

MULTNOMAH COUNTY REQUIREMENTS CONTRACT FOR GOODS

CONTRACT NO. [Insert Contract Number]

This Contract is between MULTNOMAH COUNTY (County) and [Insert Contractor's Name] (Contractor).

The parties agree as follows:

Effective Date and Termination Date. The effective date of this contract shall be [insert date] or the date, on which each party has signed this Contract, whichever is later. The termination date shall be [insert date] unless this contract is terminated earlier under paragraph 5 below.

Contractor's Agreement to Sell Goods. Contractor agrees to sell to County on a requirements basis the goods described in Exhibit 1 (Bid Pages) in accordance with the terms and conditions of this Contract and the Exhibit 2 (Specifications and Additional Contract Requirements).

County's Agreement to Pay for Goods. County shall pay Contractor for the goods at the prices set forth in Exhibit 1. Two copies of each invoice shall be mailed to:

[Insert Mailing Address]

Each invoice shall describe the items provided, the item numbers and the quantity provided. The invoice shall also identify each purchase order covered by the invoice by the number of the purchase order, the date, and the name of the person placing the order. All items shall be invoiced based on the same unit of measure shown on Exhibit 1.

County shall pay the invoice within 30 days unless otherwise provided in Exhibit 2. Contractor shall bill County as provided in Exhibit 1. County shall have the right to withhold from payments due Contractor such sums as are necessary in County's sole opinion to protect County from any loss, damage, or claim which may result from Contractor's failure to perform in accordance with the terms of the Contract.

Discounts for Early Payment If the County is entitled to a cash discount for payment within a particular period of time, the time period shall start on the date the entire order is delivered or the date the invoice is received whichever is later.

County Purchases Not Required and Subject to Change County is not required to make any purchases under this contract. County may add products to this contract at prices agreed upon by County and Contractor.

County to Purchase from Primary Vendor; Exceptions If Contractor is the primary vendor for an item described in Exhibit 1, County shall purchase that item from Contractor unless, for a particular purchase, that item is not available from Contractor or because of the geographic location of Contractor or other reason it is in the County's economic interest to purchase that item from another contractor. If Contractor is shown as the secondary vendor for an item described in Exhibit 1, County shall purchase that item from Contractor rather than the primary vendor only when that item is not available from the primary vendor, or because of the geographic location of Contractor or other reason, it is in the County's economic interest to purchase that item from Contractor.

STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract.
2. **Subcontracts and Assignment.** Contractor shall not subcontract any of its obligations under this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.
3. **No Third Party Beneficiaries.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
4. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
5. **Early Termination.** This Contract may be terminated as follows:
 - a. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - b. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor. During the first 60 days of this Contract, County may in its discretion terminate this Contract for any reason on 10 days written notice to Contractor.
 - c. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
 - d. Notwithstanding paragraph 5(c), County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.
6. **Payment on Early Termination.** Upon termination pursuant to paragraph 5, payment shall be made as follows:
 - a. If terminated under 5(a) or 5(b) for the convenience of the County, the County shall pay Contractor for goods ordered by county prior to termination and delivered to county provided that such goods conform to contract specifications. County shall not be liable for direct, indirect or consequential damages resulting from termination. Termination shall not result in a waiver of any claim County may have against Contractor.
 - b. If terminated under 5(c) by the Contractor due to a breach by the County, then the County shall pay the Contractor for goods ordered by county prior to termination and delivered to county provided that such goods conform to contract specifications.
 - c. If terminated under 5(c) or 5(d) by the County due to a breach by the Contractor, then the County shall pay the Contractor for goods ordered by county prior to termination and delivered to county provided that such goods conform to contract specifications less any setoff to which the County is entitled.
7. **Remedies.** In the event of breach of this Contract the parties shall have the following remedies:
 - a. If terminated under 5(c) by the County due to a breach by the Contractor, the County may substitute another contractor to supply the goods to be provided under this Contract. If the cost of goods supplied over the remaining term of this Contract exceeds the cost that County would have paid under the terms of this Contract if Contractor had not breached this agreement, then Contractor shall pay to the County the difference.
 - b. In addition to the remedies in paragraphs 5 and 7 for a breach by the Contractor, the County also shall be entitled to any other equitable and legal remedies that are available.
 - c. If the County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

