



Deschutes County Board of Commissioners  
1300 NW Wall Street, Suite 200, Bend OR 97701-1960  
541.388.6570 – Fax 541.385.3202 – [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST AND STAFF REPORT**

**For Board Business Meeting of: November 23, 2015**

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**DATE:** November 17, 2015

**FROM:** Chris Doty, PE                      Road Department                      Phone: 541.322.7105

### **TITLE OF AGENDA ITEM:**

Consideration of Board approval of Document #2015-662, a contract with Albina Asphalt for the purchase and delivery of hot liquid asphalt for the 2016 chip seal season.

**PUBLIC HEARING ON THIS DATE?** No

### **BACKGROUND AND POLICY IMPLICATIONS:**

The Deschutes County Road Department applies chip seal as the primary preventative maintenance treatment for the 700 paved centerline miles of road within the Deschutes County system. The product is applied on approximately 80 to 95 miles of County road annually and approximately 20 to 30 centerline miles of city streets within the cities of Bend, Redmond, Sisters and La Pine. Hot liquid asphalt is the primary component within a chip seal and traditionally comprises over 50% of the cost of the finished product.

The Road Department opened bids for purchase and delivery of AC-15P asphalt on November 10<sup>th</sup>. Albina Asphalt was the sole bidder at \$525 per ton. This price is 23% less than the 2013 thru 2015 price of \$683 per ton and will result in a cost savings of approximately \$316,000 to the County's chip seal program. Additionally, the cities of Bend, Redmond, and Sisters will experience pass-thru cost savings as well.

### **FISCAL IMPLICATIONS:**

The estimated contract amount is \$1,423,500 based on the unit price of \$525 per ton for the asphalt and a delivery price of \$22.50 per ton for the County's estimated 2,600 ton chip seal program.

### **RECOMMENDATION AND ACTION REQUESTED:**

Approval, with suggested motion: "I move to authorize Board approval of Contract #2015-662 with Albina Asphalt for supply and delivery of hot liquid asphalt."

**ATTENDANCE:** Chris Doty

**DISTRIBUTION OF DOCUMENTS:** Board Secretary

## **DESCHUTES COUNTY DOCUMENT SUMMARY**

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

**Date:** November 17, 2015

**Department:** Road

**Contractor/Supplier/Consultant Name:** Albina Holding dba Albina Asphalt

**Contractor Contact:** Kyle Arntson

**Contractor Phone #:**

360.816.8536

**Type of Document:** Contract for Purchase of Goods

**Goods and/or Services:** Hot Liquid Asphalt for chip seal

**Background & History:** This is an annual contract for procurement of hot liquid asphalt used in the County's chip seal process. Formal bid process used per County Code. Albina Asphalt was the sole bidder.

**Agreement Starting Date:** 11/23/15

**Ending Date:** 10/31/16

**Annual Value or Total Payment:** \$525/ton + freight (\$22.50/ton), \$1,423,500 total est.

☐ Insurance Certificate Received (check box)  
Insurance Expiration Date: \_\_\_\_\_

Check all that apply:

- ☒ RFP, Solicitation or Bid Process
- ☐ Informal quotes (<\$150K)
- ☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

**Funding Source:** (Included in current budget? ☒ Yes ☐ No)

If **No**, has budget amendment been submitted? ☐ Yes ☐ No

**Is this a Grant Agreement providing revenue to the County?** ☐ Yes ☒ No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance: Name:  
Phone #:

Departmental Contact and Title: Chris Doty

Phone #:

541-322-7105

Department Director Approval:

  
Signature

11/17/15  
Date

Distribution of Document: 5Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

Sheila Odle - Road Dept.

Official Review:

County Signature Required (check one): ☐ BOCC ☐ Department Director (if <\$25K)

☐ Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review

Date

Document Number

2015-662

## **The Supply and Delivery of AC-15P Liquid Asphalt 2016**

### **Supply and Delivery of 2,600 ton of AC-15P**

	Price Per ton	Freight	Total cost
<b>Albina Asphalt:</b>	<b>\$525.00</b>	<b>\$22.50</b>	<b>\$1,423,500.00</b>
<b>Estimate:</b>	<b>\$625.00</b>	<b>\$23.50</b>	<b>\$1,686,100.00</b>



# **Deschutes County Road Department**

## **Bid Documents for the Supply and Delivery of AC-15P Liquid Asphalt – 2016**

**Bid Opening: November 10, 2015**  
**Completion Date: October 31, 2016**

DC 2015-662

**DESCHUTES COUNTY, OREGON  
ROAD DEPARTMENT**

**INVITATION TO BID:**

**FOR THE SUPPLY AND DELIVERY OF AC-15P LIQUID ASPHALT - 2016**

**Sealed bids will be received at the Deschutes County Road Department, 61150 SE 27th Street, Bend, Oregon 97702, until but not after, 2:00 p.m. on November 10, 2015 at which time and place all bids for the above-entitled procurement will be publicly opened and read aloud.**

The contract calls for supplying and delivery of 2,600 Tons of AC-15P liquid asphalt to specified locations and municipalities within Deschutes County.

Specifications and other bid documents may be inspected and obtained at the Deschutes County Road Department, 61150 S.E. 27th Street, Bend, Oregon 97702 or the Deschutes County website, [www.deschutes.org](http://www.deschutes.org). Inquiries pertaining to these specifications shall be directed to Tom Shamberger, Operations Manager, 541.322.7120.

Bids shall be made on the forms furnished by the County, incorporating all contract documents, addressed and mailed or delivered to Chris Doty, Road Department Director, 61150 SE 27th Street, Bend, Oregon 97702 in a sealed envelope plainly marked **"BID FOR THE SUPPLY AND DELIVERY OF AC-15P LIQUID ASPHALT - 2016"** and the name and address of the bidder.

Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279A.120 (1) (b). Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

Deschutes County may reject any bid not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any or all bids upon a finding of Deschutes County it is in the public interest to do so. The protest period for this procurement is seven (7) calendar days.

Upon mutual agreement, parties may extend the term of this Contract, at unit prices provided herein, provided that the Contract term does not extend beyond October 31, 2018 plus the applicable warranty term.

Included in this bid are provisions for permissive cooperative procurement as provided in ORS 279A.215. Political subdivisions within and adjacent to Deschutes County are authorized to use the quoted price received on this request to purchase materials at the same terms, conditions and prices of the original contract. Freight rates for product delivery to additional agencies may be negotiated separately from this contract.

CHRIS DOTY  
Department Director

PUBLISHED: THE BEND BULLETIN: OCTOBER 26, 2015 & NOVEMBER 2, 2015  
DAILY JOURNAL OF COMMERCE: OCTOBER 26, 2015 & NOVEMBER 2, 2015

REVIEWED

LEGAL COUNSEL

**DESCHUTES COUNTY, OREGON  
CONTRACT FOR THE PURCHASE OF GOODS**

**THE SUPPLY AND DELIVERY OF  
AC-15P LIQUID ASPHALT  
2016**

This Contract is between Deschutes County, Oregon ("County"), acting by and through the Road Department ("Agency"), and ALBENA ASPHALT ("Contractor"). This Contract is effective on the date it has been signed by all parties and all required County approvals have been obtained. Except as provided in the immediately following sentence, this Contract expires on the latest of the following: October 31, 2016, the date all warranties have expired, or the date Contractor has completed delivery of all Goods and Services in accordance with the requirements of this Contract, as determined by Agency. Upon mutual agreement, parties may extend the term of this Contract, at unit prices provided herein, provided that the Contract term does not extend beyond October 31, 2018 plus the applicable warranty term.

