#### PRICE AGREEMENT

#### STATE OF OREGON

# PRICE AGREEMENT NO. 28320 Project Name: 4X4 Loader/Backhoe

This Price Agreement is between the State of Oregon, acting by and through its Department of Transportation, hereafter called "Agency" or "ODOT," and Pape Machinery an Oregon corporation, hereafter called "Contractor." Agency and Contractor together are referred to as "Parties" and individually referred to as "Party."

The State issued Request for Proposal No. 23959 (the "RFP") seeking offers to provide ODOT with the Goods and Services described in this Price Agreement.

Contractor submitted an offer in response to the RFP offering to provide the required Goods and Services in strict accordance with the terms and conditions set forth in this Price Agreement.

The State has accepted the Contractor's offer and has awarded this Price Agreement to Contractor.

NOW, THEREFORE, 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.** The definitions of certain capitalized terms contained in this Price Agreement are set forth below. Other capitalized terms are defined in the provisions of the Price Agreement.

"Contractor" means the Person with whom ODOT enters into a Price Agreement.

"Days" per ORS 279A.010 (1)(c) means calendar days.

<u>"Deliverables"</u> mean the Goods to be delivered under the Price Agreement as it may be amended during the term of the Price Agreement.

<u>"Effective Date"</u> means the date that the Price Agreement is fully executed by the Parties and all required State of Oregon approvals have been obtained.

"Goods" means the 4X4 Loader/Backhoe as specified in Exhibit A and that are to be provided to ODOT by the Contractor in strict accordance with the terms and conditions of this Price Agreement.

"ODOT" or "Agency" means the Oregon Department of Transportation.

"OPO" means Oregon Department of Transportation Procurement Office

<u>"Person"</u> per ORS 279A.010(1)(t) means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability, company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with a legal capacity to contract for a public body.

"Purchase Order" means the ordering instrument issued by ODOT resulting in the formation of a Contract.

<u>"Price Agreement"</u> per ORS 279A.010 (1)(v) means a public contract for the procurement of Goods or 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 Goods or Services in which the Agency does not guarantee a minimum or maximum additional purchase.

<u>"Services"</u> means the services described in Exhibit A to be provided by the Contractor in strict accordance with the terms and conditions of this Price Agreement.

"State" means the State of Oregon.

"Term" means the period of time from the Effective Date through and including the date on which the Price Agreement expires or is terminated in accordance with the terms of the Price Agreement.

- **2.0 AGREEMENT TO PROVIDE GOODS AND SERVICES.** During the Term of the Price Agreement, Contractor agrees to provide Goods and Services of the kinds identified in Exhibit A, in the quantity and at the time and place specified by ODOT in a Purchase Order.
- **3.0 PURCHASE ORDERS, PRICING, INVOICING AND PAYMENT.** ODOT will pay the Price for the Goods and Services purchased under this Price Agreement in accordance with the terms and conditions described in Exhibit B.

#### 4.0 TERM OF THE PRICE AGREEMENT.

- 4.1 The initial term of the Price Agreement will be one (1) year beginning on the Effective Date and expiring one (1) year from the Effective Date unless terminated sooner in accordance with the term of this Price Agreement. The Price Agreement may be extended for additional periods ("Extension Terms") by agreement of the parties as set forth below. The Term of the Price Agreement must not exceed ten (10) years.
- 4.2 ODOT will notify Contractor in writing if ODOT 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 ODOT within the time period specified in that notice. If the Contractor does not consent, the Price Agreement will expire according to its terms, unless earlier terminated.
- 4.3 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 any term. ODOT will notify Contractor in writing of the one-month extension prior to the expiration of the then current term. Consecutive one-month extensions under this Section are not allowed.
- **4.4 PRICE ADJUSTMENTS:** Contractor may seek a Unit price increase reflecting increased operating or raw material costs or both ("Production Costs") for a Term by submitting a written request to ODOT, including all appropriate price documentation. If approved, the Unit price increase will be firm for the duration of the Term. Provided, however, no more than 1 Unit price increase is allowed during any twelvementh period regardless of the number of Extension Terms entered into during that time.

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- <u>4.4.1</u> Notwithstanding **SECTION D.3**, the maximum percentage increase based upon increased Production Costs must not exceed the percentage of increase in manufacturer's then current list price over the prior year's list price.
- <u>4.4.2</u> ODOT reserves the right in its sole discretion to determine whether to agree to a price increase for a Term. It further reserves the right to require additional documentation, or to independently verify the basis for and validity of any proposed price increase utilizing its internal price review and analysis protocols. ODOT may accept or reject a requested increase or offer a lesser amount.
- <u>4.4.3</u> In the event ODOT offers some compromise amount or rejects the requested price increase, Contractor may elect to accept the Term under those conditions, or allow the Price Agreement to expire. However, Contractor has no right to receive, or claim for failure to receive, a price increase for any Term.

#### 5.0 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES:

- 5.1 With respect to the Goods and Services, Contractor provides the representations and warranties set forth in Exhibit A to the Price Agreement.
- 5.2 Additionally, Contractor hereby represents and warrants that:
  - 5.2.1 Contractor has the power and authority to enter into and perform the Price Agreement.
  - 5.2.2 The Price Agreement, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms.
- 5.3 The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided in the Price Agreement. All representations and warranties contained in the Price Agreement are cumulative, and must be interpreted expansively so as to afford ODOT and the State with the broadest protection available.

#### **6.0 TERMINATION OF THE PRICE AGREEMENT.** The Price Agreement may be terminated as follows:

- 6.1 By written agreement of both Parties at any time.
- 6.2 By the State:
  - 6.2.1 At its sole discretion, terminate the Price Agreement, in whole or in part, for its convenience, upon thirty (30) calendar days written notice to the Contractor.
  - 6.2.2 ODOT will be excused from performance and may terminate the Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as ODOT may establish in such notice, upon the occurrence of any of the following events:
    - (i) ODOT fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to pay for the Goods to be purchased under the Contract; or

- (ii) federal or State laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of Goods and Services offered under the Contract is prohibited, or ODOT is prohibited from paying for such Goods and Services from the planned funding source; or
- 6.2.3 If Contractor is in default of the Price Agreement.
- 6.3 The Contractor has no unilateral right to terminate the Price Agreement prior to its expiration or termination. The Contractor may terminate the right of ODOT to purchase under this Price Agreement if ODOT fails to pay invoiced charges in accordance with §3 of this document and Exhibit B, and such invoices remain unpaid for sixty (60) calendar days after the receipt of an invoice for the charges. Contractor may not terminate the right of ODOT as set forth in this subsection if a good faith dispute exists between Contractor and ODOT with respect to the amount ODOT owes to Contractor.
- **7.0 DEFAULT.** Contractor is in default of this Price Agreement under the following circumstances:
  - 7.1 Contractor institutes or has instituted against it, insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
  - 7.2 Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Price Agreement and Contractor has not obtained such license or certificate within ten (10) business days after delivery of a notice by the State or such longer period as the State may specify in such notice; or
  - 7. 3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Price Agreement and such breach, default or failure is not cured within ten (10) business days after delivery of a notice of default by the State or such longer period as the State may specify in such notice.
  - 7.4 Contractor attempts to assign rights in, or delegate duties under, the Contract.
  - 7.5 ODOT will be in default under the Price Agreement if it breaches any covenant, warranty, certification, or obligation.

#### **8.0 REMEDIES:**

- 8.1 If Contractor is in default under §7 of this document, the State is entitled to the following remedies:
  - 8.1.1 Recovery of any and all damages suffered as the result of Contractor's default, including but not limited to (a) direct, indirect, incidental and consequential damages, (b) damages as provided in ORS 72.7110 to 72.7170 and (c) damages provided by any other applicable Oregon law.
  - 8.1.2 Termination of this Price Agreement under §6.2 of this document.
  - 8.1.3 Initiation of an action or proceeding for specific performance or declaratory, injunctive or equitable relief;

8.1.4 Exercise of its right of setoff, and withholding of monies otherwise due and owing.

- 8.2 These remedies are cumulative to the extent the remedies are not inconsistent, and the State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 8.3 Contractor shall have no remedy against the State for breach or termination of the Price Agreement. In the event ODOT is in default under §7.5 of this document and whether or not Contractor elects to exercise its right to terminate the Contract under §6.3 of this document Contractor's sole remedy shall be (a) a claim against ODOT for the unpaid Price for Goods delivered and accepted by ODOT, invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by ODOT and (b) with respect to deliverable-based Services, a claim for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by ODOT, less previous amounts paid and any claim(s) which ODOT has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to ODOT upon written demand.
- **9.0 ACCESS TO RECORDS AND AUDIT RIGHTS.** Contractor shall maintain, retain, and keep accessible all records relevant to the Price Agreement (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Price Agreement, whichever date is later. ("Record Retention Period") Financial Records must also be kept in accordance with generally-accepted accounting principles. During the Record-Retention Period established in this §9, the Contractor shall permit the State, its duly authorized representative's access to the Records at reasonable times and places for purposes of examination and copying.
- 10.0 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS. Contractor must comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Price Agreement and any resulting Purchase Order, all of which are incorporated herein by reference to the extent applicable. Contractor must, to the maximum extent economically feasible in the performance of this Price Agreement, use recycled paper as defined in ORS 279A.010(1)(gg), post-consumer waste products as defined in ORS 279A.010(1)(jj), and other recycled plastic resin products and recycled products as "recycled product" is defined in ORS 279A.010(1)(ii).
- **11.0 CONFLICT BETWEEN PRICE AGREEMENT AND STATE AND FEDERAL LAW.** Federal law applicable to the Price Agreement take precedence over conflicting State law except that if the conflict is between minimum standards for quality, safety or similar attributes of the Goods and Services, the higher standards must apply if not in violation of the applicable federal or State law.
- **12.0 FOREIGN CONTRACTOR.** If the amount of this Price Agreement or any single Purchase Order exceeds ten thousand dollars (\$10,000.00), and if Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor must promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Price Agreement. ODOT will be entitled to withhold final payment under the Price Agreement or any Purchase Order until Contractor has met this requirement.
- **13.0 TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence for Contractor's performance obligations under the Price Agreement and any Purchase Order.

# Exhibit B: Purchase Orders, Pricing, Invoicing and Payment

#### 1.0 Definitions.

<u>"Price"</u> means the per-unit price for the Goods as set forth in the Schedule of Goods. The Price must be a delivered price and must include all direct and indirect costs incurred by the Contractor including but not limited to all overhead, profit, and taxes arising out of the transaction.

"Total Price" means the Price multiplied by the number of units purchased by ODOT.

- **2.0 Purchase Orders.** Contractor shall not accept any PO that does not comply with the following requirements.
  - 2.1 ODOT will use the approved PO form to order the Goods under the Price Agreement (PA) (see Exhibit F, Sample Purchase Order). POs will incorporate the PA number and RFP number by reference. However, no language in a PO will vary, amend, or modify the terms and conditions of the PA. Operative provisions in the PO will be: designation of ODOT and its authorized representative; identification and pricing of Goods and Services order quantities; delivery schedules; delivery destination; and invoicing address.
  - 2.2 The PO must contain the following language: THIS PURCHASE ORDER IS PLACED UNDER ODOT SOLICITATION NUMBER 23959 AND PRICE AGREEMENT 28320. THE TERMS AND CONDITIONS OF THE PRICE AGREEMENT APPLY TO THIS PURCHASE ORDER AND TAKE PRECEDENCE OVER ALL CONFLICTING TERMS AND CONDITIONS, EXPRESSED OR IMPLIED.

## 3.0 Invoicing by Contractor.

- 3.1 Contractor may invoice ODOT no more frequently than monthly or as otherwise agreed by the Parties.
- 3.2 Contractor shall invoice ODOT for the purchased Goods and Services using an invoice format approved by the State.
- 3.3 Contractor shall send invoices to the address specified by ODOT or to a different address as directed by ODOT in writing.

ODOT 455 Airport Rd SE Bldg L Salem, OR 97305

3.4 Invoices submitted must be for the Total Price of the Goods and Services purchased by ODOT for the payment period.

#### PRICE AGREEMENT

#### STATE OF OREGON

# PRICE AGREEMENT NO. 28320 Project Name: 4X4 Loader/Backhoe

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Contractor submitted an offer in response to the RFP offering to provide the required Goods and Services in strict accordance with the terms and conditions set forth in this Price Agreement.

The State has accepted the Contractor's offer and has awarded this Price Agreement to Contractor.

NOW, THEREFORE, 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.** The definitions of certain capitalized terms contained in this Price Agreement are set forth below. Other capitalized terms are defined in the provisions of the Price Agreement.

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"Days" per ORS 279A.010 (1)(c) means calendar days.

<u>"Deliverables"</u> mean the Goods to be delivered under the Price Agreement as it may be amended during the term of the Price Agreement.