8. **Access to Records.** Contractor shall maintain fiscal records and all other records pertinent to this Contract. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken. All such records shall be retained and kept accessible for at least three years following final payment. County's authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. County shall reimburse Contractor for Contractor's cost of preparing copies.
9. **Compliance with Applicable Law.** Contractor shall comply with all federal, state, and local laws applicable to the work under this Contract, and all regulations and administrative rules established pursuant to those laws, including, without limitation ORS 279B.020, 279B.220, 279B.230, and 279B.235.
10. **Indemnity.** Contractor shall defend, save, hold harmless, and indemnify County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this paragraph. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Multnomah County Attorney's Office, authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Multnomah County Attorney's Office. County may, at its election and expense, assume its own defense and settlement.
11. **Insurance.** Contractor shall provide the following insurance:
 - a. Workers Compensation insurance in compliance with ORS 656.017 together with Employer's Liability insurance with coverage limits of not less than \$500,000.
 - b. Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000, each occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. This insurance shall include contractual liability coverage.
 - c. Automobile Liability insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles.

Coverage must be provided by an insurance company admitted to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor's coverage will be primary in the event of loss. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insureds condition will be included in all commercial general liability policies required by this Contract.

Contractor shall furnish a Certificate of Insurance to the County with the signed Contract. The Certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days written notice from the Contractor's insurer to the County. The Certificate shall also state the deductible or retention level. If requested, complete copies of insurance policies shall be provided to the County.

If Contractor ships all goods to be supplied under this contract by common carrier and will not make deliveries to the County using its own employees, proof of insurance as set forth in this paragraph 11. will not be required.

12. **Waiver.** Waiver of any default under this Contract by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.
13. **Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and ordinances of Multnomah County, Oregon. Any legal action involving any question arising under this Contract must be brought in Multnomah County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.
14. **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.
15. **Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification or change in the

terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

16. **Anti-discrimination Clause.** Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority-owned, women-owned or emerging small businesses. Contractor shall include a provision in each sub-contract requiring subcontractors to comply with the requirements of this clause.
17. **Patent Infringement.** Contractor agrees to indemnify and hold harmless County against all claims for patent infringement arising from the purchase, installation, or use of any item delivered to County and to assume all expenses, including attorney fees and pay all damages arising from such claim.
18. **Intergovernmental Agreement.** Pursuant to ORS 279A.215, other public agencies may establish contracts or price agreements directly with the Contractor under the terms, conditions and prices of the original contract.
19. **Delivery.** All deliveries shall be FOB destination specified in the Specifications with all transportation and handling charges paid by Contractor, unless otherwise specified in the Specifications. Liability for loss or damage shall remain with the Contractor until final inspection and acceptance by the County.
20. **Liens.** Contractor shall not permit any claim to be filed or prosecuted against the County or any lien against the property purchased in connection with this contract and agrees to assume responsibility should such lien or claim be filed.
21. **General Product Requirements.** All items delivered shall conform with the Specifications and shall be in first class condition. Acceptance by the County shall be subject to inspection and approval. In case of conflict between the Specifications and Additional Contract Terms and these Standard Terms and Conditions, the Specifications and Additional Contract Terms shall prevail. The apparent silence of the Standard Terms and Conditions and Specifications and Additional Contract Terms as to any detail or the apparent omission of a detailed description concerning any point shall be regarded as meaning that only best commercial practice is to prevail and that only items manufactured with material and workmanship of first quality are to be supplied. All items delivered shall be of identical style, quality and appointments as those offered to the trade in general during the course of the model year. All items delivered shall be new current models, free and clear of all liens and encumbrances. Unless otherwise provided in the Specifications items shall, where appropriate, be prepared for delivery to and use by the County by a factory franchised agent. Each item delivered shall be accompanied by all pre-delivery inspection sheets, coupons, certificates, descriptive literature, warranty cards and information provided by the manufacturer and furnished to the trade in general. All such documents shall be properly completed and signed in accordance with industry standards. All items required by the Specifications to be UL listed shall indicate the current UL listing on the item. All items that are required by the Specifications to have any other certification shall indicate that certification on the item or in the accompanying documentation.
22. **Inspection and Acceptance.** Goods furnished under this Contract shall be subject to inspection and test by the County at times and places determined by the County. If the County finds goods furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as buyer under the Uniform Commercial Code, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.
23. **Warranty and Service.** Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with the specifications set out in this Contract. All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants that Contractor has the power and authority to enter into and perform this Contract and that this Contract, when executed and delivered, shall be a valid and binding obligation of contractor enforceable in accordance with its terms. All items delivered shall carry either the standard manufacturer's warranty or service policy providing that warranty work will be performed by any authorized manufacturer's dealer, or if specified in the Specifications, the warranty and service policy called for in the Specifications. In addition, unless otherwise noted in the Specifications, the warranty and service policy indicated above shall include the following terms and conditions:
 - a. There shall be no distance or time limitations, not applicable to the trade in general, on either standard or extended warranty or labor. All franchised or authorized dealers of the item in the state

