using its existing systems if appropriate. Following are the fields that are expected to be required on the reports. The specific items may change when ODOT and Contractor are establishing the reporting format.

Date of Purchase

Invoice Number

Purchase Order Number

Ordered By name

ODOT District

\*Total amount for Goods only

\*Total amount for Goods and Services

\*Information regarding Goods only sales and Goods and Services sales are for the purposes of determining BOLI public works fees. BOLI requires ODOT to pay a fee of 1/10th of one percent of the estimated value of this PA upon its effective date. At the end of the term of the PA, ODOT is required to compare the estimate upon which the fee paid was based with the actual expenditures over the term of the PA to determine the final amount of the public works fee. If ODOT picks up Goods from Contractor, that is not considered public works and would not be counted toward the fee. However, if Contractor applies the Goods during a chip seal project, that work IS considered public works, and payment of prevailing wage rates to workers, and payment of the fee to BOLI, are required.

# 8. CONTRACT EXHIBITS AND ATTACHMENTS

This Price Agreement includes the following exhibits and attachments, each of which is incorporated into this Price Agreement as though fully set forth herein:

* Exhibit A – Contractor’s Pricing
* Exhibit B – Prevailing Wage Rates
* Exhibit C – Insurance
* Exhibit D – Title VI Non-Discrimination Provisions
* Exhibit E – RESERVED
* Exhibit F – RESERVED
* Exhibit G – Contractor Selection and Purchase Orders
* Attachment A - Prices

# 9. CONTRACTOR CERTIFICATIONS and SIGNATURES

**A. Any individual signing on behalf of Contractor hereby certifies under penalty of perjury:**

1. Contractor has provided its correct TIN to ODOT.
2. Contractor is not subject to backup withholding because (**a**) Contractor is exempt from backup withholding, (**b**) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (**c**) the IRS has notified Contractor that Contractor is no longer subject to backup withholding.
3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor’s payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon Tax Laws or any applicable tax laws of political subdivisions of this State. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; the elderly rental assistance program under ORS 310.657; and local taxes administered by the Department of Revenue under ORS 305.620.

**B.** **Any individual signing on behalf of Contractor hereby certifies they are authorized to sign this PA and that:**

1. Contractor has read this PA, understands it, and agrees to be bound by its terms and conditions.
2. Contractor understands and agrees that various Exhibits to the PA are not physically attached, but are incorporated by reference in Part I, Section 4 and have the same force and effect as if fully set forth herein.
3. Contractor understands and has provided to all Associates the [ODOT COI Guidelines](http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/coiguidelines.pdf) and [COI Disclosure Form](http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/COIForm.docx) available at: <http://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. Contractor and (to the best of the undersigned’s information, knowledge and belief) Contractor’s Associates are in compliance with the disclosure requirements of the and have no conflicts of interest to disclose. If disclosures regarding this PA or the related Project are required per the , Contractor has made such disclosures to ODOT on a properly prepared and submitted form and, if determined necessary by ODOT, a mitigation plan has been approved by ODOT.
4. Contractor represents and warrants and attests that Contractor has for the six years preceding the effective date of this PA complied with, and agrees that during the term of this PA shall comply with Oregon Tax Laws and applicable tax laws of political subdivisions of this State as provided in subsection A.(3) above. Contractor’s false attestation or failure to comply with Oregon Tax Laws or the applicable tax laws of political subdivisions of this State for the six years before the Contractor executed the PA or during the term of the PA is a default for which ODOT may terminate the PA and seek damages and other relief available under the terms of the PA or under applicable law.
5. Contractor is an independent contractor as defined in ORS 670.600 and as described in [IRS Publication 1779](http://www.irs.gov/pub/irs-pdf/p1779.pdf).
6. In the event that Contractor is a general partnership or joint venture, Contractor signature(s) on this PA constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this PA.
7. Contractor certifies that it has a written policy and practice that meets the requirements described in HB 3060 (2017) Oregon Laws, chapter 212 for preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class.

No Payment shall be made for Goods and Services provided before all necessary governmental approvals have been obtained, the PA is fully executed, and a PO has been issued by ODOT.

**CONTRACTOR SIGNATURE:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

**DOJ REVIEW:** Approved by Lucinda Jackson via e-mail dated 4/5/2018)

Reviewed by Assistant Attorney General

**ODOT (Procurement Authority)**

Signature Print Name Date

**ODOT (Expenditure Decision Authority)**

Expenditure Authority approval will occur at PO issuance

Signature

# EXHIBIT A – RESERVED

# EXHIBIT B – PREVAILING WAGE RATES

**1.** The Contractor and all subcontractors shall comply with the provisions of ORS 279C.800 through 279C.870, relative to Prevailing Wage Rates and the required Public Works bond. This requirement applies to all POs for Services issued under this PA regardless of the dollar amount of the PO.

**2.** Before starting Work the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate Public Works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a Public Works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a Public Works bond before permitting the Subcontractor to start Work.

**3.** This Price Agreement (and any applicable POs) is subject to the following Bureau of Labor and Industries (“BOLI”) wage rate requirements and the prevailing wage rates set forth in the following booklet, as amended, which while not physically attached, is incorporated herein by reference with the same force and effect as though fully set forth herein, and is available at the following website:

The **“PREVAILING WAGE RATES for Public Works Contracts in Oregon” dated January 1, 2018**

These BOLI wage rates are available on line at:

[**http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\_state.aspx**](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx)

**4.** The fee required by ORS 279C.825(1) will be paid by ODOT to the Commissioner of the Bureau of Labor and Industries under the administrative rules of the Commissioner.