<u>"Effective Date"</u> means the date that the Price Agreement is fully executed by the Parties and all required State of Oregon approvals have been obtained.

"Goods" means the 4X4 Loader/Backhoe as specified in Exhibit A and that are to be provided to ODOT by the Contractor in strict accordance with the terms and conditions of this Price Agreement.

"ODOT" or "Agency" means the Oregon Department of Transportation.

"OPO" means Oregon Department of Transportation Procurement Office

<u>"Person"</u> per ORS 279A.010(1)(t) means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability, company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with a legal capacity to contract for a public body.

Contractor: Pape Machinery

14.0 FORCE MAJEURE. 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 that is beyond the Party's reasonable control. Contractor must, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and must, 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.

15.0 INSURANCE. During the Term of the Price Agreement, Contractor must obtain prior to the Effective Date of the Price Agreement, and maintain during the Term of the Price Agreement, the insurance required as provided in Exhibit C. With regard to workers' compensation insurance, all employers, including Contractor, that employ subject workers who work under the Price Agreement in the State of Oregon must comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). Contractor must require and ensure that each of its subcontractors, if any, complies with these requirements.

16.0 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS. Contractor understands and agrees that ODOT's payment of amounts under this Price Agreement is contingent on ODOT receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make payments under this Price Agreement.

# 17.0 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

- 17.1 Contractor must perform all required Services as an independent contractor. Although ODOT reserves the right (i) to determine (and modify) the delivery schedule for the Goods to be delivered and the Services to be performed and (ii) to evaluate the quality of the completed performance, ODOT 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 any Services required by this Price Agreement.
- 17.2 If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Price Agreement declares and certifies that: Contractor's Work to be performed under this Price Agreement creates no potential or actual conflict of interest as defined by ORS 244 and no State or federal rules or regulations of would prohibit Contractor's performance under this Price Agreement. Contractor is not an "officer", "employee", or "agent" of the State or ODOT as these terms are used in ORS 30.265.
- 17.3 Contractor shall be responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Price Agreement and, unless Contractor is subject to backup withholding. ODOT 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 this Price Agreement, except as a self-employed individual.

#### 18.0 INDEMNIFICATION:

18.1 CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS,

PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS AND PRICES OF EVERY KIND AND DESCRIPTION (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES AT TRIAL, ON APPEARANCE 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. THE STATE WILL NOTIFY CONTRACTOR IN WRITING OF ANY CLAIM THAT THE STATE BECOMES AWARE. CONTRACTOR'S OBLIGATION UNDER THIS SECTION WILL 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) MODIFICATION OF GOODS WITHOUT CONTRACTOR'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.

18.2 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 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 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 PRICES AND EXPENSES MUST INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

18.3 With the exception of defense costs and expenses pursuant to §18.2 above, neither party will be entitled to recover attorney's fees, court and investigative prices, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to the Price Agreement.

**19.0 NOTICES.** All notices required under the Price Agreement must be in writing and addressed to the Party's authorized representative. For ODOT, the authorized representative must be identified in the Price Agreement / Purchase Order with the Contractor. Contractor's authorized representative must be the individual identified in a notice to the State and ODOT prior to the Effective Date. Mailed notices must be deemed received five (5) business days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Faxed notices must be deemed received upon electronic confirmation of successful transmission to the designated fax number. Personal delivery must be effective upon delivery. Email notices must be deemed received upon electronic confirmation of successful transmission to designated email address.

#### 20.0 GOVERNING LAW, VENUE AND CONSENT TO JURISDICTION:

20.1 The Price Agreement and any Contract will be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Price Agreement, the UCC will govern this transaction.

20.2 Any claim, action, suit or proceeding (collectively, "Dispute") between the State and Contractor that arises from or relates to the Price Agreement, or between ODOT and Contractor must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Dispute must be brought in a federal forum, then unless otherwise prohibited by law it must 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 AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein must 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 Disputes or jurisdiction based thereon.

**21.0 SURVIVAL.** Any terms of this Price Agreement, which by their context or nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions must survive the termination or expiration of this Price Agreement.

**22.0 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 must not be affected, and the rights and obligations of the parties must be construed and enforced as if the Price Agreement did not contain the particular provision held to be invalid.

**23.0 ASSIGNMENT/SUBCONTRACT - AGREEMENT/SUCCESSORS.** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities arising under the Price Agreement, in whole or in part, without the prior written approval of the State and ODOT. Further, no such written approval must 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 must be binding upon, and will inure to the benefit of the parties to the Price Agreement and their respective successors and permitted assigns.

**24.0 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 of terms of the Price Agreement must bind either party unless in writing and signed by both parties, and all necessary approvals have been obtained. Waivers and consents must 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 will not constitute a waiver by ODOT of that or any other provision.

**25.0 NO OTHER THIRD PARTY BENEFICIARIES.** The State and Contractor are the only parties to this Price Agreement and are the only parties entitled to enforce the terms of this Price Agreement. Nothing in this Price Agreement gives, is intended to give, or must be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to other third persons unless

Contractor: Pape Machinery

such other third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Price Agreement. ODOT is an intended beneficiary of this Price Agreement.

**26.0 SALES TO UNAUTHORIZED PURCHASERS.** This Price Agreement is intended for use by ODOT. It is the Contractor's responsibility to verify that the purchaser is a purchaser authorized by ODOT or an authorized representative of the Department of Administrative Services having the authority to contract pursuant to this Price Agreement. If Contractor is found to have entered into two or more contracts with an entity other than an authorized purchaser, pursuant to this Price Agreement, Contractor shall be deemed to be in material breach of this Price Agreement.

**CERTIFICATION OF COMPLIANCE WITH TAX LAWS.** By my signature on this Price Agreement, I, hereby attest or affirm under penalty of perjury: That I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of my knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

**CERTIFICATION OF COMPLIANCE WITH NON-DISCRIMINATION LAWS.** By my signature on this Price Agreement, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of Contractor in this matter, and to the best of my knowledge the Contractor has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts, and that the Contractor is not in violation of any Discrimination Laws.

**CERTIFICATION REGARDING OFFICE OF FOREIGN ASSETS CONTROL AND U.S. DEPARTMENT OF STATE.**By my signature on this Price Agreement, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of Contractor in this matter and to the best of my knowledge the Contractor and Contractor's employees and agents are not included on:

- a) The list entitled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <a href="http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf">http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf</a>; or
- b) The list entitled "Current List of Designated Foreign Terrorist Organizations of the US Department of State" and currently found at http://www.state.gov/s/ct/rls/fs/37191.htm.

SIGNATURE OF CONTRACTOR'S DULY AUTHORIZED REPRESENTATIVE. THIS PRICE AGREEMENT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR; ANY ALTERATIONS OR ERASURES TO THE OFFER 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 Exhibits and amendments, if any, issued) (3) Contractor will furnish the designated Goods and 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 OFFER.

Contractor's Name: Papé Mac	hipery
Authorized Signature:	<u> </u>
Title: Territory Manager	<u> </u>
FEIN ID#: 73-1627810	
Contact Person (Type or Print):	tt Panter
Telephone Number: (503) 385-	
Fax Number: ( SYI ) 812-0139	
STATE SIGNATURE (to be completed by	y the State of Oregon)
	igh ODOT hereby accepts Contractor's offer and awards or for the item(s) and service(s) designated as:
4X4 Loader/Backhoe	
Name:	
Authorized Signature: Doug Yeel	2
Date: 3-8-10	_
Term of Price Agreement 3-7-2	011 NTE 10 years total 3-7-2020
Price Agreement No.: 2832D	
ODOT Contact Person:	Kari Frey
Telephone Number:	503-986-2653
Fax Number:	503-986-2717
Email:	kari.a.frey@odot.state.or.us

Exhibit A: Schedule of Goods/Services and Specification Requirements

# 1.0 Schedule of Goods/Services

Item	Description	Est. Qty	Unit	Unit Price	Total Price
1	Loader/Backhoe as specified	2	EA	<u>\$ 97,975</u>	\$ 195,950
2	Fork Carriage w/ 42" Forks and IT Coupler (PA§2.4.10.1)	1	EA	\$ 2628	\$ 2,628
3	4-in-1 Multi-Purpose Loader				
	Bucket, 1.25 cu yrd min w/ IT coupler (PA§2.4.10.2)	1	EA	\$ 5500	\$ 5,500
4	Material Handling Arm w/ IT coupler (PA§2.4.10.3)	1	EA	\$ 2375	\$ <b>237</b> S
5	Hydraulic Grapple Rake w/ IT coupler(PA§2.4.10.4)	1	EA	\$ 7,969	\$ 7969
6	12" wide backhoe digging bucket (PA§2.4.10.5)	1	EA	\$ 813	\$ 813
7	36" wide smooth bottom ditching bucket (PA§2.4.10.6)	1	EA	\$ 1,169	\$ 1,169
8	Hydraulic Breaker / Hammer attachment (PA§2.4.10.7)	1	EA	\$ 10,213	\$ 10,213
9	Vibratory Compactor attachment (PA§2.4.10.8)	1	EA	\$ 6,096	\$ 6,096
10	Operator Manual	1	EA	\$ 39:	\$ 39
11	Parts Manual	1	ĒΑ	\$ 107	\$ 107
12	Maintenance / Repair Manual	1	EA	\$ 399	\$ 399
13	Operators Training – Salem	4	HRS	<u>\$</u> 3S	\$ 140
14	Mechanics Training – Salem	4	HRS	\$ 35	\$ 140
15	Operators Training – Bend	4	HRS	<u>\$ 35</u>	\$ 140
16	Mechanics Training – Bend	4	HRS	\$ 35	\$ 140
17	Operators Training – LaGrande	4	HRS	<sub>\$</sub> 35	\$ 140
18	Mechanics Training - LaGrande	4	HRS	\$ 35	\$ 140
t.,				Total	\$ 234,098

\*Sec Next Dage #31 for Extend MHA

	Optional Proposal Items				
20	Auto Idle (RFP§2.3.6)	11	EA	§ Inc. in Price	Inc.
21	Cruise Control (RFP §2.3.7)	1	EA	\$ Inc. in Price \$ Inc. in Price	Inc
22	Electronic Anti-Theft Panel (RFP §2.3.8)	1	EA	\$ 200	\$200
23	Satellite GPS Tracking JD Link (RFP §2.3.10) Select	1	EA	\$ 80S	For service pricary See Attached
24	Auto-Shift Transmission (RFP §2.3.11)	1	EA	\$ Inc. in Price	Inc
25	Swing Out Coolers (RFP §2.3.12)	1	EA	\$ Inc. in Price \$ Inc. in Price	Inc
26	Heated Cab Mirrors (RFP §2.3.13)	1	EA	\$ 50D	<b>\$</b> 200
27	Additional Lights (RFP §2.3.14 and PA§2.4.10.9) Make: ~/A Model: ~/A	1	EA	\$ N/A	NA
28	Oil Sampling Ports (RFP §2.3.15)	1	EA	\$ 100	\$100
29	Extended Warranty (RFP §2.3.16)	1	EA	See Attached \$ for Pricing	See Attached
30	Diagnostic Software	1	EA	\$ N/A	
31	MHA IT Comp. Extendable	1	ΕA	<b>\$3,735</b>	\$3,735
	2.0 Description and Performance Specification				
32	GPS-JD Cink Ultimate	_ \	EA	52,196	1\$2,196

2.1 TECHNICAL DEFINITIONS:

<sup>&</sup>quot;AMP" means ampere (a measurement of current).

<sup>&</sup>quot;ANSI" means American National Standard Institute

<sup>&</sup>quot;API" means American Petroleum Institute.

<sup>&</sup>quot;AWG" means American Wire Guide.

<sup>&</sup>quot;dB" means decibel

<sup>&</sup>quot;DOT" means Department of Transportation

<sup>&</sup>quot;°F" means degrees Fahrenheit (measure of temperature).

<sup>&</sup>quot;FOPS" means Falling Object Protective Structure.

<sup>&</sup>quot;Heavy Duty" means the component exceeds the usual quantity, quality, or capacity of that supplied with a standard production Unit.

<sup>&</sup>quot;ID" means identification

<sup>&</sup>quot;ISO" means International Organization for Standardization

<sup>&</sup>quot;LB" means pound.

<sup>&</sup>quot;LB/CU. FT" means pound per cubic foot

<sup>&</sup>quot;LED" means light emitting diode

<sup>&</sup>quot;MHz" means megahertz (radio frequency unit).

