

EXECUTED

CONTRACT NUMBER 128867

*This Number must appear
On all Invoices*

ANNUAL SUPPLY CONTRACT

**TO FURNISH
EMERGENCY AND SPECIALTY VEHICLES, EQUIPMENT AND ACCESSORIES AND
ANY RELATED EQUIPMENT, SUPPLIES AND SERVICES**

ON A REQUIREMENTS BASIS

PARTIES: PORT OF PORTLAND ("PORT")
P.O. BOX 3529
PORTLAND, OR 97208

FARBER SPECIALTY VEHICLES ("PROVIDER")
7052 AMERICANA PARKWAY
REYNOLDSBURG, OH 43068

1. NATURE OF CONTRACT

This Annual Supply Contract (the "Contract") is for Provider's supply to the Port, on an as-needed basis, of the item or items described on the attached Schedule 1 (the "Vehicles, Equipment & Accessories"). The Port does not guarantee any specific quantity of purchase, but shall look first to Provider for the Port's needs for the Vehicles, Equipment & Accessories. The Port reserves the right to order similar goods from other suppliers if it is in the Port's best interest to do so.

2. TERM

The term of this Contract shall be from June 1, 2016 through May 31, 2019, unless sooner terminated under the provisions of this Contract. The Port shall have two options, exercisable sequentially and unilaterally by the Port, in its sole, unrestrained discretion, to extend the term of this Contract for one additional year at a time. The Port may exercise such an option by giving Provider written notice no later than fourteen calendar days prior to the expiration date. Expiration of the term does not excuse Provider's duty to provide the Vehicles, Equipment & Accessories.

3. PROVIDER'S OBLIGATIONS

Provider's obligations under this Contract include, but are not limited to, the following:

3.1 To sell, furnish, and deliver requested Vehicles, Equipment & Accessories, f.o.b. destination, within the mutually agreed upon number of days after date of receipt of a properly authorized order placed with Provider.

3.2 To provide all Vehicles, Equipment & Accessories in accordance with the Port's specifications and any issued addenda.

3.3 To submit reports of all sales activity under this Contract, including descriptions, quantities supplied, and prices charged, in an MS Excel spreadsheet format or similar compatible format, to the Port's Manager of Contracts and Procurement upon request.

4. PAYMENT

Payment will be made within 30 days of receipt of a properly completed invoice for Vehicles, Equipment & Accessories delivered pursuant to an authorized Port order placed against this Contract. Provider shall include the Contract number on all invoices and shall submit invoices to Accounts Payable, Port of Portland, PO Box 3529, Portland, OR 97208. Invoices may also be submitted to Accounts Payable via email to portinvoices@portofportland.com.

5. RATE ADJUSTMENTS

Provider may request a rate adjustment, which the Port will consider in its sole discretion, no more frequently than once annually for the ensuing one-year period beginning on the effective date of the Contract or on an anniversary of the effective date of the Contract ("**Contract Year**") to reflect actual increases in Provider's cost to perform under this Contract. Provider must submit a written request with backup documentation establishing the actual increases in cost. Any such request shall be submitted to the Port no less than thirty (30) calendar days prior to the end of the Contract Year, and adjustments shall be effective as of the beginning of the following Contract Year. In no event shall the rate adjustment be more than the percentage change during the preceding Contract Year in the *Consumer Price Index for All Urban Consumers (CPI-U), US City Average, not seasonally adjusted, all items*, published by the U.S. Department of Labor.

6. PROVIDER IS INDEPENDENT PROVIDER

Provider is an independent Provider for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract. The Port will not withhold any taxes from any payments made to Provider, and Provider will be solely responsible for paying all applicable taxes arising out of or resulting from the provision of the Vehicles, Equipment & Accessories, including but not limited to income, social security, worker's compensation, and employment insurance taxes.