This Contract is for the purchase and sale of the following: The Supply and Delivery AC-15P Liquid Asphalt to Deschutes County in an estimated quantity of 2,600 Tons, as more fully described in the Special Provisions set forth in Appendix "A" attached and by this reference incorporated herein.

Contractor agrees to sell, and Agency agrees to purchase, Goods and Services for the benefit of Agency subject to the following terms and conditions:

**1. DEFINITIONS.**

- A. "Goods" means the goods specified in Section 2.
- B. "IRS" means the Internal Revenue Service.
- C. "Services" means the services, if any, that are incidental to the purchase of Goods and that Contractor is required to perform under Section 2.
- D. "Specifications" means the specific attributes of Goods and Services described in Section 3.

**2. REQUIRED GOODS, SERVICES, PRICING AND DELIVERY SCHEDULE.**

Contractor shall deliver to Agency the following Goods and Services for the prices specified in the bid schedule in this Section 2 under paragraph D.

- A. GOODS. - Contractor shall deliver Goods F.O.B. place of destination.

i. Description, Quantities and Delivery Location: The material description and quantity is described in the Bid Schedule and Special Provisions of this Contract, with site address location to be provided by Deschutes County at time of order. Agency, at its sole discretion, may reduce or increase the estimated quantity at the unit prices set forth on the Bid Schedule.

ii. AUTHORIZATION FOR ADDITIONAL ORDERS. This contract allows for the designation of additional orders by other public agencies pursuant to ORS 279A.215. Contractor will complete Appendix "B" attached and by this reference incorporated herein.

B. SERVICES.

N/A

C. DELIVERY.

i Delivery locations shall be disbursed throughout Deschutes County, within 50 air miles of the Deschutes County Road Department, 61150 SE 27th Street, Bend, OR 97702.

ii. Contractor shall deliver Goods to Agency and shall perform Services, if any, at the specific locations described at the time goods are ordered.

iii. Contractor shall retain the risk of loss of Goods until Agency accepts Goods in accordance with Section 4.D.

iv. Contractor shall deliver Goods as scheduled by Deschutes County.

D. BID SCHEDULE AND UNIT PRICING.

**BID SCHEDULE**

**The Supply and Delivery of AC-15p Liquid Asphalt**

#	Item	Est. Quantity	Unit Price	Units	Total Cost
1	Hot Applied AC-15P Liquid Asphalt	2,600	\$ 525 <sup>00</sup>	Ton	\$ 1,365,000 <sup>00</sup>
2	Delivery of Asphalt		\$ 22 <sup>50</sup>	Ton	\$ 58,500 <sup>00</sup>
3	Total Cost at Estimated Quantity		\$ 547 <sup>50</sup>		\$ 1,423,500 <sup>00</sup>

BID PRICE OF TOTAL COST OF ESTIMATED TONNAGE: (written words)

ONE MILLION, FOUR HUNDRED TWENTY THREE THOUSAND,  
Written: FIVE HUNDRED DOLLARS.

NOTE: A. Bidder must bid on all Items #1 and #2. Failure to bid on all items will disqualify the bid.



The name of the Bidder who is submitting this Proposal is:

Name:	ALBENA HOLDING dba ALBENA ASPHALT
CCB#:	# 13
Address:	801 MAEN ST.
City:	VANCOUVER
State:	WASHINGTON
Zip:	98660
Phone:	360-816-8536
Facsimile:	360-816-8537

The above is the address to which all communications concerned with this proposal and with the Contract shall be sent.

### 3. SPECIFICATIONS.

Contractor shall deliver all Goods and Services specified in Section 2 in accordance with this Section 3. Contractor's failure to deliver Goods and Services in accordance with the provisions of this Contract is a material breach of this Contract.

#### A. GENERAL PROVISIONS.

i. NON-COMPLIANCE. If any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Specifications, Contractor shall immediately notify Agency of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. Agency may elect to (a) reject Goods in whole or in part, or (b) revoke its acceptance of Goods in whole or in part. If Agency rejects Goods or revokes its acceptance of Goods, Contractor shall remove the particular Goods from Agency's possession as provided in Section 4.D.iv at no cost to Agency and shall reimburse Agency for all payments made for those Goods.

ii. STANDARD COMPONENTS. Unless specified otherwise in this Section 3, Specifications, Contractor shall provide Goods with all components and accessories that the manufacturer lists as "standard" for Goods.

iii. NECESSARY COMPONENTS. Unless specified otherwise in this Section 3, Specifications, Contractor shall include all components, hardware and parts necessary for complete and proper assembly, installation and operation of Goods.

iv. NEW AND UNUSED GOODS. Unless specified otherwise in this Section 3, Specifications, Contractor shall deliver Goods that are new, unused and produced from current production inventory. Contractor shall provide Goods manufactured from only those components that the manufacturer offers in the manufacturer's current parts catalogue for Goods.

**B. DETAILED SPECIFICATIONS/SPECIAL PROVISIONS.**

**SEE APPENDIX "A" ATTACHED AND BY THIS REFERENCE INCORPORATED HEREIN.**

**4. TERMS AND CONDITIONS.**

**A. PAYMENT.**

i. Agency's Payment. Agency shall pay Contractor for Goods delivered and Services performed at the unit prices and rates specified in Section 2. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of County other than Agency for Goods delivered or Services performed.

ii. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the IRS, as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.

iii. Funds Available and Authorized; Payments. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.

**B. INVOICES.**

i. Contractor shall send invoices to Agency no more often than monthly after Agency's acceptance in accordance with Section 4.D of Goods delivered under this Contract. Contractor shall send invoices to Agency for completed Services no more often than monthly.

ii. Contractor shall send all invoices to the Agency mailing address specified in Section 7 or to any other address that Agency may indicate in writing to Contractor. Contractor shall include in each invoice:

- a. The Solicitation number if any, the Contract number if any;

- b. The quantity of Goods ordered, the quantity of Goods delivered, the date Goods were delivered, the price per unit, if applicable;
- c. A detailed description of Services performed, including the name or names of the individuals who performed Services and prepared the deliverables to which the invoice applies, the dates Services were performed, all deliverables delivered during the period of the invoices, the rate or rates for Services performed, and the total cost of Services
- d. Itemization and explanation of all expenses for which Contractor claims reimbursement authorized under this Contract; and
- e. The total amount due, and the payment address.

