



Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with Western Emulsions, Inc. for
Liquid Asphalt – 2016

Purpose/Outcomes	Purchase liquid asphalt from Western Emulsions, Inc. to use in our chip seal program.
Dollar Amount and Fiscal Impact	We anticipate spending \$1.5 million on liquid asphalt between three companies during the summer of 2016 and the early part of the summer of 2017.
Funding Source	215-7433-00-424410
Duration	July 1, 2016 through June 30, 2017
Strategic Plan Alignment	1. Performance measure to chip seal 43 miles of roadway 2. Improve County road status
Previous Board Action	In 2015, Albina Asphalt was the only company that submitted a bid and we estimated spending no more than \$1.7 million for liquid asphalt
Contact Person	Terry Learfield, 503-650-3253

BACKGROUND:

The Transportation Maintenance Division uses a considerable amount of liquid asphalt for its chip seal program. Liquid asphalt is delivered to work sites throughout the County by private carrier on an “as needed basis”.

After going out for bids, Purchasing received three competitive bids for liquid asphalt that met our needs. The three companies are Albina Holdings, Inc., Western Emulsions, Inc. and Blue Line Transportation Co., Inc. We anticipate spending no more than \$1.5 million between the three companies on liquid asphalt.

RECOMMENDATION:

Staff recommends Board Approval of a Contract with Western Emulsions, Inc. for Liquid Asphalt.

Respectfully submitted,

Randall A. Harmon
Transportation Operations Manager

*Placed on the June 23rd, 2016 agenda by the Procurement Division.

**MATERIALS AND SERVICES CONTRACT WITH WESTERN EMULSIONS, INC.
FOR LIQUID ASPHALT - 2016**

This requirements contract for materials and services is entered into by and between Clackamas County, a political subdivision of the State of Oregon hereinafter referred to as the COUNTY, and **WESTERN EMULSIONS, INC.** hereinafter called the CONTRACTOR, to provide the materials and services described below, which by this reference is hereby made a part of and incorporated herein. The following provisions shall comprise this Contract:

I. SCOPE

This Contract covers the materials and services as described in the Bid Documents. Materials and/or services shall be performed/supplied in accordance with a schedule approved by the COUNTY. The CONTRACTOR shall meet the standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The Contract shall commence **upon contract execution and continue through June 30, 2017**. This contract may be renewed for two (2) additional one year terms upon the written approval of both parties.

II. COMPENSATION

A. The COUNTY agrees to compensate the CONTRACTOR on a fee for -for-services basis as detailed in this Contract. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent COUNTY contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. The maximum annual compensation authorized under this Contract shall not exceed **\$1,500,000.00**.

B. The CONTRACTOR is engaged hereby as an independent contractor and will be so deemed for purposes of the following:

- 1.** The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.
- 2.** This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Oregon Public Employees Retirement System).
- 3.** If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR shall qualify and remain qualified for the term of this contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

C. The CONTRACTOR certifies that, at present, he or she, if an individual is not a program, County, or Federal employee.

D. The CONTRACTOR, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

III. CONSTRAINTS

The CONTRACTOR agrees:

A. If the materials and services to be provided pursuant to this Contract are professional and/or consultative, the CONTRACTOR shall not delegate the responsibility for providing those services to any other individual or agency.

B. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

1. CONTRACTOR shall:

- a.** Make payments promptly, as due, to all persons supplying to the CONTRACTOR labor or materials for the prosecution of the work provided for in this Contract.
- b.** Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in the performance of this Contract.
- c.** Not permit any lien or claim to be filed or prosecuted against the COUNTY on account of any labor or material furnished.

2. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONTRACTOR by reason of this Contract.

3. The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.

All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

4. In the case of contracts lawn and landscape maintenance the CONTRACTOR shall salvage, recycle, compost or mulch waste material at an approved site, if feasible and cost effective.