- "MPC" means Manufacturing Process Conference.
- "MPH" means miles per hour.
- "OSHA" means Occupational Safety & Health Administration
- "PREVENTIVE MAINTENANCE" means maintenance recommended or required by the manufacturer in order to ensure proper performance of the Unit and to satisfy the terms and conditions of warranty coverage.
- "ROPS" means Rollover Protective Structure.
- "RPM" means revolutions per minute.
- "SAE" means Society of Automotive Engineers
- "SINAD" means Signal plus noise plus distortion to noise plus distortion ratio.
- "UV" means Ultra Violet

#### 2.2 GENERAL PROVISIONS:

<u>2.2.1 SILENCE OF SPECIFICATIONS</u>: The apparent silence of the Specifications as to any detail, or the apparent omission of a detailed description concerning any point, will be regarded as meaning that only the best commercial practice is to prevail and that only materials and workmanship of first quality are to be used.

#### 2.2.3 DRAWINGS:

- <u>2.2.3.1 INCLUDED IN THE CONTRACT</u>: The purpose of drawings is to clarify the intent of the Specifications. Contractor is cautioned that drawings may NOT be relied upon, and may NOT reflect complete or accurate information contained in the Specifications, including all material requirements. Contractor is also cautioned that if there is a conflict between the drawings and the Specifications, the Specifications take precedence over the drawings.
- <u>2.2.3.2 PRODUCTION DRAWINGS:</u> If applicable, Contractor must submit production drawings prior to fabrication of unit.
- <u>2.2.4 STANDARD COMPONENTS</u>: Unless stipulated otherwise elsewhere in the Contract, Goods must include all components and accessories listed by the manufacturer as standard.
- <u>2.2.5 COMPONENT SELECTION</u>: The components selected must be rated for the maximum loading they would be subjected to in severe service environments. The torque rating of a driven component must exceed the input torque. The component parts and structure of the Unit must be sized and designed to safely withstand the maximum load imposed, without inducing failure or deterioration. All Units must be constructed from current production components as listed in current manufacturer parts catalogs.
- 2.2.6 NECESSARY COMPONENTS: The Contractor shall provide all components, hardware, and parts necessary for proper assembly, installation, and operation of the Unit, even though certain items may not be specifically described in the Contract Specifications. This includes all cables, fittings, couplers, brackets, adapters, etc. Contract pricing includes the cost of such components, hardware and parts.
- 2.2.7 REFERENCED STANDARDS: Certain ISO, SAE, and other consensus standards are referenced in these Specifications. Unless otherwise specified elsewhere in the Contract or required by law, the current version of each standard at time of delivery applies to the Unit and components thereof.

- 2.3 DEFAULT TECHNICAL SPECIFICATIONS: Unless particular Specifications under SECTION 2.4 or the Special Contract Terms and Conditions require otherwise, the following default Specifications apply:
  - 2.3.1 LABELS: All controls and instrumentation must be clearly identified and permanently labeled. Labels must be engraved plastic, stainless steel, or aluminum alloy. Decal labels must be printed on waterproof printable vinyl paper or film using waterproof UV resistant ink, Epson Dura-Brite or equal. The decal must have a waterproof UV over laminate exterior. Labels must be permanently affixed.
  - 2.3.2 ADVERTISING: Advertising is not allowed, except for the standard manufacturer's markings typically on a Unit. A Contractor identification sticker not to exceed 4 inches by 6 inches may be applied.
  - 2.3.3 MUD FLAPS: Mud flaps must be black with no legends.
  - 2.3.4 SERVICE AND INSPECTION POINTS: The Unit must be designed so that inspection and service points are readily accessible, including grease fittings and tire valve stems, drain ports, etc.
  - <u>2.3.5 COVERS</u>: All caps and covers that must be removed in order to perform daily to bi-weekly Preventive Maintenance, other scheduled warranty service, or maintenance recommended or required by the Contractor, must be secured to the Unit by a chain or other device. All hoses, pipes, and plumbing connections must have either retained covers, quick disconnects, or protective caps.
  - <u>2.3.6 SPECIAL TOOLS</u>: If special tools, gauges, adapters, etc., are required for maintenance, adjustment or inspection of the Unit or a component thereof, they must be identified and delivered with the Unit. This includes the latest version of diagnostic software, where applicable.
  - 2.3.7 FILTERS: Filters must be easily accessible and replaceable without removing or disconnecting other components. If necessary, filters must be remotely mounted to meet this requirement. Spin-on or cartridge filters are required for fluid service. All filters must be heavy-duty and sized for severe service environments. Filter housings, including engine air cleaner housings, must be manufacturers standard material.
  - <u>2.3.8 BOLTS AND NUTS</u>: Bolts must be used with nuts of identical grade. Bolt and nut grade certification may be required. Grade 8 bolts must be medium carbon alloy steel. Grade 8 bolts of boron steel or grain enhanced steel are unacceptable.
  - <u>2.3.9 HOSE, WIRE AND TUBE ROUTING</u>: Hose, wire and tube routing must not impede normal maintenance and adjustment of the Unit. Hoses, wires and tubes must be securely and neatly positioned. Kinks in hoses, wires, or tubing are not acceptable. See also SECTIONS 2.3.11, 2.3.13 and 2.3.16.

#### 2.3.10 FLUIDS AND LUBRICANTS:

- <u>2.3.10.1</u> Unless otherwise specified elsewhere in the Contract, fluids and lubricants must be compatible with the following:
  - <u>2.3.10.1.1</u> Engine Oil SAE 15W40, API SM/CJ-4 or Manufacturer specified recommendation.
  - 2.3.10.1.2 Hydraulic Fluid AW ISO 32

## 2.3.10.1.3 Grease - Chevron Ultra Duty II, Grade 2

- 2.3.10.2 Engine coolant must be a 50/50 mixture of low-silicate formula ethylene glycol based antifreeze and water or extended life coolant. The coolant system must have a coolant overflow recovery system with an easily visible means of checking the fluid level without removing any parts.
- 2.3.10.3 Remote grease line must be flushed / purged prior to connection to bearing(s).
- 2.3.11 HYDRAULIC SYSTEMS: (Workmanship Standards applicable to both traction and controls systems):
  - 2.3.11.1 Components containing hydraulic fluid must not be installed in the cab.
  - <u>2.3.11.2 Hydraulic Symbols</u>: Hydraulic symbols on schematics are interpreted per American National Standard Institute (ANSI) Y32.10.
  - 2.3.11.3 Leaks: Hydraulic leaks are not acceptable. A leak is defined as any fluid flow larger than 1 drop in 4 hours.
  - <u>2.3.11.4</u> All components installed in the hydraulic system must be free of contamination and must be flushed out or cleaned, if necessary, to meet this requirement.
  - **2.3.11.5** Hose Routing: Hose routing must meet the following requirements:
    - 2.3.11.5.1 The bend radii of hoses must meet or exceed the manufacturers' recommended minimums.
    - <u>2.3.11.5.2</u> Hoses must be routed no closer than 6 inches from exhaust components or other heat sources unless proper shielding is provided.
    - 2.3.11.5.3 Hoses must not come in contact with moving parts.
    - 2.3.11.5.4 Hoses must be clamped to supporting structures at intervals not exceeding 60 hose diameters. Clamps must be polypropylene cushion clamps.
    - 2.3.11.5.5 Black wire ties securing hoses must be used for ultraviolet stability.
    - 2.3.11.5.6 Fittings must be steel 37° flare type on all pressure lines where practical. Flat-faced "O" ring seal type fittings are acceptable.
    - 2.3.11.5.7 Hoses must not be routed through holes or across sharp edges without protection from being chafed or cut.
    - <u>2.3.11.5.8</u> Hoses must be of sufficient length to prevent stretching, distortion, and disconnecting.

- <u>2.3.11.5.9</u> Hose(s) bundled and routed under equipment so that they are exposed to the road must be individually spiral wrapped to prevent rubbing. Spiral wrap must be Newman Heli-Tube or equal, outdoor, UV-resistant type.
- <u>2.3.11.6</u> Pipe fittings must not be used on the pressure side of any hydraulic circuit. A Teflon sealant must be used on pipe threads. Sealant must be used sparingly and must not contaminate the hydraulic system.
- 2.3.11.7 All hoses on the pressure side of a circuit must conform to SAE 100R2 Type AT or SAE100R16. Hoses on the suction side of the hydraulic system must be rated for suction service.
- 2.3.11.8 All hydraulic components must be rated for working pressures to exceed system operating pressures, and have a minimum burst of 1.5 times the system operating pressure.
- 2.3.11.9 All hydraulic quick disconnects must be equipped with protective covers that are retained by the coupling with a chain, wire cable or similar device. Snap-Tite series 71 with EF end fittings or approved equal must be used.

STATE TYPE OF QUICK DISCONNECTS PROVIDED: Snap Tite Serier 71 with EF and fittings

## 2.3.12 ELECTROMAGNETICS

- <u>2.3.12.1</u> Electromagnetic disturbances generated by on-board devices to radio receivers installed on the unit must not exceed the values in Table 5 of SAE Standard J551-4.
- <u>2.3.12.2</u> Systems or components on the unit must not be adversely affected by on-board or external electromagnetic emissions of the types and intensities defined in SAE Standards J551-1, J551-11, and J551-12.
- <u>2.3.12.3</u> Systems or components, electrical, hydraulic, or mechanical must not be adversely affected by calendrical transitions.
- 2.3.12.4 The receiver of a 2-way radio (installed and operating at 26.0 to 28.0 MHz, 30.86 to 47.66 MHz or 150.0 to 460.0 MHz) must not be degraded more than 3dB by interference generated from electrical components supplied with the vehicle. (Degradation will be measured at the radio's specified 12dB SINAD point.) When a problem is identified it shall be the responsibility of the contractor to assist ODOT's OIT Wireless Group to resolve the situation.

#### 2.3.13 ELECTRICAL WORKMANSHIP AND MATERIALS:

<u>2.3.13.1</u> All wire must be un-tinned stranded copper with type GXL cross-linked polyolefin insulation in accordance with SAE J1128. Wires must be color coded. Dyes must not be used for color coding. Wire runs and color coding must be continuous and terminate within a weatherproof junction box. All terminals and wire ends that terminate inside junction boxes must be treated with a dielectric compound so as to be entirely submerged. Vendor installed wire connector plugs must be filled with dielectric grease prior to assembly. Aluminum wire is not acceptable.

- 2.3.13.2 Unless otherwise specified elsewhere in the Contract, except for multi-terminal connectors, solderless terminals must be used for all connections. Solder must be 60-40 tin-lead alloy with a single or multiple rosin core. Cold joints or air pockets are not acceptable. A maximum 25 watt iron must be used. Solder must not wick up under the wire insulation. Both the wire and the terminal must be tinned before soldering.
- 2.3.13.3 All ring terminals on 10 AWG and smaller wires must be insulated.
- 2.3.13.4 Insulated ring terminals must meet SAE AS7928 Class 1 and Class 2 requirements. SAE AS7928 ring terminals have an extra copper sleeve around the terminal barrel that improves the holding force and reduces corrosion. Ring terminals must be crimped with an AMP model 58433-3 ratchet crimper or equal ratchet crimper. If a specially-fabricated ratchet crimper is utilized, the Contractor shall submit a description of the intended crimping tool at ODOT's request.
- 2.3.13.5 Butt splices must have moisture barriers and integral polyolefin heat shrinkable sleeves. Heat shrink tubing over non-sealed butt splices is not acceptable. Butt splices must be crimped with an AMP model 55893-1 or equal ratchet crimper. If a specially-fabricated ratchet crimper is utilized, the Contractor shall submit a description of the intended crimping tool at ODOT's request.
- <u>2.3.13.6</u> FASTON type or spade terminals must not be used unless an integral part of premanufactured electrical component.
- 2.3.13.7 Insulation-piercing connectors (Scotch Lok type) must not be used.
- 2.3.13.8 Wires must be protected by looms, sleeving and grommets. Wire bundles must be routed away from moving parts and hot components. Wires and bundles must be clamped at intervals of not greater than 20 inches with cushioned metal Adel type clamps.
- 2.3.13.9 Plastic wire ties must be black ultraviolet-protected. Wire ties must be applied with a Panduit GS2B or equal controlled-tension installation tool. If a specially-fabricated controlled-tension installation tool is utilized, the Contractor shall submit a description of the intended controlled-tension installation tool at ODOT's request.
- 2.3.13.10 All chassis/body combination units must have a separate grounding strap installed from the body to the chassis.
- 2.3.13.11 Wire Routing: Wire routing must ensure that the following requirements are met
  - 2.3.13.11.1 Wiring must not be exposed to throw-offs from tires.
  - 2.3.13.11.2 Wires must not be routed closer than 6 inches to exhaust components or other heat sources, unless they are shielded.
  - 2.3.13.11.3 Wires must not come in contact with moving parts.