#### C. MOST FAVORABLE PRICES AND TERMS.

Contractor represents and warrants that all prices, terms and benefits offered by Contractor under this Contract are equal to or better than the equivalent prices, terms and benefits being offered by Contractor to any other County or local governmental entity or commercial customer.

i. If during the term of this Contract Contractor enters any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other County or local governmental entity or commercial customer, Contractor shall provide the same price or prices, terms and benefits to Agency. The prices, terms and benefits shall be effective as of the date Contractor made the more favorable terms or greater benefits available to any other County or local governmental entity or commercial customer. This provision applies to comparable goods and services and to purchase volumes by Agency that are not less than the purchase volumes of the County or local governmental entity or commercial customer that has received the lower prices, greater benefits or more favorable terms.

ii. Section 4.C.i does not apply to Contractor's donations of comparable goods and services to charitable, nonprofit or governmental entities if the donations are recognized as donations and are deductible under the Federal Internal Revenue Code. These donations are not considered contracts, agreements or arrangements with other County or local governmental entities or commercial customers for purposes of Section 4.C.i.

#### D. ACCEPTANCE, REJECTION AND REVOCATION OF ACCEPTANCE:

i. ACCEPTANCE. Agency shall test if Agency, in its sole discretion deems testing necessary, inspect and either accept or reject Goods delivered within fourteen (14) calendar days from the date Contractor delivers Goods to Agency. If Agency does not provide written notice of acceptance or rejection of Goods to Contractor within fourteen (14) calendar days *following* the date of delivery of Goods, Agency is deemed to have accepted Goods.

ii. REJECTION. If Agency rejects Goods, then Agency's written notice of rejection shall, at a minimum, itemize the apparent defects and include:

- a. a description of nonconformance between Goods delivered and the required Specifications and warranties (including any variance from demonstrations or sample characteristics of Goods if Contractor provided demonstrations or samples);

- b. a description of any other nonconformance of Goods (including late delivery); and
- c. a statement indicating whether Contractor may cure the nonconformance and if so, the method by which and time period within which Contractor may cure.

iii. REVOCATION OF ACCEPTANCE. Notwithstanding Agency's acceptance of Goods under Section 4.D.i Agency may revoke its acceptance of Goods for nonconformance with the Specifications. If Agency revokes acceptance of Goods, Agency shall deliver a written notice of revocation of acceptance to Contractor that includes the same information required for a written notice of rejection under Section 4.D.ii.

iv. EFFECT OF REJECTION OR REVOCATION OF ACCEPTANCE. If Agency rejects Goods or revokes its acceptance of Goods, Contractor shall refund all payments Agency has made to Contractor for those Goods and shall, at no cost to Agency, remove Goods from Agency's possession within nine (9) calendar days following the latest of the date of Agency's notice of rejection, the date of Agency's notice of revocation of acceptance, or the date of Contractor's failure to cure if cure is permitted. Nothing contained in this Section 4.D precludes Agency from pursuing any remedies to which either may be entitled upon rejection or revocation of acceptance of Goods or otherwise under this Contract.

#### E. OTHER REPRESENTATIONS AND WARRANTIES.

All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to Goods delivered under this Contract. Contractor represents and further warrants that:

- i. Contractor has the authority to enter into and perform in accordance with this Contract, and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;
- ii. All Goods delivered to Agency are new, unused, current production models and are free from defects in materials, design and manufacture for "the duration of the warranty period specified in Section 3." ("Warranty Period"). Contractor further represents and warrants that all Goods meet or exceed all Specifications;
- iii. All Goods delivered shall comply with all applicable federal health and safety standards.
- iv. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services, including but not limited to delivery of goods, in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession; and
- v. Contractor is, and shall be at all times during the term of this Contract, qualified, professionally competent and duly licensed to perform Services.

The warranties specified in this Section 4.E are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

F. MANUFACTURER WARRANTIES.

At no charge to Agency, Contractor shall transfer or cause the transfer of all manufacturers' warranties for Goods and component parts, if any, to the Agency for Agency's benefit when Contractor delivers Goods to Agency. If a conflict or inconsistency exists between a manufacturer's warranty and Contractor's warranty, the warranty that provides the greatest benefit and protection to County shall prevail.

G. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

- i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as they may be adopted or amended from time to time.
- ii. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

H. AMENDMENTS.

- i. All amendments to this Contract are Unanticipated Amendments unless subsections ii and iii of this Section H are completed for Anticipated Amendments. OAR 137-047-0800 applies to all Contract amendments.
- ii. Circumstances Requiring Amendments.
- iii. Amendment Method.

I. MATERIAL SAFETY DATA SHEET.

At the time Contractor delivers Goods to Agency, Contractor shall provide to Agency a "Material Safety Data Sheet" as defined by (OSHA) for any Goods delivered which may release or otherwise cause exposure to a hazardous chemical substance under normal conditions of use. Contractor shall properly label, tag or mark those Goods.

J. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

K. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism,

war, or any other cause which is beyond the delaying or breaching entity's reasonable control. Contractor shall make all reasonable efforts to eliminate the cause of Contractor's delay or breach and shall, upon elimination of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that this delay or breach could likely prevent successful performance of this Contract.

#### L. INSURANCE.

Contractor shall obtain the insurance required under Section 5 prior to performing under this Contract and shall maintain the required insurance throughout this duration of this Contract and all Warranty Periods.

#### M. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent contractor. Although Agency may (a) determine and modify the delivery schedule for Goods to be delivered and Services to be performed and (b) evaluate the quality of the completed performance, Agency 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 under this Contract. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265 of County.

ii. If Contractor is currently performing work for County, the State or the federal government, Contractor by signature to this Contract declares and certifies that Contractor's performance under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (County, State or federal) would prohibit Contractor's performance under this Contract.

iii. Contractor shall pay or cause to be paid all federal and state taxes applicable to Contractor's compensation under this Contract, and Agency will not withhold from Contractor's compensation any amount to cover Contractor's federal or State tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from Contractor's compensation under this Contract.

#### N. INDEMNIFICATION.

i. GENERAL INDEMNITY. TO THE GREATEST EXTENT AUTHORIZED BY LAW CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY AGENCY, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. AGENCY SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE AGENCY'S ATTORNEY TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT LEGAL COUNSEL BEFORE COUNSEL MAY ACT IN THE

NAME OF, OR REPRESENT THE INTERESTS OF, AGENCY, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. AGENCY MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME AGENCY DETERMINES IMPORTANT AGENCY INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF AGENCY, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

O. ASSIGNMENT OF ANTITRUST RIGHTS.

i. CONTRACTOR IRREVOCABLY ASSIGNS TO AGENCY ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO CONTRACTOR FOR THE PURPOSE OF CARRYING OUT CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT AGENCY'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

ii. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO AGENCY, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT AGENCY'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

P. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches this Contract if:

a. 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;

b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the required license or certificate within fourteen (14) calendar days after delivery of Agency's notice of breach or a longer period as Agency may specify in its notice; or

c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, and Contractor fails to cure its breach within fourteen (14) calendar days after delivery of Agency's notice of breach or within a longer period as Agency may specify in its notice.

ii. Breach by Agency. Agency breaches this Contract if:

a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure this failure within fourteen (14) business days after delivery of Contractor's notice of breach or within a longer period as Contractor may specify in its notice; or

b. Agency commits any material breach of its obligations under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and fails to cure its failure within fourteen (14) calendar days after delivery of Contractor's notice of breach or a longer period as Contractor may specify in its notice.