7. ASSIGNMENTS AND SUBCONTRACTS

Provider may not assign or transfer any interest or obligation under this Contract without the Port's prior written consent. Provider may not subcontract any part of the work required under this Contract without the Port's prior written consent. Any assignment, transfer, or subcontract attempted in violation of this section shall be void.

8. RECORDS

Provider shall retain all books, documents, papers, and records that are directly pertinent to this Contract for at least three years after the Port makes final payment on this Contract and all other pending matters are closed. Provider shall allow any authorized representatives of the Port to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

9. DUTY TO INFORM

Provider shall give prompt written notice to the Port if, at any time during the performance of this Contract, Provider becomes aware of actual or potential problems, faults, or defects in the Vehicles, Equipment & Accessories, any nonconformance with the Contract, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by the Port. Any delay or failure on the part of the Port to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim, and shall not constitute a waiver of any of the Port's rights.

10. WARRANTY; WARRANTY DISCLAIMER

10.1 Warranty

Provider warrants to the Port that: (a) the Vehicles, Equipment & Accessories will conform to the Contract specifications (including any issued addenda) and be free from material defects; and (b) Provider has good title to the Vehicles, Equipment & Accessories, and that Provider conveys the Vehicles, Equipment & Accessories to the Port free from any restriction or condition, and free from any encumbrance, including but not limited to any security interest or lien. Provider will defend title to the Vehicles, Equipment & Accessories against the rightful claim of any person.

10.2 Warranty Disclaimer

Except for the express warranties in this Contract, Contractor expressly disclaims all warranties with respect to the Vehicles, Equipment & Accessories, express and implied, including but not limited to any warranties that may have arisen from course of dealing or usage of trade.

11. INDEMNIFICATION AND INSURANCE

11.1 Indemnification

Provider shall indemnify, defend, reimburse, and hold harmless the Port and the Port's commissioners, officers, employees, and agents for, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including without limitation reasonable attorney fees, accountant fees, paralegal fees, expert witness fees, escrow fees, fines, environmental costs, and penalties resulting from, arising out of, or in any way connected with the acts or omissions of Provider or Provider's partners, directors, officers, employees, subProviders, invitees, or agents under this Contract.

11.2 Damage to Port Property

Provider shall fully compensate the Port for harm to the Port's real or personal property caused by the acts or omissions, negligent or not, of Provider or Provider's partners, directors, officers, employees, subProviders, invitees, or agents under this Contract.

11.3 Liability Insurance

Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, the Port, its commissioners, employees, and agents. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than \$1,000,000 combined single limit per occurrence.

11.4 Certificates

11.4.1 Certificates Required

Prior to full execution of this Contract, Provider must furnish the Port with: (i) certificates referencing this Contract (by number, if known), coverage dates, amount, and type of insurance required by this Contract; and (ii) a copy of the endorsement or policy provision providing additional insured status under the commercial general liability policy.

11.4.2 Certificate Management; Notice Requirement

When the period during which services will be performed exceeds the coverage period stated on a certificate, prior to the certificate expiration date Provider or its insurer must furnish updated certificates demonstrating continuous coverage. Provider or its insurer must give the Port not less than thirty (30) days' written notice before cancellation, non-renewal, or material change of any policy (except ten (10) days for non-payment of premium).

11.5 Workers' Compensation Coverage

Provider certifies that Provider has qualified for State of Oregon Workers' Compensation coverage for all Provider's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer.

11.6 Additional Insureds

All liability insurance policies required under this Contract shall name the Port, its Commissioners, employees, and agents as additional insureds.

12. BREACH OF CONTRACT

12.1 Cure; Remedies

Provider must cure any breach of this Contract within the shortest reasonable time after Provider first has actual notice of the breach or the Port notifies Provider of the breach, whichever is earlier. If Provider fails to cure a breach in accordance with this subsection, the Port may exercise one or more of the following remedies:

12.1.1 Substitute Services

The Port may terminate that part of this Contract affected by the breach upon written notice to Provider, may obtain substitute services or Vehicles, Equipment & Accessories in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services or Vehicles, Equipment & Accessories exceeds the price for the terminated services or Vehicles, Equipment & Accessories.