shall honor warranty. Warranty maintenance requirements, when performed by County, shall be acceptable to dealer when said work performance meets or exceeds the dealer certification requirements. County shall provide evidence of such work performance upon request, as required by the manufacturer. Any extended warranty period customarily granted shall be made available to County at no additional cost, and

- b. County shall be advised of all product recalls on all or any part of the item at no additional cost. All product recall information, replacement parts and labor, shall be provided to the County as soon as available to dealer.

24. Hazardous Materials Contractor warrants that goods provided under this Contract comply with all federal Occupational Safety and Health Administration (OSHA) requirements and will all Oregon safety and health requirements including those of the Workers' Compensation Division. All items that include hazardous materials shall be labeled in accordance with law with the names of the hazardous ingredients, the hazards of the materials and the appropriate precautions. Contractor shall provide a Material Safety Data Sheet as defined by OSHA for any goods provided under this Contract which may release, or otherwise result in exposure to, a hazardous substance under normal conditions of use. In addition, Contractor shall label, tag or mark such goods. Those materials for which toxicological or hazard data are unavailable shall carry a label stating: "Toxicological and other hazards unknown. Handle as extremely hazardous."

25. Recyclable Products. Contractor shall use recycled and recyclable products to the maximum extent economically feasible.

26. Quarterly Reports. Contractor shall provide quarterly reports to County which shows each item purchased from County in the prior quarter, the individual cost of each item, and the total cost of all items purchased in the quarter.

CONTRACTOR DATA AND SIGNATURE

NOTE: Contractor must also complete and sign Exhibit 3, and (if attached) Exhibit 4.

Business Type (check one): Sole Proprietorship Partnership Corporation-for profit
 Other (describe here):

I have read this Contract. I understand the Contract, including its attached exhibits and agree to be bound by its terms and conditions.

Signature: _____ Title: _____
Name (print): _____ Date: _____
Contractor
Address: _____

MULTNOMAH COUNTY SIGNATURE

This Contract is not binding on the County until signed by the Chair or the Chair's Designee.

County Chair or Designee*: _____ Date: _____

*Department Director signs here for Class 1 Contracts (unless retroactive). For all other contracts, Chair or Chair's designee signs.

COUNTY ATTORNEY REVIEW

Reviewed:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____ Date: _____
Assistant County Attorney