**Q. REMEDIES.**

i. County's Remedies. If Contractor is in breach under Section 4.P.i, then in addition to the remedies afforded elsewhere in this Contract, Agency shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS Chapter 72. Agency may, at its option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

a. Termination of this Contract under Section 4.S.ii;

b. Withholding all amounts Contractor has invoiced for Goods and Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or

d. Exercise of the right of setoff and withholding amounts otherwise due and owing to Contractor in an amount equal to Agency's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If Contractor is found to not be in breach under Section 4.P.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 4.S.ii.a.

ii. Contractor's Remedies. If Agency terminates this Contract for convenience under Section 4.S.ii.a, or if Agency is in breach under Section 4.P.ii and whether or not Contractor elects to exercise its right to terminate this Contract under Section 4.S.iii, Contractor's sole remedy is a claim against Agency for the unpaid price for any Goods delivered and accepted by Agency less any claims Agency has against Contractor and is as follows for unpaid Services completed and accepted by Agency:

a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by Agency less any claims Agency has against Contractor.



b. For deliverable-based Services, a claim against Agency for the amount specified for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and the amount of any claims Agency has against Contractor.

If previous amounts paid to Contractor for Goods and Services exceed the amount due to Contractor under this Section 4.Q.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

#### R. ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to Section 4.N, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy arising out of or relating to this Contract.

#### S. TERMINATION.

i. MUTUAL CONSENT. The Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate the Contract for its convenience upon 30 days written notice to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in its notice, upon the occurrence of any of the following events:

1. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract;
2. Agency may reduce quantity of goods and services purchased if anticipated funding is reduced;
3. Federal or State laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Goods or Services, or both, by the Agency under this Contract is prohibited, or the Agency is prohibited from paying for Goods or Services, or both, from the planned funding source; or
4. Contractor commits any material breach of this Contract.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this Section 4.S.ii.

iii. CONTRACTOR. Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in its notice, if Agency is in breach under Section 4.P.ii.

**T. REPRESENTATION AND COVENANT.**

- a. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- b. Contractor covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this contract.
- c. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the contract or during the term of the contract is and will be deemed a default for which Deschutes County may terminate the contract and seek damages and/or other relief available under the terms of the contract or under applicable law.

**U. ACCESS TO RECORDS.**

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for six (6) years following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending date is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit County, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

**V. NOTICES.**

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For Agency, the authorized representative is the Agency contact person identified in Section 8. Contractor's authorized representative is the contact person identified in Section 7. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

**W. GOVERNING LAW.**

The Contract is governed by and construed in accordance with the laws of State of Oregon without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs Goods under this Contract. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties, and it does not apply to this Contract.

**X. VENUE; CONSENT TO JURISDICTION.**

Any claim, action, suit or proceeding (collectively, "Proceeding") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Oregon for Deschutes County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

**Y. SURVIVAL:**

In addition to all provisions which by their nature extend beyond the Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: Sections 1, 3, 4.A, 4.D, 4.E, 4.F, 4.I, 4.N, 4.O, 4.Q, 4.R, 4.T, 4.U, 4.W, 4.X, 4.Y, 4.CC and Section 5.

**Z. SEVERABILITY.**

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

**AA. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.**

i. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any Services required under this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor with respect to Sections 3, 4.E, 4.F, 4.I, 4.J, 4.N, 4.O, 4.T, 4.U, 4.W, 4.X, and 4.AA. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

iii. The provisions of this Contract are binding upon, and inure to the benefit of the parties and their respective successors and permitted assigns, if any.

**BB. MERGER CLAUSE; AMENDMENT; WAIVER.**

This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements or representations, oral or written, not specified herein

regarding this Contract. This Contract may be amended to the extent permitted by applicable statutes and administrative rules. For Anticipated Amendments, this Contract may be amended only in accordance with and to the extent provided in the Solicitation, if any, and this Contract, in accordance with OAR 137-047-0800. No waiver, consent or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

#### CC. THIRD PARTY BENEFICIARIES.

Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall 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 third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

#### DD. COUNTERPARTS.

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

### 5. INSURANCE

A. REQUIRED INSURANCE. Contractor shall obtain the insurance specified in this Section 5 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all Warranty Periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in County and that are acceptable to Agency.

#### i. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers who work under this Contract in Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless these employers are exempt under ORS 656.126(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

#### ii. COMMERCIAL GENERAL LIABILITY.

☒ Required by Agency ☐ Not required by Agency.

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to Agency. This insurance shall include personal and advertising injury liability, products and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Combined

single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000 .

iii. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

☒ Required by Agency ☐ Not required by Agency.

Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$500,000.

iv. EMPLOYERS' LIABILITY.

☐ Required by Agency ☒ Not required by Agency.

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage with combined single limit per occurrence of not less than \$500,000, and annual aggregate limits of not less than \$1 million.

v. POLLUTION LIABILITY.

☒ Required by Agency ☐ Not required by Agency.

Pollution coverage shall be required with a combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
• \$1,000,000	• \$2,000,000

Pollution Liability insurance includes coverage for claims involving bodily injury, property damage (including loss of use of tangible property that has not been physically injured), cleanup costs, remediation, disposal or other handling of pollutants, including costs and expenses incurred in the investigation, defense, or settlement of claims arising out of:

- Contractor's operations related to this project; and/or
- Remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos; and/or
- Transportation of hazardous materials away from any site related to this project.

By separate endorsement, the policy shall name Deschutes County, its officers, agents, employees and volunteers as an additional insured. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis.

B. ADDITIONAL INSURED.

The commercial general liability insurance and automobile liability insurance required under this Contract shall include by separate endorsement Deschutes County, and its departments, divisions, commissions, branches, officers and employees as Additional Insureds with respect to Contractor's performance obligations under this Contract. Contractor shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE.

If any of the required liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of

- i. Agency's acceptance of all Goods in accordance with Section 4.D (if acceptance has not been revoked in accordance with Section 4.D.iii),
- ii. The completion of all Services required under this Contract, or
- iii. The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon request, certification of the coverage required under this Section 5.C.

D. NOTICE OF CANCELLATION OR CHANGE.

There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency. No later than fourteen calendar days following the effective date of any insurance policy renewals, Contractor shall deliver to Agency all documentation evidencing renewal of the particular insurance policy renewed.