- 2.3.13.11.4 Wire runs that may be subjected to ice and snow buildup require additional clamping, supports or protection.
- 2.3.13.11.5 Wires and wire harnesses must not be routed through holes or across sharp edges without protection from being chafed or cut.
- 2.3.13.11.6 Wires must be of sufficient length to prevent stretching, distortion, or disconnecting. Extra wire must be neatly bundled and tied off.
- 2.3.13.12 All added equipment and switches must be deactivated by the ignition switch, except for those items required by law to be active.
- 2.3.13.13 Wire runs and color must be continuous and terminate at weather proof junction boxes.
  - 2,3,13,13.1 Wire color must be continuous for the length of each wire.
- <u>2.3.13.14</u> Positive (hot), electrical points including ring poles and power rails must be boxed in, covered, or otherwise protected to prevent accidental short or overload from incidental contact
- 2.3.13.15 Wire size and length shall be evaluated per SAE J2202 to determine maximum amperage rating and appropriate circuit breakers installed to prevent overload conditions. Minimum wire size for vendor installed terminal to terminal wiring must be 14 AWG unless provided as a stock factory component.

#### 2.3.14 COLOR AND FINISH:

- 2.3.14.1 The Unit must be painted as specified in SECTION 2.4.1. No additional stripes or styling enhancements are permitted.
- 2.3.14.2 Sharp corners and Edges: Cut metals and other materials must have rounded corners and edges to prevent injury to personnel.
- 2.3.14.3 Surface Preparation: All welding slag and scale must be removed and surfaces must be clean and free of dirt and grease prior to painting.
- <u>2.3.14.4</u> Paint application to be in an OSHA approved facility. Painting of metal surfaces must conform to best industry practices and must provide a well-bonded surface of paint. Orange peel and runs are not acceptable. Metals must not be left bare. ID plates, tags, part numbers, serial numbers, etc. must not be painted.
- 2.3.14.5 All paint must be lead free.

#### **2.3.15 GENERAL WELDING REQUIREMENTS:**

2.3.15.1 Distortion of assembled parts is not acceptable. All welds must have proper penetration and be relatively uniform in appearance. All welds must provide a metal-to-metal bond, with adequate penetration using proper flux or welding materials. Downhill welds are not acceptable for

ten gauge or thicker material, unless unavoidable using best industry practices. If downhill welds are used, they must have proper penetration.

#### 2.3.15.2 Some characteristics of an unacceptable weld are the following:

CRACKS	UNDERCUT	OVERLAP
EXCESSIVE SPLATTER	SLAG ENTRAPMENT	INADEQUATE
		PENETRATION
DISTORTION	BLOW-HOLES	INCLUSIONS
POROSITY	CONCAVE O	र
	CONVEX	

2.3.15.3 Body Fillers: The covering of welds with body fillers or similar practice is not acceptable.

#### 2.3.16 AIR SYSTEMS:

- 2.3.16.1 Leaks: Air leaks are not acceptable.
- 2.3.16.2 Air lines: All air lines must be DOT air brake lines.
- 2.3.16.3 Air systems interface: The air system interface with air brake systems must have appropriate isolation valves.
- <u>2.3.16.4 Hose Routing</u>: Hose routing must be clamped or field to supporting structures at approximately 20 inch intervals.
- 2.3.16.5 The bend radius of air lines must not be less than the manufacturer's recommended minimum.
- <u>2.3.16.6</u> Air lines must not be routed closer than 6 inches to exhaust components or other heat sources, unless they are shielded.
- 2.3.16.7 Air lines must not come in contact with moving parts.
- 2.3.16.8 Air lines must not be routed through holes or across sharp edges without protection from being chafed or cut.
- 2.3.16.9 Air lines routing must be so that local low points (water traps) are minimized.
- <u>2.3.16.10</u> Hoses must be of sufficient length to prevent stretching, distortion, or disconnecting. Extra hose must be neatly bundled and tied off.
- 2.3.17 OPERATOR(s) EQUIPMENT INTERFACE: The operator(s) station(s): The operator(s) stations(s), including safety devices, controls, gauges and visibility, must be configured for operators with physical dimensions as specified in SAE J833 (medium build).

2.3.17.1 Control Locations: All controls	at an operator's station mu	ist be located w	ithin easy react
of an operator wearing a seat belt or oth	er required safety device.	The controls a	re to be located
and spaced to allow for easy operation.	Control location must not	hamper or inte	rfere with othe
control applications.			

- 2.3.17.2 Instrumentation Visibility: Instrumentation, gauges, warning lights, etc., must be sized and located so they are easily read.
- <u>2.3.17.3 Work Area Visibility</u>: Visibility of the work area, road, etc., must be unobstructed, and provide for safe equipment operation.
- 2.4. SCOPE: This specification describes a 4x4 industrial loader with an integral extendable backhoe with factory installed hydraulic thumb and plumbed for additional equipment including but not limited to a breaker/hammer or compactor. Loader must be equipped with a CATERPILLAR, category 1 compatible IT style quick coupler on the front end plumbed with additional auxiliary hydraulic circuit for use with a 4 in 1 bucket or grapple rake. Loader must be equipped with "ride control".

  Manufacturer: John Deere

Manufacturer: John Deere

Model Number: 410 TMC

2.4.1 COLOR: The basic color of the industrial 4X4 Loader/Backhoe must be manufacturer's standard color.

Color provided: Tohn Dear Control Yellow

# 2.4.2 BASIC DIMENSIONS AND CAPABILITIES:

must include reversible cutting edges.

2.4.2.1. The SAE operating weight must be a minimum of 17,000 pounds without ballast,
counterweights or attachments.  Operating weight provided: 19,022 #
2.4.2.1.1 The total gross machine weight must not exceed 24,300 pounds with attachments.
Total gross machine weight provided: 22, 500 #
2.4.2.2. The overall width must not exceed 102 inches.
Overall width provided: 91"
2.4.2.3. The overall height must not exceed 120 inches.
Overall height provided: 111"
2.4.2.4. The loader general purpose bucket must be a minimum of 92 inches wide, and be wider

than the tractor with a struck capacity minimum of 1.31 cubic yards. The general purpose bucket

General purpose bucket width provided: 92"

Loader bucket capacity provided:	31 cubic yds
2.4.2.5. The general purpose bucket equipped with bolt on cutting edge and provide a loader dump clearance minimum of 100 inches as defined in SAE J	
Dump clearance of bucket at 45°:\C	00"
2.4.2.6. The loader lift capacity must be 6,500 pounds minimum at full height.	
Lift capacity at full height provided: 7	215#
2.4.2.7. The loader breakout force must be 10,000 pounds minimum.	
Breakout force provided:	450#
2.4.2.8. The loader automatic return to dig with minimum digging depth of 3.5	inches below ground.
Digging depth provided (automatic return to dig): 5	. <u>S"</u>
2.4.2.9. The loader dump reach at full height and maximum angle must be a	minimum of 30 inches.
Reach at full height / angle provided: 3	<u>7"</u>
2.4.2.10. The backhoe must be an integral part of the tractor with a manual b grabber) and heavy duty bucket with built in cutting edges and replaceable	teeth. The bucket must
have a minimum width of 24 inches (approximately 6 cubic feet capacity).  Bucket width provided:	۲۲"
Bucket capacity provided:	.S cobic ft
2.4.2.11. The reach of the backhoe must be a minimum of 23 feet from axl stick in the retracted position.	
Reach of the backhoe provided: 2	3'7"
2.4.2.12. The backhoe digging depth with dipper stick extended must be 18 fo	eet minimum.
Digging depth provided: 2	0'
2.4.2.13. The backhoe swing arc must be a minimum of 180°.	
Swing arc provided: \(\S\)	iO°
2.4.2.14. The backhoe bucket digging force must be a minimum of 14,000 with SAE standard.	pounds in compliance
Digging force provided:	,801#

_	2.4.2.15. Stabilizer width for transport must not exceed 102 inches. Stabilizers must include adjustable rubber street pads.
	Stabilizer transport width provided:
u	2.4.2.16. The Loader/Backhoe must have the maximum number of counter weights installed on the unit as recommended by the manufacturer. Weights will be removed by ODOT as needed, depending on the configuration of the backhoe's use.
	Total weight of all counterweights provided: 1450#
2.4.3. EN	GINE:
-	2.4.3.1. The engine must be diesel-fueled, liquid-cooled, turbo-charged, four-stroke with a minimum of four (4) cylinders and must be current (as of the date of this contract) Tier III emissions certified or greater, capable of operation on bio diesel with blends up to B20.
	Engine make: John Deere Powertec
	Model: YOYSHTOSY
	Cylinders:
_	2.4.3.2. The engine displacement must be at least 268 cubic inches, with a minimum output of 98 net SAE J1349 horsepower.
	Engine displacement provided: 276 cubic in
	Engine displacement provided: 276 cubic in  Horsepower provided: 98
<u>2</u>	2.4.3.3. Engine must have a minimum net torque rise of 40%.
	Net Torque rise: 477.
<u>2</u>	2.4.3.4. The filters used must be sized for "severe service duty", and include the following:
	<ul><li>(1) Fuel filter with water separator.</li><li>(2) Oil filter.</li><li>(3) Air cleaner, dual element with precleaner.</li></ul>
<u>2</u>	2.4.3.5. All engine compartment side covers and hood enclosures must afford easy access to engine

- components and service points.
- <u>2.4.3.6.</u> Anti-vandalism devices must be installed, including locks on the cab, engine compartment, hydraulic tank, and fuel cap. Whenever possible, locking devices must be keyed the same.

# 2.4.4 TRANSMISSION AND DRIVE TRAIN:

`	ability to shift from forward to reverse without using the clutch.
	Number forward speeds provided:
	Number reverse speeds provided: 3
2	2.4.4.2. The industrial Loader/Backhoe must have a forward speed of at least 16 MPH.
	Forward speed provided: 23.2 mph
4	2.4.4.3. The industrial Loader/Backhoe must have a 2 wheel steering mode.
1	2.4.4.4. The drive train must be 4 wheel drive and equipped with locking differential so that if one or more wheels lose traction due to a slippery surface or a surface lacking sufficient shear strength to react tractive force, the remaining wheels still provide tractive force.
_	2.4.4.5. A guards must be provided for the driveshaft and any under carriage components that are susceptible to damage.
4.5. E	LECTRICAL SYSTEM:
2	2.4.5.1. The electrical system must be a 12-volt negative ground system.
Ī	2.4.5.2. Batteries must be 2 extra heavy-duty maintenance free, off-road vibrations resistant with a minimum of 850 Cold Cranking Amps (CCA) each. There must be an accessible battery master
(	disconnect switch.  Total CCA provided: 1900
2	2.4.5.3. The electrical system must include the following:
	<ul> <li>(1) Horn</li> <li>(2) Batteries (see Section 2.4.5.2 above)</li> <li>(3) Hour meter</li> <li>(4) Head lights</li> <li>(5) Work lights (6) six total, two (2) to front, two (2) to rear, and one (1) to each side</li> <li>(6) The alternator must be ninety (90) amps minimum</li> </ul>
	Alternator amps provided: \\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\
	(7) Directional turn signals and flashers (8) The mini light bar must be a amber Federal Signal Solaris, Model 454201-02 or
	approved equal. The flash pattern must be adjusted to meet SAE Class 1 requirements.

2.4.5.4. The steering must be power assist type or power steering.

2.4.5.5. An 107dB electronic backup alarm must be installed, ECCO 830 or approved equal.

Back Up Alarm provided (make " Model): ECCO 830

<u>2.4.5.6.</u> A 110-volt 1000 watt minimum AC block heater with thermostat must be provided. The heater connection must be made at weatherproof receptacle (J. Jeb plug kit PK 1212.) <u>or approved</u> equal.

Watts provided with AC block heater: 1606

2.4.5.7. A non ether cold weather starting aid must be provided.

#### 2.4.6, CAB

- <u>2.4.6.1.</u> The cab must be fully enclosed with a certified OSHA, ISO and SAE standards for ROPS and FOPS structure with 2 one-piece doors.
- 2.4.6.2. All windows must be tinted safety glass. There must be 2 opening side windows.
- <u>2.4.6.3.</u> Factory installed air-conditioning must be provided with an air filtration system. Air conditioner performance must equal or exceed that specified in SAE J1503.
- 2.4.6.4. An extra heavy-duty hot water heater must be supplied exceeding the performance specified in SAE J1503 and capable of producing sufficient heat for the cab and for defrosting the windows during adverse winter weather. The heater must be capable of increasing the operator environment temperature to the comfort zone shown in Figure 1 of SAE J1503 when the ambient temperature is as low as -25°F. Both the heater and defroster must be equipped with a multi-speed fan control.
- 2.4.6.5. The cab must be pressurized with filtered air.
- 2.4.6.6. All switches and controls must be within easy reach of the operator wearing a safety belt. The instrument panel must have all necessary gauges grouped in clear view of the operator, including:
  - (1) Fuel gauge
  - (2) Hour meter
  - (3) Air restriction indicator
  - (4) Hydraulic oil temperature gauge
  - (5) Coolant temperature gauge
  - (6) Tachometer/speedometer
  - (7) Low oil pressure warning light
  - (8) Alternator warning light

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2.4.6.7. Backhoe controls must be standard excavator 2 lever controls per SAE J1177. A hand control pattern selector valve (to switch the control from SAE to ISO pattern) must be included.