# EXHIBIT C – INSURANCE REQUIREMENTS

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

**INSURANCE REQUIREMENT REVIEW**

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

**SUBCONTRACTORS:**

Contractor shall require that all of its subcontractors carry insurance coverage that the Contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the PA.

**WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY**

**Required by ODOT of Contractors with subject workers, as defined by ORS 656.027**.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer’s Liability Insurance with limits not less than $500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

**PROFESSIONAL LIABILITY**

**Required**  **Not required**

Professional liability insurance must cover damages caused by negligent acts, errors or omissions of Contractor and Contractor’s subcontractors, agents, officers or employees related to the professional Services to be provided under the PA.

**COMMERCIAL GENERAL LIABILITY**

**Required  Not required**

Commercial General Liability insurance must be issued on an “occurrence basis” covering “bodily injury” and “property damage” and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage.

* Coverage shall be written on an occurrence basis in an amount of not less than  **$500,000  $1,000,000**

**$2,000,000  $5,000,000** per occurrence.

* Annual aggregate limits shall not be less than  **$1,000,000  $2,000,000  $4,000,000  10,000,000.**

**AUTOMOBILE LIABILITY**

**Required  Not required**

Automobile Liability insurance covering Contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for “bodily injury” and ”property damage”, with a combined single limit of not less than

**$500,000  $1,000,000  $2,000,000**  **$5,000,000.**

**EXCESS/UMBRELLA INSURANCE:**

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

**NOTICE OF CHANGE OR CANCELLATION:**

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

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to ODOT Certificate(s) of Insurance for all required insurance before delivering any Goods or performing any Services required under the PA. The Certificate(s) shall:

* List the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as a Certificate holder and as an **endorsed** Additional Insured.
* Specify that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Professional liability and Workers’ compensation
* Confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided.
* If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance.

If ODOT has on file current certificates of insurance that meet all requirements of this Exhibit C, and ODOT provides such notification to Contractor, then submittal of certificates prior to execution of the PA will not be required.

**ENDORSEMENTS:**

**i. Additional Insured.** The liability insurance coverages, except Professional Liability or Workers’ Compensation/Employer’s Liability, if included, required for performance of the PA must include an "additional insured" endorsement specifying the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees.”** Coverage shall be primary and non-contributory with any other insurance and self-insurance. Proof of additional insured status will include copies of endorsements and/or policy wording which must be submitted with the Certificate(s) of Insurance. **The additional insured endorsement must be acceptable to ODOT.**

**ii. Commercial General Liability** will contain, or be endorsed to contain, a provision that specifies **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as additional insureds with respect to liability arising out of work or completed operations performed by, or on behalf of, the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

**STATE ACCEPTANCE:**

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

# EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

During the performance of the PA, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **Compliance with Regulations:** Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the PA.
2. **Nondiscrimination:** Contractor, with regard to the work performed by it during the PA, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the PA covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor’s obligations under the PA and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by ODOT, FHWA or the Federal Transit Administration (“FTA”) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Contractor’s noncompliance with the nondiscrimination provisions of the PA, ODOT shall impose such sanctions as ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:

(i) Withholding of payments to Contractor under the PA until Contractor complies, and/or

(ii) Cancellation, termination or suspension of the PA, in whole or in part.

1. **Incorporation of Provisions:** Contractor shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as ODOT of the federal government may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request ODOT, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

# EXHIBIT E - RESERVED

# EXHIBIT F – RESERVED

# EXHIBIT G – CONTRACTOR SELECTION AND PURCHASE ORDERS

1. **Contractor Selection:**  This PA is one of a series of PAs for Emulsified Asphalt and Recycling Agents. When a purchaser requires Goods and Services (or Goods only) under the PA series, the purchaser must determine which PA under the series provides the best value for the specific Goods and Services required, based on any or all of the following criteria:

* Product availability
* Price
* Schedule availability
* Distance from plant to jobsite
* Plant capacity
* Traffic congestion issues between plant and jobsite
* Availability of experienced distributor drivers
* Past performance on previous projects
* Out-of-season availability if needed
* Any other factor that will benefit the Oregon Highway Fund

1. **Alternate Selection Method (Contractor quotes):** A purchaser may opt to obtain quotes from PA holders when the purchaser determines a lower price may be warranted; for instance (but not limited to), for an especially large project or during non-peak season for Contractors. When this option is selected, the purchaser must take reasonable steps to obtain quotes from at least 2 of the PA holders. Negotiation of price and other factors is allowed during the quote process. Any negotiated prices must be clearly listed in the resulting PO.
2. **Purchase Order issuance:**  ODOT will issue POs on an as-needed basis over the life of the PA. POs may include any of the Goods and Services listed in the PA. POs executed under this PA incorporate and are subject to all of the PA terms, conditions and requirements.
3. **Unauthorized Sales.** Contractor shall not enter POs or make sales pursuant to this PA: 1) of any Goods or Services not specifically listed in the PA or 2) to any entity other than ODOT.