E. CERTIFICATE(S) OF INSURANCE.

Upon Agency's request, Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

6. RESERVED.

7. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/4/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Elliott Powell Baden and Baker Inc. 1521 S.W. Salmon Street  Portland OR 97205-1783		<b>CONTACT NAME:</b> Pam Wimmer <b>PHONE (A/C No. Ext):</b> (503) 227-1771 <b>E-MAIL ADDRESS:</b> pwimmer@epbb.com <b>FAX (A/C No.):</b> (503) 274-7644	
<b>INSURED</b> Albina Holdings Inc, DBA: Albina Fuel Co DBA: Albina Asphalt 801 Main St Vancouver WA 98660		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Continental Western Insurance Co. <b>INSURER B:</b> SAIF <b>INSURER C:</b> Nautilus Insurance Co <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b> 36196	

**COVERAGES**

CERTIFICATE NUMBER: 15-16 GL, Auto, Umb, WC

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WA Stop Gap \$1,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	CPA6000012	7/1/2015	7/1/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	CPA6000012	7/1/2015	7/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		CPA6000012	7/1/2015	7/1/2016	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	499173	10/1/2015	10/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Contractors Pollution Liability \$10,000 Ded		CPL200910311	6/28/2015	6/28/2016	Aggregate Limit 1,000,000 Each Claim 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Bid for Supply and Delivery of AC-15P Liquid Asphalt-2016. Forms CL CG 00 13 08 13, CL CA 01 49 02 15 and CA 99 48 10 13 are attached.

**CERTIFICATE HOLDER****CANCELLATION**

<b>CERTIFICATE HOLDER</b> kyle.arntson@albina.com  Deschutes County, its officers, agents employees and volunteers County Road Department 61150 SE 27th Street Bend, OR 97702	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> Pam Wimmer/LJ
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **GENERAL LIABILITY PLATINUM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

#### **A. MEDICAL PAYMENTS**

If **SECTION I - COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit provided by this policy, subject to the terms of **SECTION III - LIMITS OF INSURANCE**, shall be the greater of:
  - a. \$10,000; or
  - b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

#### **B. FIRE, LIGHTNING, EXPLOSION, SMOKE AND SPRINKLER LEAKAGE DAMAGE TO PREMISES YOU RENT**

If damage to premises rented to you under **Coverage A** is not otherwise excluded from this policy, the following applies:

1. The last paragraph of **SECTION I - COVERAGE A.2. Exclusions** is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.
2. Paragraph 6. of **SECTION III - LIMITS OF INSURANCE** is deleted and replaced by the following:
  6. Subject to Paragraph 5. above, the greater of:
    - a. \$300,000; or
    - b. the Damage To Premises Rented To You Limit shown in the Declarations;is the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you or temporarily occupied by you with the permission of the owner.
3. Paragraph 4.b.(1)(a)(ii) **Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced by the following:
  - (ii) That is Fire, Lightning, Explosion, Smoke or Sprinkler Leakage insurance for premises rented to you or temporarily occupied by you with the permission of the owner;
4. Paragraph 9.a. of **SECTION V - DEFINITIONS** is deleted and replaced by the following:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";



### **C. LIMITED NON-OWNED WATERCRAFT**

1. Paragraph g.(2) of **SECTION I - COVERAGE A.2. Exclusions** is deleted and replaced by the following:

A watercraft you do not own that is:

- a. Less than 51 feet long; and
- b. Not used to carry persons or property for a charge.

### **D. SUPPLEMENTARY PAYMENTS**

**SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is amended as follows:

1. The limit of insurance in paragraph 1.b. is increased from \$250 to \$2,500; and
2. The limit of insurance in paragraph 1.d. is increased from \$250 to \$500.

### **E. AUTOMATIC ADDITIONAL INSURED - SPECIFIED RELATIONSHIPS - PRIMARY NON-CONTRIBUTORY**

The following is added to Paragraph 2. of **SECTION II - WHO IS AN INSURED**:

- e. Any person or organization described below, when you are obligated by virtue of a written contract or agreement that such person be added as an additional insured on your policy.

When required by virtue of a written contract or agreement, coverage provided to any additional insured will be on a primary basis and will not seek contribution from the additional insured's policy.

Only the following persons or organizations are additional insureds under this endorsement:

- (1) **Managers Or Lessors Of Premises.** The manager or lessor of a premise leased to you, but only with respect to liability arising from the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant of that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

- (2) **Lessor Of Leased Equipment.** Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- (3) **Vendors.** Any person or organization, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- a. The insurance afforded the vendor does not apply to:

1. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
2. Any express warranty unauthorized by you;
3. Any physical or chemical change in the product made intentionally by the vendor;

4. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
5. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
6. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
7. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

- b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**(4) State Or Political Subdivision - Permits Or Authorizations Relating To Premises.**  
Any state or political subdivision, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (b) The construction, erection, or removal of elevators; or
- (c) The ownership, maintenance, or use of any elevators covered by this insurance.

Limits of insurance for such additional insured are the limits in this coverage form or the limits you and such additional insured agreed to by virtue of a contract or agreement, whichever is less. These limits are inclusive of and are not in addition to the Limits Of Insurance shown in the Declarations.

When required by virtue of a written contract or agreement, coverage provided to any additional insured **AUTOMATIC ADDITIONAL INSURED - SPECIFIED RELATIONSHIPS - PRIMARY NON-CONTRIBUTORY** will be on a primary basis and will not seek contribution from the additional insured's policy.

**F. BROADENED NAMED INSURED - NEWLY ACQUIRED 180 DAYS**

Paragraph 3. of **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or majority interest of more than 50% will be a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
- b. **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.
- c. **COVERAGE B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**G. AGGREGATE LIMITS OF INSURANCE**

The General Aggregate Limit under **SECTION III - LIMITS OF INSURANCE** applies separately to each of your:

1. Projects away from premises owned by or rented to you.
2. "Locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

When paragraph B. Construction Project General Aggregate Limit on form CL CG 00 20 is a part of this policy, then paragraph G. Aggregate Limits of Insurance of this endorsement does not apply.

#### **H. KNOWLEDGE OF OCCURRENCE**

The following is added to paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. A report of an "occurrence", offense, claim or "suit" to:
  - (1) You, if you are an individual,
  - (2) A partner, if you are a partnership,
  - (3) An executive officer, if you are a corporation, or
  - (4) A manager, if you are a limited liability company;is considered knowledge and requires you to notify us of the "occurrence", offense, claim, or "suit" as soon as practicable.
- f. We are considered on notice of an "occurrence", offense, claim or "suit" that is reported to your Workers' Compensation insurer for an event which later develops into an "occurrence", offense, claim or "suit" for which there is coverage under this policy. However, we will only be considered on notice if you notify us as soon as you know the claim should be addressed by this policy rather than your Workers' Compensation policy.

#### **I. UNINTENTIONAL OMISSIONS**

The following is added to paragraph 6. Representations of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- d. If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under this Coverage Part solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

#### **J. MENTAL ANGUISH**

Paragraph 3. of **SECTION V - DEFINITIONS** is deleted and replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

#### **K. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS**

Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations or "your work" done under a contract requiring such waiver with that person or organization and included in the "products-completed operations hazard".

However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

**Paragraph K. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS** does not apply if another waiver of transfer of rights of recovery against others is endorsed separately to this policy.

#### **L. OTHER INSURANCE**

When Coverage applies in this General Liability Enhancement Endorsement, no other coverage or limit of insurance in the policy applies to loss or damage insured by this coverage.