<u>2.4.6.8.</u> In addition to the gauges, there must be a multiple level warning system for critical machine functions, air restriction indicator, and parking brake on indicator.

2.4.6.9. At a minimum, the cab must include the following features:

- (1) Windshield wipers front and rear
- (2) Internal light
- (3) Hot air defroster front and rear windows
- (4) AM/FM stereo w/ speakers
- (5) Rear View Mirror

2.4.6.10. The seat must be an adjustable, air-suspension type seat with arm rests, and must swivel to the rear for backhoe operation. A safety belt (three (3) inches in width) with retractor must be installed.

2.4.6.11. The steering column must be adjustable to accommodate a variety of operator sizes.

2.4.6.12. The Loader must have a lockable weather tight toolbox.

2.4.6.13. A slow moving vehicle emblem must be installed.

2.4.6.14. The interior noise level in the closed cab at the operators position must not exceed 79 dBA when tested in accordance with ANSI/SAE J1166.

Interior noise level:	76 dBA	
interior noise lever.	10 0.01	

<u>2.4.6.15.</u> Cab access must include hand-holds and steps. Adequate toe clearance must be provided for all steps. Open grate type steps are preferred.

# 2.4.7. TIRES

2.4.7.1. The front radial tire must be 340/80 R18 and 19.5L R-24 on the rear or approved equal.

Size of tires provided front 12.5/80-18 340/80 R18

Size of tires provided rear: 19.5L R-24 10 ply

2.4.7.2. Both the front and rear tires must have lug treads.

2.4.7.3. The tires must be rated to carry the loads imposed by the industrial Loader, and implements.

2.4.7.4. The Loader must have fenders over the rear wheels.

2.4.7.5. There must be ample clearance to allow the use of heavy-duty tire chains without impairment.

#### 2.4.8. HYDRAULIC SYSTEM

2.4.8.1. The hydraulic system must be sized to properly operate all attachments.

Hydraulic tank size: Pump capacity @ 2200 rpm: 42 gpm / 3625 PSI

- <u>2.4.8.2.</u> The hydraulic system must be designed to operate all tools and attachments without overheating.
- 2.4.8.3. Controls for the attachments must be located in the Loader cab within easy reach of the operator wearing a safety belt.
- 2.4.8.4. Hydraulic connections to attachments must be with quick disconnects with covers.

#### 2.4.9. BRAKES:

- <u>2.4.9.1.</u> In the case of a power shift multi-speed transmission, the service brakes must have split circuits and act on all wheels.
- 2.4.9.2. If a hydrostatic transmission is used, four (4) wheel braking must be provided.
- 2.4.9.3. The parking brake must be independent of the service brakes.
- <u>2.4.10 ATTACHMENTS:</u> Required items <u>2.4.10.1</u> through <u>2.4.10.8</u>. Item <u>2.4.10.9</u> must be provided if available. All attachments must be complete with pins, hydraulic couplers, mounts or needed equipment for attachment and operation, including all load rating charts for attachments on supplied machine. Indicate price for each item in Exhibit A Section 1.0 Schedule of Goods/Services.
  - 2.4.10.1 Fork carriage with minimum 42 inch long forks with IT coupler
  - 2.4.10.2 4-in-1 Multi-purpose loader bucket, 1.25 cu. yd. min with IT coupler
  - 2.4.10.3 Material Handling Arm with IT coupler
  - 2.4.10.4 Hydraulic Grapple rake with IT coupler
  - 2.4.10.5 12 inch wide backhoe digging bucket
  - 2,4.10.6 36 inch wide smooth bottom ditching bucket
  - <u>2.4.10.7</u> Hydraulic breaker/hammer attachment correctly sized for weight and hydraulic flow for machine. Breaker/hammer must have both a chisel and mole point bit included.

2.4.10.8 Vibratory compactor attachment correctly sized for weight and hydraulic flow for machine.

2.4.10.9 Additional work lights, if available. List make and model numbers in Exhibit A: Section 1.0 Schedule of Goods/Services.

#### 3.0 SERVICES TO BE PERFORMED

- 3.1 TRAINING: Contractor shall provide the Services of a qualified factory service representative(s) for the following training:
  - 3.1.1 Training of ODOT mechanics in major maintenance, preventive maintenance, adjustment and repair of the Unit(s). Estimated number of hours required is 4. Contractor shall provide training at an hourly rate and invoice separately at actual hours. If training is not invoiced separately, payment may be held until all items (including equipment) on invoice have been received, approved and released.
  - 3.1.2 Training of ODOT operators in safe operation and preventive maintenance of the Unit(s). Estimated number of hours required is 4. Contractor shall provide training at an hourly rate and invoice separately at actual hours.
  - 3.1.3 Training will be held at Salem, Bend and LaGrande.
  - 3.1.4 All costs of training, including but not limited to, factory service representatives' salaries and fees, travel, lodging, meals, training/demonstration materials, etc. is included in the Contract pricing.
  - 3.1.5 A training syllabus covering all required training subjects must be made available after Contractexecution and must be provided upon request from ODOT.

#### 4.0 Delivery Requirements

- 4.1 DELIVERY TIMELINE REQUIRED BY ODOT: 120 calendar days from date of order. Early delivery is acceptable and encouraged.
- - 4.2.1 Failure to insert a delivery date proposal indicates a Contractor commitment to deliver within the time specified in SECTION 4.1. Submittal of delivery timelines later than those required may result in rejection. Submittal of delivery timelines providing for earlier delivery than required by ODOT binds the Contractor.
- 4.3 MANUFACTURING UPDATES: The Contractor shall provide to ODOT monthly written status reports summarizing the manufacturing progress of all equipment on order. Written manufacturing status reports must be submitted to ODOT by the 15th day of each month, to begin the month following receipt of order. Written manufacturing status reports must be submitted to the attention of the ODOT Fleet Operations Purchasing Coordinator as follows:

#### If by U.S. Mail:

Gene Hunter ODOT Fleet Operations 455 Airport Road, SE Building K Salem, OR 97301-5348

If by Facsimile: (503) 986-2864 (Attn: Gene Hunter)

If by Email: Lester.E.HUNTER@odot.state.or.us

Contractor agrees that time is of the essence for Contractor's performance obligations under the Contract. The Contractor shall notify ODOT immediately, in writing, if at any time Contractor finds that delivery cannot be completed as required. Upon receipt of such notice from the Contractor or upon Contractor's failure to deliver Goods within the timeline as specified, ODOT reserves the right to cancel the order and make the purchase from another source, without further obligation to the Contractor.

- **4.4 DELIVERY COMPONENTS:** The following items (collectively referred to as "Delivery Components") must be included in the Contract price and delivered with the Unit.
  - 4.4.1 A manufacturer's statement of origin.
  - 4.4.2 A copy of all product information and instructions supplied by the manufacturer.
  - 4.4.3 Data sheets (furnished by ODOT), filled out with applicable data.
  - 4.4.4 Three (3) sets of keys for all locks.
  - 4.4.5 Orders for multiple Units must be keyed alike.
  - **4.4.6** All manufacturer's warranties, evidencing proper transfer to the State.
  - **4.4.7** An extra filter set consisting of all filters used on the Unit (oil, hydraulic, air, water, fuel, etc.), each of which must be individually packaged and identified. The filter set must be packaged as a group in appropriately-sized 5 mil., minimum, plastic water proof bags or box. Supply filters in original packaging when possible. Extra filter set must include filters for cab air, air intakes, air vents and transmission, if applicable.
  - <u>4.4.8</u> ON BOARD DIAGNOSTICS: If available from the manufacturer, pricing for an electronic self-diagnostic system is provided as separate line item in Exhibit A, Section 1.0 Schedule of Goods/Services Table.
  - <u>4.4.9</u> Contractor shall provide 1 copy of current <u>operator's manual</u> and all other operator information and instructions available from the manufacturer with each unit ordered.

- **4.4.10** Contractor shall provide 1 copy of current **shop repair manual**, including electrical and hydraulic schematic diagrams, covering all systems, components, and optional equipment with each unit ordered.
- **4.4.11** Contractor shall supply 1 copy of the current **parts catalog** covering all components and optional equipment available from the manufacturer with each unit ordered. ("All components" means the primary Unit and all auxiliary equipment and components added to the Unit to meet the Specifications set forth in the Contract.)
- **4.4.12** Shop repair manuals and parts catalogs may be combined.
- **4.4.13** Operator manuals provided must be in hard copy format only. Service, parts and repair manuals may be provided in hard copy, CD ROM or DVD format.
- **4.4.14** All hard copy manuals and catalogs must be individually assembled and bound.
- <u>4.4.15</u> Manuals & Diagnostic Software (Model Upgrades): In the event the manufacturer upgrades the models bid herein during the Contract term, and new manuals & diagnostic software are issued, Contractor shall provide replacement upgrade materials in quantities as listed above at no additional cost.
- **4.4.16** Additional manual quantities and pricing is provided under Exhibit A, Section 1.0 Schedule of Goods/Services Table.

#### 5.0 Warranties

- <u>5.1.1 AUTHORITY</u>; <u>BINDING OBLIGATION</u>: Contractor represents and warrants that Contractor has the power and authority to enter into and perform the Contract, and that the Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms.
- **5.1.2 WARRANTY ON MATERIALS, DESIGN, MANUFACTURE:** Contractor warrants that all Goods are new, unused, current production models, fit for their intended purpose, and free from defects in materials, design, and manufacture for the duration of the applicable manufacturer warranty periods, any portion of the standard warranty on any of the components that exceed these requirements apply. Where Specifications have been made a part of the RFP, Contractor further warrants that all Goods conform to the Specifications and meet or exceed safety and quality standards established in the Contract.
- **5.1.3 WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all Services, where provided, are in accordance with the best commercial practice, by properly licensed or certified individuals, and that only materials and workmanship of good quality are used in the performance of the Contract.
- <u>5.1.4 WARRANTY OF SAFETY AND HEALTH REQUIREMENTS</u>: Contractor warrants that the Goods comply with all applicable federal and State health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA) and Oregon Occupational Safety and Health Administration (OROSHA).

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- <u>5.1.5 MANUFACTURER WARRANTIES</u>: Contractor shall have all manufacturer warranties covering the Goods and component parts, where applicable, 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.
- <u>5.1.6 WARRANTY OF TITLE</u>: Contractor warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person has any right, title or interest in the Goods which are superior to or infringe upon the rights granted to ODOT hereunder.
- <u>5.1.7 WARRANTIES CUMULATIVE</u>: The warranties set forth in this Section 5.1 are in addition to, and not in lieu of, any other warranties provided in the Contract. All warranties provided in the Contract are cumulative, and shall be interpreted expansively so as to afford ODOT the broadest warranty protection available.
- <u>5.1.8 BASIC WARRANTY</u>: The basic warranty on the 4X4 Loader/Backhoe must be for a minimum period of 2 years or 2000 hours (which ever occurs first). The warranty for attachments must be a minimum of 1 year. The basic warranty on all other components must be for a period of not less than 1 year. Any portions of the standard warranty on any of the components that exceed these requirements apply. See Section <u>5.1.9</u> **CONTRACTOR WARRANTY PERIODS** for additional details.
  - **5.1.8.1** The warranty excludes consumables such as lamps, lights, belts, ground engagement tools, batteries and tires, except as warranted by the manufacturer of said items. It also excludes damage to the unit due to accident, misuse, abuse, vandalism or operator or maintenance neglect.
  - <u>5.1.8.2</u> With prior Contractor approval and if the unit is urgently needed, the State may elect to have equipment transported by ODOT to the Contractor's authorized repair center for warranty work. **The Contractor shall reimburse ODOT for all costs thereof.**
  - **5.1.8.3** The Contractor shall be responsible for all warranty adjustment expenses. Services / costs in excess of published flat rate may be negotiated. Applicable published flat rates must be provided to ODOT prior to warranty work
  - <u>5.1.8.4</u> If the Contractor is unable to furnish warranty repair within 14 calendar days, the Contractor shall furnish a replacement Unit until the warranty repair is completed and the repaired Unit is returned to ODOT.
- **5.1.9 CONTRACTOR WARRANTY PERIODS**: Warranty periods for Contractor's warranties on materials, design, and manufacture will not start until the date the Unit is actually put into service, as established by ODOT's business records.
- **5.1.10 WARRANTY COMPUTER SOFTWARE:** Contractor warrants that the engine diagnostic software does not infringe, nor ODOT's use of such software infringe, any license, copyright, patent, trade secret, or other proprietary right of any third party, and Contractor shall provide indemnification to ODOT against any such infringement of third party rights.
- <u>5.1.11 WARRANTY REPAIRS</u>: If any Unit or component thereof should prove defective in workmanship, design, or materials during the relevant warranty period, the manufacturer or Contractor shall promptly repair or replace the Unit or component ("Warranty Repairs") at no cost to the State, including parts, labor, and

expenses of any kind (transportation and shipping costs, insurance, meals, accommodations, travel time, mileage, etc., to job sites) ("Warranty Costs"). Contractor shall be responsible for completing all necessary Warranty Repairs within 48 hours of notice from ODOT. Such notice may be made by phone, fax, e-mail or other means reasonably calculated to reach Contractor. All warranty repair work will conform to ODOT workmanship standards as identified in Section 2.0 Mutually agreeable alternative arrangements may be made prior to warranty work.