5. The CONTRACTOR shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the CONTRACTOR,

of all sums which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or deducted from the wages of the CONTRACTOR'S employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

6. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
7. The CONTRACTOR agrees to indemnify, hold harmless and defend the COUNTY, its officers, commissioners, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CONTRACTOR or the CONTRACTOR'S employees or agents.
8. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.
9. In the event the CONTRACTOR encounters on the site material reasonable believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the CONTRACTOR shall immediately stop work in the area affected and report the condition to the COUNTY in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the COUNTY and CONTRACTOR if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos PCBs, or when it has been rendered harmless, by written agreement of the COUNTY and CONTRACTOR.
10. The CONTRACTOR shall not be required to perform without consent any work relating to asbestos or PCBs.
11. The CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include, but are not limited to:
 - a. Reducing or withholding payment;
 - b. Requiring the CONTRACTOR to perform, at the CONTRACTOR'S expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
 - c. Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.

IV All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

V. INSURANCE REQUIREMENTS

A. COMMERCIAL GENERAL LIABILITY

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$1,000,000 / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The COUNTY, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

C. PROFESSIONAL LIABILITY

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/ \$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. COUNTY, at its option, may require a complete copy of the above policy.

D. POLLUTION LIABILITY INSURANCE

Required by COUNTY Not required by COUNTY

The CONTRACTOR shall obtain, at the CONTRACTOR'S expense and keep in effect during the term of the Contract, CONTRACTOR'S Pollution Liability insurance covering the CONTRACTOR'S liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR while performing their operations under the Contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for

notice to the insurer must be accepted by the COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this Contract. Any self-insured retention / deductible amount shall be submitted to the COUNTY for review and approval.

E. The certificate of insurance, other than the Worker's Compensation, shall include the COUNTY as an additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self insurance maintained by the COUNTY shall be excess and shall not contribute to it.

F. If the CONTRACTOR has the assistance of other persons in the performance of this contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

G. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Contract.

H. The insurance, other than the Workers' Compensation and Pollution Liability Insurance, shall include the COUNTY, its agents, officers, commissioners and employees as an additional insured when and where required by written contract.

If the CONTRACTOR's insurance policy does not include a blanket endorsement for additional insured status when and where required by written contract the insurance, except that noted in the preceding paragraph, shall include the COUNTY, its agents, officers, commissioners and employees as and additional insured. Proof of additional insured status must be provided upon request in the form of an endorsement listing the COUNTY, its agents, officers, commissioners and employees as an additional insured. Use Form CG 20 10 or its equivalent.

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the CONTRACTOR to the County.

This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.

I. The CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the COUNTY.

V. LAWS, REGULATION AND ORDERS AND TAX LAW COVENANT

A. The CONTRACTOR at all times shall observe and comply with all federal and state laws and lawful regulations issued there under and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the CONTRACTOR under this Contract, and further shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the CONTRACTOR.

B. The CONTRACTOR must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Any violation shall entitle the DISTRICT to terminate this Contract, to pursue and recover any all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

1. Termination of this Contract, in whole or in part;
2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to the CONTRACTOR, in an amount equal to the DISTRICT's setoff right, without penalty; and
3. Initiation of an action of proceeding for damages, specific performance, declaratory or injunctive relief. The DISTRICT shall be entitled to recover any and all damages suffered as the result of the CONTRACTOR's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and the DISTRICT may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

C. The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316,317, and 318;
2. Any tax provisions imposed by a political subdivision of this state that applied to the CONTRACTOR, to the CONTRACTOR's property, operations, receipts, or income, or to the CONTRACTOR's performance of or compensation for any work performed by the CONTRACTOR;

3. Any tax provisions imposed by a political subdivision of this state that applied to the CONTRACTOR, or to goods, services, or property, whether tangible or intangible, provided by the CONTRACTOR; and

4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

VI. SUBCONTRACTS

The CONTRACTOR shall be responsible to the COUNTY for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise in obtaining any subcontract.

VII. TERMINATION - AMENDMENT

A. This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

B. This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County.

C. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

The CONTRACTOR agrees to perform the scope of work as described in the Contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Western Emulsions, Inc.
7701 11th Street
White City, OR 97503

Clackamas County Board of
County Commissioners by:

Authorized Signature

Chair

Name / Title (Printed)

Recording Secretary

Date

Date

Telephone / Fax Number

APPROVE AS TO FORM

CCB License # (if applicable)

1086177-96

*Oregon Business Registry #

County Counsel

FBC Arizona

Entity Type / State of Formation

Date

*Please do not provide assumed business names or trade names. Please provide only the correct legal name of the entity or individual entering into the Contract.