#### **M. NON-EMPLOYMENT DISCRIMINATION LIABILITY (DEFENSE WITHIN LIMITS)**

The following is added to paragraph 14. "Personal and advertising injury" **SECTION V - DEFINITIONS of COMMERCIAL GENERAL LIABILITY COVERAGE FORM:**

##### **h. Non-employment discrimination.**

Non-employment discrimination means violation of a person's civil rights with respect to such person's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other protected class or characteristic established by any federal, state or local statutes, rules or regulations. Non-employment discrimination does not include violation of civil rights arising out of past, present or prospective employment.

Our obligation under the **Personal and Advertising Injury Liability Coverage** to pay non-employment discrimination liability damages on your behalf applies only to the amount of damages in excess of \$5,000 deductible as the result of any one offense regardless of the number of persons or organizations who sustain damages because of the offense.

The most we will pay for all damages for non-employment discrimination is \$15,000 annual aggregate. No other liability to pay sums or perform acts or services is covered.

Supplemental Payments - Coverages A and B do not apply to non-employment discrimination coverage.

#### **N. ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS OR OTHERS- AUTOMATIC, INCLUDING PRIMARY NON-CONTRIBUTORY**

1. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization for whom you are performing operations when you are obligated by virtue of a written contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused by your ongoing operations for the additional insured and only to the extent that such "bodily injury", "property damage" or "personal and advertising injury" is caused by your negligence or the negligence of those performing operations on your behalf.

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" included within the "products-completed operations hazard".

This insurance does not apply to any additional insured scheduled on your policy by separate endorsement

##### **2. Limits of Insurance**

Limits of insurance for such additional insured are the limits in this coverage form or the limits you and such additional insured agreed to by virtue of a contract or agreement, whichever is less. These limits are inclusive of and are not in addition to the Limits Of Insurance shown in the Declarations.

##### **3. Exclusions**

- A. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

1. The rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:

- a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to Paragraph 3. below, professional services include:
- a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you or performed by or for the construction manager, its employees or its subcontractors in connection with your ongoing operations.
- B. "Bodily injury" or "property damage" occurring after:
- 1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
4. **Primary Non-Contributory**

When required by virtue of a written contract or agreement, coverage provided to any additional insured by **ADDITIONAL INSURED - OWNERS, LESSEES, CONTRACTORS OR OTHERS - ONGOING OPERATIONS - AUTOMATIC, INCLUDING PRIMARY NON CONTRIBUTORY** will be on a primary basis and will not seek contribution from the additional insured's policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL AUTOMOBILE EXPANSION ENDORSEMENT - PLATINUM**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

With respect to the coverages provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by this endorsement.

#### **A. NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following is added to Paragraph A.1. Who Is An Insured of Section II - Covered Autos Liability Coverage:

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company or any organization excluded either by this Coverage Part or by endorsement, and over which you maintain ownership or majority interest of more than 50 percent will qualify as a Named Insured. However:

1. This insurance does not apply to any newly acquired or formed organization that is an "insured" under any other automobile policy or would be an "insured" under such policy but for its termination or the exhaustion of its Limit of Insurance.
2. Coverage does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.
3. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### **B. ADDITIONAL INSURED BY CONTRACT OR AGREEMENT**

The following is added to Paragraph A.1., Who Is An Insured of Section II - Covered Autos Liability Coverage:

When you have agreed in a written contract or agreement to include a person or organization as an additional "insured", such person or organization is included as an "insured" subject to the following:

1. Such person or organization is an additional "insured" only to the extent such person or organization is liable for "bodily injury" or

"property damage": because of the conduct of an "insured" under Paragraphs a. or b. under Paragraph A.1. Who Is An Insured of Section II - Covered Autos Liability Coverage, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto";

2. The written contract or agreement described above must have been executed prior to the "accident" that caused the "bodily injury" or "property damage" and be in effect at the time of such "accident";
3. The insurance afforded to any such additional "insured" does not apply to any "accident" beyond the period of time required by the written contract or agreement described above;
4. The most we will pay on behalf of such additional "insured(s)" is the lesser of:
  - a. The Limits of Insurance specified in the written contract or agreement described above; or
  - b. The Limits of Insurance shown in the Declarations.

This provision shall not increase the Limit of Insurance shown in the Declarations in this policy or coverage part; and

5. The following changes are made to Paragraph 5. Other Insurance of B. General Conditions under Section IV - Business Auto Conditions:
  - a. The following is added to Paragraph 5.a.:

If required by the written contract or agreement described above, the insurance afforded to the additional insured under this provision will be primary to, and will not seek contribution from, the additional insured's own insurance.

b. Paragraph 5.c. is deleted in its entirety.

6. Paragraph A.1.c. under Section II - Covered Autos Liability Coverage is deleted in its entirety.
7. The definition of "insured contract" under Section V - Definitions is amended to add the following:

An "insured contract" does not include that part of any contract or agreement:

That pertains to the ownership, maintenance or use of an "auto" and which indemnifies a person or organization for other than the vicarious liability of such person or organization for "bodily injury" or "property damage" caused by your operation or use of a covered "auto".

However, a person or organization is an additional "insured" under this provision only to the extent such person or organization is not named as an "insured" by separate endorsement to this policy.

#### **C. EMPLOYEES AS INSURED**

The following is added to Paragraph A.1. Who Is An Insured Section II - Covered Autos Liability Coverage:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

#### **D. INCREASED COVERAGE - BAIL BONDS**

The Supplementary Payments Coverage Extension of Section II - Covered Autos Liability Coverage is amended as follows:

The Limit of Insurance in paragraph A.2.a.(2) is increased to \$5,000.

#### **E. INCREASED COVERAGE - LOSS OF EARNINGS**

The Supplementary Payments Coverage Extension of Section II - Covered Autos Liability Coverage is amended as follows:

The Limit of Insurance in paragraph A.2.a.(4) is increased to \$1,000.

#### **F. FELLOW EMPLOYEE COVERAGE**

The Fellow Employee Exclusion contained in Section II - Covered Autos Liability Coverage does not apply. This coverage is excess over any other collectable insurance.

#### **G. COVERAGE EXTENSION - TRANSPORTATION EXPENSES**

Paragraph A.4.a. Transportation Expenses of Section III - Physical Damage Coverage is amended as follows:

1. The Limits of Insurance are increased to \$75 per day to a maximum of \$2,500.
2. We will also pay reasonable and necessary expenses to facilitate the return of the stolen "auto" to you.
3. It is agreed and understood and it is our stated intent that expenses incurred by you under the Transportation Expenses Coverage Extension will not also be covered or paid under the Rental Reimbursement Coverage provided by this endorsement or any rental reimbursement coverage added by separate endorsement to this policy.

#### **H. EXTENDED COVERAGE - AIRBAGS**

The following is added to Exclusion B.3.a. of Section III - Physical Damage Coverage:

However, this exclusion does not apply to the unintended discharge of an airbag.

This coverage is excess over any other collectible insurance or warranty providing such airbag coverage.