<u>5.1.11.1 ODOT REPAIR OPTION</u>: With Contractor's prior approval, not to be unreasonably withheld, ODOT may perform Warranty Repairs. In such case, ODOT will hold the failed parts for the Contractor's inspection, together with sufficient documentation to verify the repairs. Contractor shall reimburse ODOT for all Warranty Costs incurred by ODOT in making such repairs.

5.1.11.2 EMERGENCY REPAIRS: In an emergency, if the Contractor is unable to furnish a service representative and parts to the on-site location of a Unit within the time frame required by ODOT under the circumstances, ODOT may elect to have emergency Warranty Repairs completed by other means and hold the failed parts for the Contractor's inspection, together with sufficient documentation to verify the repairs. The Contractor shall reimburse ODOT for all Warranty Costs incurred by ODOT in completing such emergency repairs. In the alternative, ODOT may rent substitute equipment from another source until Warranty Repairs can be completed, and obtain from Contractor reimbursement for all costs incurred. As used in this SECTION 5.1.11.2, "costs" include substitute equipment, parts, labor, testing, transportation and shipping costs, insurance, travel, meals, accommodations, and all other expenses related to rental of substitute equipment.

# 6.0 Special Provisions

6.1. DISCLOSURE OF SOCIAL SECURITY NUMBER: Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385 and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

6.2 CONTRACTOR'S SOLE REMEDY: For its sole remedy, after exhausting any provisions for resale under Oregon's UCC (ORS Chapters 71 & 72), Contractor lessor / renter / seller is limited to the difference between market price and Contract price at the time and place for tender, less expenses saved, without incidental damages. For the avoidance of doubt, Contractor specifically disclaims and otherwise waives any right or privilege to recover consequential, exemplary, incidental, nominal, special, punitive or other statutory damages, and specifically shall not recover damages for lost opportunity or profits, or pursue any remedy in equity, by specific performance or otherwise.

#### 6.3. INDEPENDENT CONTRACTOR: RESPONSIBILITY FOR TAXES AND WITHHOLDING:

**6.3.1** Contractor shall perform all required Work (for example, training) as an independent Contractor. Although ODOT reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, ODOT 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 Work.

- **6.3.2** If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, ODOT 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 this Contract, except as a self-employed individual.
- 6.4 CONTRACT DOCUMENTS: The Contract consists of (a) Specifications; (b) Proposal Pricing Section; (c) Standard Contract Terms and Conditions; (d) Special Contract Terms and Conditions, if any; (e) Insurance; (f) the Proposal; (g) Purchase Orders; and (h) all Contract addendum and amendments.
- 6.5 ORDER OF PRECEDENCE: Whenever possible, all terms and conditions are to be harmonized. However, in the event of a conflict, the Contract is interpreted utilizing the following order of precedence: (a) Contract amendments; (b) the Special Price Agreement Terms and Conditions, if any; (c) these Standard Price Agreement Terms and Conditions; (d) the Specifications; (e) Drawings; (f) Purchase Order(s); and (g) the Proposal. Provided, however, if a particular term is required by law, it takes precedence over any conflicting terms. For purposes of this section, to "take precedence" means to supersede. "Order of precedence" refers to the order in which conflicting Contract provisions supersede each other.
- <u>6.6 GOODS AND SERVICES TO BE FURNISHED</u>: During the term of the Contract, Contractor agrees to deliver all Goods and provide all services ordered by ODOT in accordance with the terms and conditions of the Contract.
- **6.7 PURCHASE ORDERS:** ODOT will order Goods, if any by Purchase Order. Contractor shall not accept any Purchase Order that does not comply with the following requirements:
  - 6.7.1 ODOT will use the ODOT-approved Purchase Order form(s) to order Goods under the Contract. Purchase Orders will incorporate the Contract by reference, and identify the Contract number, the RFP number, and Proposal item number(s) of the Unit(s) and options ordered. However, no language in a Purchase Order submitted will vary, amend, modify, or add terms or conditions to the Contract. Operative provisions in Purchase Orders will be limited to: designation of ODOT and its authorized representative; identification of Goods and order quantities; optional Services, equipment and accessories offered under the terms of the Contract; delivery schedules in accordance with the terms of the Contract; and Delivery Destination and invoicing address.

# **6.7.2 MANDATORY PURCHASE ORDER LANGUAGE:**

THIS PURCHASE IS PLACED AGAINST ODOT PRICE AGREEMENT # [INSERT Price Agreement #]. THE PRICE AGREEMENT TERMS AND CONDITIONS AND SPECIAL PRICE AGREEMENT TERMS AND CONDITIONS (T'S & C'S) CONTAINED IN THE PRICE AGREEMENT

APPLY TO THIS PURCHASE AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S AND C'S, EXPRESSED OR IMPLIED.

- **6.7.3** In the event a court of competent jurisdiction determines that the Purchase Order constitutes an offer rather than an acceptance, then acceptance by Contractor shall be limited to the terms of the Contract as stipulated in the RFP.
- <u>6.8 SHIPPING/DELIVERY DESTINATION</u>: Goods, including all Delivery Components, must be delivered F.O.B. destination to the address or location specified in the Purchase Order ("Delivery Destination"), together with all warranty documentation, inspection reports, and certifications, where applicable, unless specified otherwise in the Contract. Responsibility and liability for loss or damage remains with Contractor until final inspection and acceptance.
- **6.9 DELIVERY DATE REQUIRED BY ODOT:** Delivery must be completed, including all Back Orders, within 120 days after receipt of Purchase Order. All shipping and handling charges are to be paid by Contractor, unless specified otherwise in the Contract.
  - <u>6.9.1</u> The Contractor shall notify ODOT, in writing, within 5 business days of receipt of Purchase Order if delivery cannot be completed as required. Upon receipt of such notice from the Contractor, ODOT reserves the right to cancel the order and make the purchase from another source, without further obligation to the Contractor.
- **6.10 DELIVERY TIME:** Delivery is accepted Monday through Friday, excluding weekends or legal holidays as recognized by the State. Delivery hours are 7:30 AM to 3:00 PM. Any exceptions to this time frame is at the discretion of ODOT.
- **6.11 DAMAGED SHIPMENT:** It is the Contractor's sole responsibility to insure that the shipment arrives at its destination undamaged. If there is any damage to goods upon delivery, ODOT reserves the right to return the shipment in whole or in part at the Contractor's expense. If the Contractor is unable to supply a replacement shipment within the allotted period of time (Refer to PA Section 4.0 Delivery Requirements), ODOT may cancel the order in whole or in part and purchase needed items from another source.

#### 6.12 INSPECTIONS/ACCEPTANCE:

- **6.12.1 PRE-DELIVERY INSPECTION:** ODOT may request to have a pre-delivery inspection at Contractor's location to insure specification compliance PRIOR TO DELIVERY.
- 6.12.2 ODOT may reject any shipment or cancel any Purchase Order which does not meet all of the requirements of the specifications and warranties. ODOT will have 21 calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, ODOT will provide Contractor with written notification of rejection. Notice of rejection will include itemization of apparent defects, including but not limited to (i) discrepancies between the Goods and the applicable Specifications or warranties (including variance from sample characteristics where samples or prototypes have been provided), and (ii) other apparent defects in design, materials, or manufacture, or (iii) otherwise nonconforming Goods (including late delivery). Notice of rejection will also indicate whether cure will be allowed. Specification deviations unacceptable to ODOT that are discovered after delivery must be corrected at no cost to ODOT.

**6.12.3 CURE:** If ODOT elects to allow cure, Contractor shall complete cure within 14 calendar days of date of notice of rejection and opportunity to cure (the "Cure Period"). If a missing part, component, or accessory cannot be provided and installed within 14 calendar days, ODOT will have the right to buy the item or part from another source and bill the Contractor or deduct the cost from Contractor's invoice for the Goods, including costs of installation. With regard to defective Goods, ODOT may elect to have the Contractor deliver substitute Goods within the Cure Period that comply with the Contract Specifications and warranties. Failure to complete cure within the Cure Period may constitute an event of default under PA SECTION 6.

6.12.4 REMOVAL/REIMBURSEMENT: If the Goods are rejected or acceptance is revoked, the Contractor shall refund any Contract payments that have been made with regard to such Goods, and, at Contractor's sole cost and expense, remove the Goods within 14 calendar days of date of notice of rejection or revocation of acceptance. Contractor shall return all Agency owned items to Agency in like condition initially received.

Nothing in this SECTION 6.12 in any way affects or limits ODOTs rights as buyer under UCC, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

PERFORMANCE EVALUATIONS: Agency may conduct performance evaluation(s) on the 6.13 selected Contractor(s) during the Contract term. Any completed evaluations will be compiled and maintained by Agency, and become a written record of Contractor's performance. Agency also may maintain as part of that written record information obtained from Contractor during an exit interview following Contract expiration or termination. Upon request, Agency will provide copies of any performance evaluation documentation to the affected Contractor and third parties, unless the requested material is lawfully exempt from disclosure.

Agency may, at its sole discretion, use performance evaluation findings and conclusions in any way deemed necessary by Agency, including, but not limited to, determining eligibility for future contract assignments, and as a criterion of selection for future Agency contracts.

- 6.14 PAYMENT; OVERDUE ACCOUNT CHARGES: Payment is due and owing no later than 45 days from date of acceptance or expiration of the inspection and acceptance period, whichever occurs first. Contractor may only assess overdue account charges, in accordance with the provisions of ORS 293.462, up to a maximum rate of 2/3 percent per month (up to 8 percent per annum) starting 45 days from the date of acceptance or expiration of the inspection and acceptance period, whichever occurs last (per Oregon Accounting Manual [OAM] 15.40.00 PR).
- 6.15 PAYMENT ADDRESS: Payment will be sent to Contractor at the address specified in the invoice.
- 6.16 INVOICES: Contractor shall invoice ODOT upon delivery of the entire order. Training must be invoiced separately at actual hours after training is completed. Each invoice must include the Contract and applicable Purchase Order number. All items included on a single invoice must be delivered, inspected, approved and released prior to payment. Separate invoices may be sent for each unit to facilitate release of invoice payment. Invoices must be sent to the Fleet Inspector address specified in the Purchase Order.
- **6.17 TRAINING:** Training costs must be itemized separately (See Table in Exhibit A Section 1.0).

- **6.18 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.
  - 6.18.1 Should Contractor, during the term of the Contract, 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 Contract is thereupon deemed amended to provide the same price or prices, terms and benefits to ODOT. This provision applies to comparable Goods and 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.
  - **6.18.2** 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, sales or arrangements with other government units or commercial customers that call for the application of this paragraph.

#### 6.19 SPECIAL LAWS AND STANDARDS:

- <u>6.19.1 MATERIAL SAFETY DATA SHEET</u>: Contractor shall provide ODOT with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Contract which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag or mark such Goods.
- 6.19.2 Contractor shall comply with all federal, State and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) ORS Chapter 659, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and State civil rights and rehabilitation statutes, rules and regulations. All laws, regulations and executive orders applicable to the Contract are incorporated by reference where so required by law. ODOT's performance is conditioned upon Contractor's compliance with ORS 279B.220, 279B.235 and 279B.230, the terms of which are incorporated by reference into the Contract.
- **6.20 NONCOMPLIANT GOODS:** In the event of a conflict between the Specifications and applicable federal or State laws, the federal or State laws prevail. Provided, however, in the event of any conflict based solely upon minimum standards, such as quality or safety, the higher or more stringent standard apply.
  - 6.20.1 Contractor shall be responsible for making any modifications required to achieve compliance with the required laws and standards. Contractor shall notify ODOT of any such required

modifications upon receipt of knowledge or notification of such, and shall complete all necessary modifications or provide substitute compliant Goods at no cost to ODOT within 14 calendar days of receipt of such notice. As used in this Section, "cost" includes substitute equipment, labor, transportation and shipping costs, insurance, travel, meals, accommodations, etc.