#### **I. AUTO LOAN/LEASE GAP COVERAGE**

The following is added to Section III - Physical Damage Coverage, Paragraph C. Limits of Insurance.

4. In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:
  - a. The amount under the Physical Damage Coverage section of the policy; and
  - b. Any:
    - (1) Overdue lease/loan payments at the time of the "loss";
    - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
    - (3) Security deposits not returned by the lessor;
    - (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
    - (5) Carry-over balances from previous loans or leases.

#### **J. GLASS REPAIR - NO DEDUCTIBLE**

The following is added to Paragraph D. Deductible of Section III - Physical Damage Coverage:

Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" to glass when you elect to patch or repair rather than replace the glass.

**K. INCREASED COVERAGE - ELECTRONIC EQUIPMENT**

The \$1,000 limit indicated in Paragraph C.1.b. under Section III - Physical Damage Coverage is increased to \$2,500.

**L. EXTENDED COVERAGE - PERSONAL PROPERTY**

The following is added to Paragraph A.4. Coverage Extensions of Section III - Physical Damage Coverage:

Physical Damage Coverage on a covered "auto" may be extended to "loss" to your personal property or, if you are an individual, the personal property of a family member, that is in the covered "auto" at the time of "loss" and caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

The insurance provided by this coverage extension is excess over any other collectible insurance. The most we will pay for any one "loss" under this coverage extension is \$500. However, our payment for "loss" to personal property will only be for the account of the owner of the property.

Under this provision, personal property does not include and we will not pay for "loss" of currency, coins, securities or contraband.

No deductible applies to this coverage extension.

**M. TOWING**

Paragraph A.2. Towing of Section III - Physical Damage Coverage, is replaced by the following:

If a private passenger type "auto" or light truck "auto" (0-10,000 Lbs. GVW) is provided both Comprehensive and Collision Coverage, we will pay up to \$150 for towing and labor costs incurred each time such "auto" is disabled. If a medium, heavy or extra-heavy truck or extra-heavy Truck-tractor "auto" (greater than 10,000 Lbs. GVW) is provided both Comprehensive and Collision Coverage, we will pay up to \$250 for towing and labor costs incurred each time such "auto" is disabled. However, the labor must be performed at the place of disablement.

**N. FIRE EXTINGUISHER RECHARGE**

The following is added to Paragraph A.4. Coverage Extensions of Section IV - Physical Damage Coverage:

When fire extinguishers are kept in your covered "auto" and any are discharged in an attempt to extinguish a fire, we will pay the lesser of the actual cost of recharging or replacing such fire extinguisher(s).

No deductible applies to this coverage

**O. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

The following is added to Paragraph A.4. Coverage Extensions of Section III - Physical Damage Coverage:

If hired "autos" are covered "autos" for Covered Autos Liability Coverage and if Physical Damage Coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you lease, rent, hire or borrow from someone other than your "employees", partners or members of their households subject to the following:

1. The most we will pay in any one "loss" is the lesser of:

- a. The actual cash value of the "auto";
- b. The cost to repair or replace the "auto"; or
- c. \$100,000.

2. Paragraph 1. above is subject to a deductible. The deductible shall be equal to the amount of the highest deductible shown for any owned "auto" of the same classification for that coverage. In the event there is no owned "auto" of the same classification, the highest deductible for any owned "auto" will apply for that coverage.

No deductible will apply to "loss" caused by fire or lightning.

3. Hired Auto Physical Damage Coverage is subject to the following:

- a. If symbol 8 is shown in the Covered Auto section of the Declarations page for any of the Physical Damage coverages, then the Hired Auto Physical Damage coverage described in this endorsement does not apply.
- b. Other than indicated in Paragraphs a. directly above, coverage provided under this provision will be excess over any other collectible insurance or coverage.



4. In addition to the limit set forth in Paragraph 1. above we will pay up to \$500 per day, to a maximum of \$3,500 per "loss" for:

- a. Any costs or fees associated with the "loss" to a hired "auto"; and
- b. Loss of use of the hired "auto", provided it is the consequence of an "accident" for which you are legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.

However, Paragraph A.4.b. Loss of Use Expenses under Section III - Physical Damage Coverage of the Business Auto Coverage Form does not apply.

#### **P. RENTAL REIMBURSEMENT COVERAGE**

We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto".

- 1. Payment applies in addition to the otherwise applicable amount of each coverage you have on the covered "auto".
- 2. No deductible applies to this coverage.
- 3. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the expiration date of the policy, with the lesser of the following number of days:
  - a. The number of days when the covered "auto" has been repaired or replaced, or
  - b. 45 days.
- 4. Our payment is limited to the lesser of the following amounts:
  - a. Necessary and actual expenses incurred; or
  - b. Not more than \$75 for any one day;
- 5. We will pay up to an additional \$300 for the reasonable and necessary expenses you incur to remove your materials and equipment from the covered "auto" and replace such materials and equipment on the rental "auto".
- 6. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
- 7. If "loss" results from the total theft of a covered "auto" of the "private passenger type", we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension

sion of the Business Auto Coverage Form or any endorsements thereto

However, this provision does not apply to the extent that rental reimbursement is provided by separate endorsement to this policy.

#### **Q. DRIVE OTHER CAR COVERAGE**

1. The following is added to Section II - Covered Autos Liability Coverage:

a. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by:

- (1) You, if you are designated in the Declarations as an individual;
- (2) Your partners or members, if you are designated in the Declarations as a partnership or joint venture;
- (3) Your members or managers, if you are designated in the Declarations as a limited liability company;
- (4) Your executive officers if you are designated in the Declarations as an organization other than an individual, partnership, joint venture or limited liability company; and
- (5) The spouse of any person named in Paragraphs 1.a.(1). through 1.a.(4) while a resident of the same household;

Except:

- (a) Any "auto" owned by that individual or by any member of his or her household.
- (b) Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

#### **2. Changes In Auto Medical Payments And Uninsured And Underinsured Motorists Coverages**

The following is added to **Who Is An Insured**:

Any individual named in 1.a above and his or her "family members" are "insured" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

#### **3. Changes In Physical Damage Coverage**

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in Q.1.a. above or his or her spouse while a resident of the same household except:

- a. Any "auto" owned by that individual or by any member of his or her household; or
  - b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".
4. The most we will pay for the total of all damages under Covered Autos Liability Uninsured Motorists Coverage and Underinsured Motorists Coverage is the Limit Of Insurance shown in the Declarations as applicable to owned "autos".
5. Our obligation to pay for, repair, return or replace damaged or stolen property under Physical Damage Coverage, will be reduced by a deductible equal to the amount of the highest deductible shown for any owned private passenger type "auto" applicable to that coverage. If there are no owned private passenger type "autos", the deductible shall be \$250 for Comprehensive Coverage and \$500 for Collision Coverage. No deductible will apply to "loss" caused by fire or lightning.

**6. Additional Definition**

As used in this **DRIVE OTHER CAR** Provision:

"Family member" means a person related to the individual named in 1.a. by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

**R. KNOWLEDGE OF AN ACCIDENT, CLAIM, SUIT OR LOSS**

The following is added to Paragraph A.2. of Section IV - Business Auto Conditions:

Your obligation to provide prompt notice of an "accident", claim, "suit" or "loss" is satisfied if you or a person designated by you to be responsible for insurance matters is notified of, or in any manner made aware of an "accident", claim, "suit" or "loss" and provides us such notice as soon as practicable

**S. WAIVER OF SUBROGATION BY CONTRACT OR AGREEMENT**

The following is added to Paragraph A.5 of Section IV - Business Auto Conditions:

We waive any right of recovery we may have against a person or organization because of payments we make for "bodily injury" or "property damage" when you and such person or organization have agreed in writing in a contract or agreement to waive such right of recovery, provided:

1. Such written contract or agreement was:
  - a. Made prior to the "accident" or "loss" resulting in the covered "bodily injury" or "property damage"; and
  - b. Was in effect at the time of the covered "bodily injury" or "property damage"
2. The covered "bodily injury" or "property damage" must arise out of the operations specified in such written contract or agreement.
3. At our request you must provide us with a copy of the aforementioned written contract or agreement.

**T. UNINTENTIONAL OMISSIONS**

The following is added Paragraph B.2. of Section IV - Business Auto Conditions:

If you fail to disclose any hazards existing at the inception date of this policy, such failure will not prejudice the coverage provided to you. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

**U. LIBERALIZATION**

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**POLLUTION LIABILITY – BROADENED COVERAGE  
FOR COVERED AUTOS – BUSINESS AUTO AND  
MOTOR CARRIER COVERAGE FORMS**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A. Covered Autos Liability Coverage is changed as follows:**

1. Paragraph a. of the Pollution Exclusion applies only to liability assumed under a contract or agreement.
2. With respect to the coverage afforded by Paragraph A.1. above, Exclusion B.6. Care, Custody Or Control does not apply.

**B. Changes In Definitions**

For the purposes of this endorsement, Paragraph D. of the Definitions Section is replaced by the following:

**D. "Covered pollution cost or expense" means any cost or expense arising out of:**

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs a. and b. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a State tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

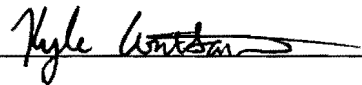
C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United County's Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

E. Contractor's Federal Employee Identification Number or Social Security Number specified below is correct;

F. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract and will provide Goods and Services in accordance with the Specifications; and

G. Contractor \_\_\_ is / ☒ is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one).  
See Section 4.A.ii.

Contractor (print name):	ALBENA HOLDING dba ALBENA ASPHALT
Authorized Signature:	
By (print name):	KYLE ARNTSON
Title:	SALES ASSOCIATE
Date:	11/10/15
FEIM ID# or SSN# (required):	93-0466510



Date:	W/17/15
Agency's Contact Person:	Tom Shamberger
Contact Phone #:	541.322.7120
Contact Fax #:	541.388.2719
Contact Email:	<u>tom.shamberger@deschutes.org</u>
Agency Mailing Address:	61150 SE 27 <sup>th</sup> Street, Bend OR 97702

## APPENDIX "A"

### SPECIAL PROVISIONS

#### **WORK TO BE DONE:**

The work required under this contract is to supply and deliver approximately 2,600 Tons of AC-15P Liquid Asphalt to Deschutes County to be used in chip seal projects distributed to various locations throughout Deschutes County, within 50 air miles of the Deschutes County Road Department.

#### **MATERIAL SPECIFICATIONS:**

PROPERTY	TEST PROCEDURE	MINIMUM	MAXIMUM
Absolute Viscosity at 140° F, poise	ODOT TM430	1500	3500
Kinematic Viscosity @ 275° F, cst	AASHTO T201	-	1200
Penetration @ 77° F, 100g, 5sec., dmm	AASHTO T49	100	150
Elastic Recovery %	ODOT TM429	70	-
Cleveland Open Cup Flash Point (C°)	AASHTO T48	260	-

#### **DELIVERY AND DELIVERY TEMPERATURE:**

Liquid Asphalt will be made available to the County from May 16, 2016 through September 15, 2016 as scheduled by the County. It is the intention of the County to have received all materials under this contract before September 16, 2016. Liquid AC-15P Asphalt delivered to the specified area shall be above a minimum of 335° F. Loads that do not meet the minimum temperature requirement will be rejected at contractor's expense.

#### **ACCEPTANCE TESTING:**

- A. Deschutes County will conduct acceptance sampling testing to determine material compliance with specifications. Deschutes County will randomly sample liquid asphalt delivered to the project in accordance with the following procedure:

Two, one-quart, samples will be obtained daily. One sample may be subject to testing, the second sample will be retained as a back-up sample. From daily samples, two per week may be tested for compliance to specifications at an independent testing laboratory chosen by the County. Asphalt will be tested in accordance to the test procedures shown in the tables above under MATERIAL SPECIFICATIONS

- B. It is anticipated that test results will not be available until a minimum of 4 days after testing.
- C. Test results will be provided to the contractor.

**FAILING TEST RESULTS:**

Should failing test results be reported to Deschutes County from its independent testing laboratory, the following procedure will be occur:

- 1) Deschutes County will solely make the determination when it is in the best interest of the County to terminate the delivery of materials or terminate the work.
- 2) The back-up sample from the date of the failing sample will be submitted for testing.
- 3) The daily sample obtained from the day before and the day following the date of the failing test will be submitted for testing.
- 4) The back-up test results will be used to verify the accuracy of the initial test result. If the back-up test is within specification, it will be used in lieu of the original test result.
- 5) If applicable, test results from the day before and the day after the reported failed test result will be used to document the quantity of out of specification product that has been delivered.

**PAYMENT:**

Payment will be made at the contract unit price only for asphalt materials that are in compliance with the specifications, based on the actual quantity of materials furnished. There will be no compensation for materials furnished that are not in compliance with the applicable material specifications.



**APPENDIX "B"**

**AUTHORIZATION FOR ADDITIONAL ORDERS**

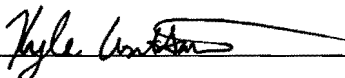
It is intended that this contract be available to other public agencies in the region in accordance with the requirements of ORS 279A.215(g). Deschutes County hereby concurs with such usage of this contract. Bidder shall specify below whether it will accept purchase orders for this product from other public agencies within Deschutes County and neighboring counties at the same price, allowing only for changes in price due to changes in specifications.

**CONTRACT AUTHORIZATION FOR OREGON STATE AGENCIES AND/OR POLITICAL SUBDIVISIONS**

#	Item	Unit Price	Units
1	Hot Applied AC-15P Liquid Asphalt	\$ 525 <sup>00</sup>	Ton

Plant Location (city): MADRAS, OR

Oregon State Agencies and/or Political Subdivisions within and adjacent to Deschutes County, and Polk County are hereby authorized to use the quoted price received on this request to purchase materials at the same price structure as described above in accordance with ORS 279A.215(g). Freight rates for product delivery to additional agency's may be negotiated separately from this contract. Freight based on place and time of delivery.

Authorized Signature:	
Date:	11/10/15