<u>6.20.1.1</u> In the event required modifications impair the utility of the Good for its intended purpose or level of function, in the reasonable opinion of ODOT, ODOT may elect to cancel any order and terminate the Contract in whole or in part, based on such non-compliance. Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within 14 calendar days of receiving notice of rejection or revocation of acceptance.

#### 6.21.2 RECALLED GOODS:

**6.21.2.1** In the event any Good, component, or accessory is recalled by a regulatory body or the manufacturer, Contractor shall immediately notify ODOT of the recall, and shall provide copies of the notice or other documentation ODOT may require. Contractor (at Contractor's sole cost and expense) shall complete all necessary modifications or provide substitute non-defective Goods and remove recalled Goods, wherever located, within 14 calendar days of receipt of such notice.

6.21.2.2 In the event required modifications impair the utility of a Good for its intended purpose or level of function in the reasonable opinion of ODOT, ODOT may elect to cancel any order or terminate the Contract, in whole or in part, at no cost or penalty to the State based on such recall. Contractor shall (at Contractor's sole cost and expense) promptly remove all recalled Goods, wherever located, and reimburse ODOT all amounts paid for recalled Goods, less the value of the use of such recalled Goods while in ODOT's possession.

As used in this Section, "cost" includes substitute equipment, labor, transportation and shipping costs, insurance, travel, meals, accommodations, etc.

- <u>6.21.3</u> Nothing contained in this **SECTION 6.21** precludes ODOT from other remedies to which it may be entitled upon rejection or revocation of acceptance
- <u>6.22 RECYCLED PRODUCTS</u>: Contractor shall use recycled and recyclable products to the maximum extent economically feasible in performance of the Contract set forth in this document. These products include recycled paper, recycled PETE products, as defined in ORS 279A.010(1)(hh), and other recycled plastic resin products. If used, Contractor shall specify the minimum percentage of recycled product used and submit with Bid. See Attachment A Section 11 RECYCLED PRODUCTS CERTIFICATION.
- **6.23 VERBAL COMMUNICATIONS:** Verbal communications shall not be construed as or have the effect of signifying ODOT's waiver, or consent or agreement to amend, any Contract provision. All such changes must be in writing, signed by both parties and all necessary approvals obtained, including approval by the ODOT Fleet Operations Manager.

6.24 AMENDMENT OF CONTRACT. Within the general scope of the Price Agreement, the parties may by amendment to Purchase Order modify any or all of the following and related payment obligations as necessary but not to exceed the price established in the Price Agreement: the expiration date of the Contract; time, place, quantity or form of delivery; and technical specifications or additional or substituted Goods, Services, or other work. No waiver, consent, modification or change of terms of a Contract binds a party unless in writing, signed by Contractor and ODOT, and approved as required by applicable laws and rules. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given and shall not vary, amend, modify, or add Price Agreement provisions. By providing a substitution with consent of ODOT, Contractor represents that Contractor has personally investigated the proposed substitute product; provides the same warranty for the substitution that the Contractor provides for the product originally specified; waives all claims for additional costs related to the substitution; and will make such changes as may be required by the substitution for the Goods to conform in all respects with the Price Agreement specifications and warranties.

#### Exhibit B: Purchase Orders, Pricing, Invoicing and Payment

#### 1.0 Definitions.

<u>"Price"</u> means the per-unit price for the Goods as set forth in the Schedule of Goods. The Price must be a delivered price and must include all direct and indirect costs incurred by the Contractor including but not limited to all overhead, profit, and taxes arising out of the transaction.

"Total Price" means the Price multiplied by the number of units purchased by ODOT.

- 2.0 Purchase Orders. Contractor shall not accept any PO that does not comply with the following requirements.
  - 2.1 ODOT will use the approved PO form to order the Goods under the Price Agreement (PA) (see Exhibit F, Sample Purchase Order). POs will incorporate the PA number and RFP number by reference. However, no language in a PO will vary, amend, or modify the terms and conditions of the PA. Operative provisions in the PO will be: designation of ODOT and its authorized representative; identification and pricing of Goods and Services order quantities; delivery schedules; delivery destination; and invoicing address.
  - 2.2 The PO must contain the following language: THIS PURCHASE ORDER IS PLACED UNDER ODOT SOLICITATION NUMBER 23959 AND PRICE AGREEMENT 28320. THE TERMS AND CONDITIONS OF THE PRICE AGREEMENT APPLY TO THIS PURCHASE ORDER AND TAKE PRECEDENCE OVER ALL CONFLICTING TERMS AND CONDITIONS, EXPRESSED OR IMPLIED.

#### 3.0 Invoicing by Contractor.

- 3.1 Contractor may invoice ODOT no more frequently than monthly or as otherwise agreed by the Parties.
- 3.2 Contractor shall invoice ODOT for the purchased Goods and Services using an invoice format approved by the State.
- 3.3 Contractor shall send invoices to the address specified by ODOT or to a different address as directed by ODOT in writing.

ODOT 455 Airport Rd SE Bldg L Salem, OR 97305

3.4 Invoices submitted must be for the Total Price of the Goods and Services purchased by ODOT for the payment period.

#### 4.0 PAYMENT.

4.1 ODOT will pay Contractor within thirty (30) days after ODOT receives the invoice. ODOT will send payment to Contractor at the address specified in the invoice.

- 4.2 If ODOT fails to pay an invoice as set forth in §4.1 above, at Contractor's option, it may assess overdue account charges to an ODOT at a percentage which is the same as the usual overdue account charges to the general clientele of the Contractor but in no event will such overdue account charges exceed two-thirds of one percent per month (8% per annum).
- 4.3 ODOT obtaining Goods or Services under this Price Agreement is solely responsible for the payment of all amounts due to the Contractor. Contractor agrees to look only to ODOT for payment.
- 4.4 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. The 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.
- 4.5 Prices for the Goods and Services may be adjusted only as described in this Exhibit B.
- **5. PRICING ADJUSTMENT:** The Prices in the Schedule of Goods may be increased or decreased during the Term of the Price Agreement only as set forth below.
  - 5.1 The Price may be adjusted no more than once within a 12 month period.
  - 5.2 Upon receipt of the Renewal Notice, Contractor may propose an adjustment of the Price. In submitting its response to the Renewal Notice, Contractor shall also provide such information and documentation regarding the need for the adjustment as Contractor considers appropriate. If the State desires to consider the proposed adjustment, State will meet with the Contractor for purposes of negotiating a new Price.
  - 5.3 If the Parties agree on an adjusted Price, that Price will be effective upon the date identified within the amendment language. If the Parties are not able to agree on an adjusted Price, the Price Agreement will expire in accordance with its terms. Notwithstanding the expiration of the Price Agreement, Contractor shall complete performance of all outstanding Contracts.
  - 5.4 If the State desires to propose a reduction in the Price of the Goods and Services, it will provide notice of the proposed adjustment in the Renewal Notice and will deliver such information and documentation regarding the need for the adjustment as the State considers appropriate. If the Contractor desires to consider the proposed adjustment, State will meet with the Contractor for purposes of negotiating a new Price. §5.3 will apply with respect to the resolution of the negotiation of the Price.

#### **Exhibit C: Certificate of Insurance**

The following are the minimum insurance requirements for this Contract

The apparent low Proposer shall provide all required proof of insurance and bonding (if required) to the ODOT Procurement Office within 7 calendar days of notification of Intent to Award. Failure to present the required documents within 7 calendar days may be grounds for bid rejection.

C.1	Required by Agency of Contractors with one or more 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). Contractor shall include these requirements in each of its subcontractor contracts.
C.2	Required by Agency 🔲 Not required by Agency.
0.2	General Liability insurance with a per occurrence limit, or the equivalent, of not less than \$200,000, ☐ \$500,000, ☐ \$1,000,000, or ☐ \$2,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than ☐ \$100,000, ☐ \$500,000, ☐ \$1,000,000, or ☐ \$2,000,000. This insurance shall include personal and advertising injury liability coverage, as well as coverage for products and completed operations. This coverage may be written in combination with the Automobile Liability insurance required under this Contract (with separate limits).
<u>^</u>	Descriped by Agency Agency
0.3	Required by Agency Not required by Agency.  Automobile Liability insurance covering Contractor's business-related automobile use, with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, or \$1,000,000, each accident for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles. This coverage may be purchased by Contractor from a rental company, as appropriate, or written in combination with the Commercial General Liability insurance required under this Contract (with separate limits).

- C.4 Notice of cancellation or change. There shall be no cancellation, material change (one that would adversely impact the protection of Agency provided through the insurance coverages required in this Contract), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Contractor or its insurer(s) to the Department of Transportation (Agency).
- C.5 Certificates of Insurance. As evidence of the insurance coverages required by this Contract, Contractor shall furnish acceptable insurance certificates to Department of Transportation (Agency) prior to Contract execution. Throughout the life of this Contract, Contractor shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If Agency has on file current certificates of insurance that meet all requirements of this Contract, and Agency provides such notification to Contractor, then submittal of certificates pursuant to this Contract will not be required.
  - i) Blanket Coverage. Unless otherwise approved by Agency, the certificate submitted for this Contract shall not reference a specific Contract name or number with regard to any of the required liability coverages or Additional Insured Endorsement (contact the Agency's Procurement Specialist if this is not available from the insurance provider).
  - ii) Additional Insureds. The certificate must specify "The State of Oregon, the Oregon Transportation Commission and its members, and the Department of Transportation, its officers, agents and

- employees" as Additional Insureds for Automobile and General Liability. The certificate must be submitted with the blanket Additional Insureds Endorsement page(s).
- State Acceptance. All insurance providers are subject to State acceptance. If requested by Agency, Contractor shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents to Agency; or, b) make such insurance policies, endorsements, self-insurance documents and related insurance documents. available for inspection by Agency's representatives at a location in the State of Oregon that is reasonably convenient for Agency's representatives responsible for verification of the insurance coverages required under this Contract. In the event Contractor elects to have Agency representatives inspect the insurance policies, endorsements, self-insurance documents and related insurance documents, Agency representative shall be entitled to make written notes regarding the documents inspected, for the purpose of verifying the coverages required under this Contract.
- iv) **Financial Responsibility.** Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance.

C.6	Required by Agency Not required by Agency.  Tail Coverage. If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of: 24 months, or 12 months. If "tail"
	coverage is required by Agency, Contractor will be responsible for furnishing certification of "tail" coverage as described, or continuous "claims made" liability coverage, for the time period required in this Contract following Contract expiration. 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. Evidence of suitable coverage will be a condition of final payment under the Contract.
C.7	Required by Agency Not required by Agency.  Garagekeepers' Legal Liability Coverage: Contractor shall obtain, at Contractor's expense and keep in effect
	during the term of this Contract and any applicable warranty periods, Garagekeepers' Legal Liability Coverage for "Autos left for service, repair, storage or safekeeping." The deductible for this coverage will be

determined prior to Price Agreement award. Coverage limits per occurrence must not be less than

### **Exhibit D: Federal Provisions - Reserved**

Exhibit E: Disadvantaged Business Enterprise (DBE) - Reserved

## Exhibit F: Sample Purchase Order (PO)

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#### **Exhibit G: Performance Evaluations**

The Agency may conduct performance evaluations on the Contractor during the Price Agreement term, be compiled and maintained by Agency, and become a written record of Contractor's performance, including information gained during the exit interview. The Agency will provide copies of any performance evaluation to the affected Contractor and third parties, unless lawfully exempt.

The following information describes the Agency's use of the performance evaluation documentation:

#### Performance Evaluation Process:

- a. Agency's Right to Evaluate. Agency may, at its sole discretion, conduct performance evaluations. The Agency reserves the right to negotiate the criterion of the Performance Evaluation Form prior to execution of the Price Agreement.
- b. Evaluation Process. The performance evaluation results may be used as written documentation for addressing areas of Contractor's performance throughout the term of the resulting Price Agreement. Agency reserves the right to conduct performance evaluations on an interim basis throughout the term of the Price Agreement.
- c. Contractor's Review/Response. The Agency will provide a copy of the performance evaluation form results to Contractor within ten (10) business days following completion. Contractor may respond, in writing, and request a meeting to address any or all findings contained in the completed Contractor's performance evaluation form within five (5) business days following receipt.
- d. Agency's Use of Performance Evaluation. Agency may, at its sole discretion, use performance evaluation findings and conclusions in any way deemed necessary by Agency, including, but not limited to, as a criterion of selection for future Agency contracts.

#### **Exhibit H: Conflict of Interest**

Conflict of Interest (COI): Conflict of Interest (COI) Guidelines and Disclosure Process is not physically attached but is incorporated with the same force and effect as if it were fully set forth herein, and is available at the following Web address: <a href="http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/xbth.pdf">http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/xbth.pdf</a>

**Exhibit I: Reserved** 

Exhibit J: Reserved

Exhibit K: MWESB & DBE Aspirational Target Provisions - Reserved

#### ATTACHMENT D - Contractor Customer Reference Questions

§2.3.4 References / Customer Survey (20 points possible)

In the event that ODOT cannot make contact with a reference within 1 calendar week after Proposal closing date (at least 2 contact attempts will be made), points will be determined based on contacted customers. The identification of alternative contact persons for each reference is highly recommended. ODOT cannot be used as a reference.

Proposers must provide 4 references where the proposed chassis, or similar chassis, has been purchased and is operating.

The 4 references must be as follows, 1 state DOT other than ODOT, 2 county or city governments, 1 Proposer's choice.

Contact must be involved with the Contract Administration, use or operation of the equipment in question.

Proposers must provide the following information regarding each reference:

a.	Firm Name: (DOT)	Cal Trans
	Address:	34th Street and Stockton Blud Sacramento, CA 95816
	Name of Contact Person:	Jose Villasenor
	Position Title:	Engineering Specifications Manager
	Telephone Number:	916-227-9505 F 916-227-0977
	Name of Contact Person:	N/A
	Position Title:	N/A
	Telephone Number: Make / Model provided	N/A F N/A
	•	MA
b.	Firm Name: (County / City)	City at Salem
	Address:	1455 22nd St. SE Bldg 3 Salem, OR 97302
	Name of Contact Person:	Floyd Noel
	Position Title:	Equipment Manager
	Telephone Number:	503-588-6313 F 503-588-6408
	Name of Contact	Ja
	Person:	NA
	Position Title:	N/A
	Telephone Number:	<u>N/A</u> F <u>N/A</u>
	Make / Model provided	NA

C.	Firm Name: (County / City)	City of Seattle
	Address:	P.O. Box 34018 Seattle WA 98124
	Name of Contact Person:	Frank Jacobson Jr.
	Position Title:	Automotive Engineer
	Telephone Number:	206-386-1843 F 206-386-9186
	Name of Contact Person:	N/A
	Position Title:	N/A
	Telephone Number:	N/A F N/A
	Make / Model provided	N/A
d.	Firm Name: (Other)	Gelco Construction
	Address:	P.O. Box 7716 Salem, OR 97303
	Name of Contact Person:	Kevin Mongghan
	Position Title:	Owner
	Telephone Number:	503-364-2638 F 503-364-0085
	Name of Contact Person:	N/A
	Position Title:	N/A
	Telephone Number:	N/A F N/A
	Make / Model provided	<u>^\/A</u>
	Person: Position Title: Telephone Number:	N/A

ODOT will ask each reference to rate their satisfaction of the Proposer's products and services on a scale of 1 to 5 (1 being Not Satisfied and 5 being Extremely Satisfied) in the following areas:

- 1. Reliability and Performance of the system and components
- 2. Ease of maintenance and repair
- 3. Responsiveness of the Proposer to customer issues
- 4. Quality of service and support

The ratings will be added together to provide a point score from 4 to 20 points for each of the four references. These point scores then will be averaged to establish a point score of up to 20 points for this scored criterion.

#### ATTACHMENT E - Authorized Service Centers

§2.3.3 AUTHORIZED SERVICE CENTERS (10 points possible)

Proposer shall identify the total number of parts warehouses available within the state of Oregon: 4 depot Prid

ODOT will award 5 points to the Proposer offering the most # of parts warehouses available within the state of Oregon. All others will be prorated against the highest #.

The Proposer shall identify the authorized service centers closest to each of the 8 ODOT facilities listed below. Include the following information:

1	Service / Dispatch location closest to:							
	Address:	20434 NE Cady Way Bend, OR 97701						
	Telephone Number:	541-389-5869 F 541-389-5081						
	Name of Contact Person:	Jim Sherman						
	Any Special Procedures	No						
2	Service / Dispatch location closest to:	Glenwood Section 1920 Henderson Ave, Eugene, OR 97403-2331						
	Address:	460 N. Danebo Are Suite 100 Eugene, OR 97402						
	Telephone Number:	541-484-2454 F 541-463-2929						
	Name of Contact Person:	Jeff Rusow						
	Any Special Procedures	No						
3	Service / Dispatch location closest to:	Grants Pass Maintenance 345 NE Agness Ave, Grants Pass, OR 97526-3905						
	Address:	4300 Hadley Dr Central Point, OR 97502						
	Telephone Number:	541-772-4706 F 541-776-3818						
	Name of Contact Person:	Dave Lawrence						
	Any Special Procedures	<i>N</i> b						
4	Service / Dispatch location closest to:	LaGrande Repair Facility 3016 Island Ave, LaGrande, OR 97850-9497						
	Address:	1907 East James St Pasco, WA 9930)						
	Telephone Number:	800-338-1052 F S09-547-7959						
	Name of Contact Person:	Monte Engelberg						

	Any Special Procedures	Call Pape Machinery to set up Service
5.	Service / Dispatch location closest to: Address: Telephone Number:	Ontario Maintenance 541 Stanton Bivd, Ontario, OR 97914-8437  2000 E Overland Pd Meridian ID 83642  800-479-3337 F 208-888-3088
	Name of Contact Person:	Dan Rittenhouse
	Any Special Procedures	Call Dapé Machinery to Sct up Service
6.	Service / Dispatch location closest to:	Baldock Maintenance 9637 SW 35th Dr, Portland, OR 97219-6139
	Address:	1425 NE Columbia Blud Portland, OR 97211
	Telephone Number:	583-289-1103 F 503-283-4549
	Name of Contact Person:	Jim Smith
	Any Special Procedures	No
7.	Service / Dispatch location closest to:	Shady Maintenance 3339 Old Hwy 99S, Roseburg, OR 97470-4438
	Address:	1699 Greensiding Rd Parebug OR 97470
	Telephone Number:	541-679-2928 F <u>541-679-2985</u>
	Name of Contact Person:	Gordon Boyd
	Any Special Procedures	No
8.	Service / Dispatch location closest to:	Salem Repair Facility 455 Airport Rd SE, Salem, OR 97301-5348
	Address:	33693 McForland 12d. Tappent, 012 47369
	Telephone Number:	541-612-0207 F 547-812-0139
	Name of Contact Person:	Agron Dotter
	Any Special Procedures	No

The distances from the service centers to the ODOT facilities will be determined, <a href="http://maps.yahoo.com">http://maps.yahoo.com</a> will be used to test the validity of the distances in miles. The summation of all the travel distances to the 8 stations will be used to award points. The lowest mileage will receive 5 points. Proposers providing higher mileage will be prorated points against the lowest mileage.

#### ATTACHMENT F - Life Cycle Costing

2.3.5.1 ODOT will evaluate Life Cycle costing for each vendor based upon the following 3 factors:

- 1.) Acquisition Cost.
- 2.) Fuel.
- 3.) Oil, Fluids, Lubricants and Filters.

<u>Acquisition Cost</u> is the purchase price of the mandatory equipment, implements, and accessories listed in the Attachment B - Price Agreement, Exhibit A: Schedule of Goods/Services Table (Items 1 – 18).

Cost provided for item 1, 4X4 Loader/Backhoe as specified: \$\frac{\pi 97,975}{2}\$

Total <u>fuel consumption</u> for 3 years will be calculated and added to the LCC with the following assumptions: average unit hours per year is 1000 hours, diesel prices shall be a set price of \$3.00/gallon.

Provided Loader/Backhoe hours per gallon: See Addendum [1.7 gallons per how]

ODOT Fleet has developed the following guidelines for the replacement of Oil, Fluids, Lubricants and Filters:

- Every 100 hours replace engine oil and oil filter.
- Every 250 hours replace the fuel filter.
- Every 250 hours replace the air filter.
- · Every 250 hours replace the hydraulic filter.

The associated LCC material costs for OEM oil and OEM standard filters are as follows;

- 1.) Engine oil per quart = \$ 5.69 Indicate # of quarts needed: 14

  2.) Engine oil filters = (# needed) I price per unit \$ 11.25

  3.) Fuel filter ea = primary \$ 21.75 , secondary \$ 30.25

  4.) Air filter ea = \$ 23.10 + \$ 13.50 (2 & feed needed)
- 5.) Hydraulic filter ea = \$ 65.00
- 6.) Hourly shop rate = \$66.00

Indicate # of hours needed to accomplish complete engine oil and filter change:

7.) Hydraulic Oil per gallon = \$ 13.97 Indicate # of gallons needed: 12

8.) Additional costs associated with oil and fluid replenishment and replacement including nonstandard items and processes:

Contractor must INCLUDE costs associated with oil and fluid replenishment and replacement. If the Proposers equipment requires maintenance at shorter intervals than ODOT's recommended maintenance then these costs must be included.

Summary: The points for the life cycle costing ("LCC") component of the Proposal specification will be calculated as follows:

Acquisition Costs, plus Fuel cost plus Oil, Fluids, Lubricants and Filters for a set period of 2000 hours on a Loader/Backhoe as described in the RFP specifications.

$$(AC) + (FC) + (Lub, Fil) = LCC$$

Include all supporting data for values used. The lowest LCC shall receive 10 points. Proposers providing larger life cycle costs shall receive points prorated against the lowest LCC

#### February 9, 2010

#### OREGON DEPARTMENT OF TRANSPORTATION

## INVITATION TO BID ADDENDUM NO. 1

7/[

BID NO.:

23959

CLOSE DATE:

February 16, 2010

TIME:

2:00 PM

DESCRIPTION:

Loader / Backhoe

BUYER:

Kari Frey

PHONE:

503-986-2653

FAX:

503-986-2717

This addendum forms a part of the contract documents and modifies, as noted below, the original bidding documents dated January 22, 2010, and becomes a part of the contract documents.

\*Acknowledge receipt of this addendum in the space provided on the bottom of this page and return with bidding documents. Failure to do so may be subject to disqualification.

SINGLE POINT OF CONTACT: There will be only one point of contact for this Invitation to Bid. The contact point is the ODOT Purchasing Office, and the contact person is the Buyer listed above. Any questions or issues that may arise regarding the specifications, the bidding process, and/or the award process shall be directed to the Buyer listed above. The State's official response to any questions or requests will be through direct letters or the addendum process.

#### **DESCRIPTION OF BID CHANGES**

2.4.6.6 (6) Remove the word "speedometer"

Attachment F Change – "Provided Loader/Backhoe hours per gallon " to read "Provided Loader/Backhoe gallons per hour"

Remove and replace the following sections in their entirety:

2.3.12 Swing out or non stacked coolers. (10 bonus points possible). State will award 10 points for those Contractors offering swing out or non stacked coolers for easier cleaning. Provide details / drawings for clarification. Include any additional pricing for this item in Exhibit A: Schedule of Goods/Services and Specification Requirements, Table 1.0 Schedule of Goods/Services.

Swing out or non stacked coolers offered?



Ν

- 2.4.5.7 An electronically controlled cold weather starting aid must be provided.
- 2.4.6.4 Heater/Defroster Factory heater/defroster must be able to keep cab warm and defrosted in any winter condition in accordance with SAE J1503.
- 2.4.6.14. The interior noise level in the closed cab at the operators position must not exceed 80 dBA when tested in accordance with ANSI/SAE J1166.
- <u>2.4.9.1</u> In the case of a power shift multi-speed transmission, the service brakes must be on rear axle and dynamic front braking engaged when slowing or stopping from roading speeds.

<u>2.4.10.4</u> Hydraulic Grapple rake with IT coupler. Hydraulic Grapple rake must be a heavy duty / severe duty rated, multi- tooth style with top and bottom tooth spacing from 8 to 12 inches, at least as wide as the GP bucket bid with the machine.

4.4 Point	s for Evaluati	on of Criteria.				
	2.3.12 Swing out or non stacked coolers					
Exhibit A	: 1.0 Schedu	le of Goods/Services	Table			_
	25	Swing out or non stacked coolers (RFP §2.3.12)	1	EA	\$ Ic.in Price	
ATTACH	Swing (	out or non stacked cool um Possible Points	ers §2.3.1 10 poin			
*I hereby acknowl	edge having re	eceived and duly consid	lered the p	preceding	addendum to the s	pecification.
Bidder Name: Authorized Signa		lachinery - N. M				

# Reference 2.3.16 Deve 10



Pape Machinery Additional Extended Warranty Options For John Deere 410JTMC Backhoe Loader

3 Year / 3,000 Hours / Full Machine

\$2,455.00

4 Year / 4,000 Hours / Full Machine

\$4,228.00

5 Year / 5,000 Hours / Full Machine

\$6,116.00

Scott\_Panter

Territory Manager (503)385-5706 cell