12.1.2 Suspension of Services

Pending a decision to terminate all or part of this Contract under this Section, the Port may unilaterally order Provider to suspend all or part of the services or Vehicles, Equipment & Accessories. If the Port terminates all or part of this Contract after such a suspension, Provider will be entitled to compensation only for services rendered or Vehicles, Equipment & Accessories delivered prior to the date of termination but not for any services rendered or Vehicles, Equipment & Accessories delivered after the Port-ordered suspension date. If the Port

suspends certain services or material deliveries and later orders Provider to resume those services or material deliveries, Provider will be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

12.1.3 Default

If the breach is material, the Port may declare Provider in default, and the Port may pursue any remedy available for a default.

12.2 Recovery of Amounts Due for Breach

To recover any amounts Provider owes to the Port due to Provider's material or non-material breach of this Contract, the Port may withhold such amounts from any Port payments to Provider, including but not limited to payments made under this Contract or under any other agreement between the parties. Provider's default under this Contract will be, at the Port's option, a default under any other agreement between the parties.

12.3 Contractual Remedies Not Exclusive

The Port will have all remedies available to the Port under this Contract, at law, and in equity, including reasonable attorneys' fees and costs incurred in any action to enforce the Port's rights under this Contract. All available remedies are cumulative and may be exercised singularly or concurrently.

13. TERMINATION FOR CONVENIENCE

The Port may terminate all or part of this Contract at any time for its own convenience by written notice to Provider. Upon termination under this section, Provider shall be entitled to compensation for all Vehicles, Equipment & Accessories delivered to and accepted by the Port prior to Provider's actual notice of the termination or the receipt of the written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the Contract.

14. STATUTORILY REQUIRED PROVISIONS

14.1 Payment for Labor or Material

As a condition of this Contract, Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the delivery of the Vehicles, Equipment & Accessories provided for in this Contract. [Required by ORS 279B.220 (1)]

14.2 Overtime

As a condition of this Contract, Provider shall pay employees for overtime work performed under this Contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) [Required by ORS 279B.235 (6)(e)]

14.3 Contributions to the Industrial Accident Fund

As a condition of this Contract, Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider or Provider's subProvider incurred in the performance of this Contract. [Required by ORS 279B.220 (2)]

14.4 Income Tax Withholding

As a condition of this Contract, Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [Required by ORS 279B.220 (4)]

14.5 Workers' Compensation

As a condition of this Contract, all subject employers performing services under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [Required by ORS 279B.230 (2)]

14.6 Medical Care for Employees

As a condition of this Contract, Provider shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Provider, of all sums that Provider agrees to pay for such services and all moneys and sums that Provider collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. [Required by ORS 279B.230 (1)]

14.7 Liens and Claims Prohibited

As a condition of this Contract, Provider shall not permit any lien or claim to be filed or prosecuted against the Port, the state, any county, any school district, any municipality, any municipal corporation, or any subdivision thereof, on account of any labor or material furnished pursuant to this Contract. [Required by ORS 279B.220 (3)]

15. MISCELLANEOUS PROVISIONS

15.1 Time of Essence

Time is of the essence with respect to all dates and time periods in this Contract.

15.2 Contingencies

Neither party will be responsible for failure to perform the party's obligations under this Contract due to contingencies beyond the party's reasonable control, including but not limited to earthquakes, floods, tornadoes, and other acts of Nature, fires, epidemics, wars, riots, revolutions, acts of civil or military authorities, sabotage, or nuclear incidents. If any obligation of a party will be delayed by a contingency, the party will promptly notify the other party. Each party will use commercially reasonable efforts to remove the contingency as soon as practicable.

15.3 Law of Oregon; Venue

ORS 15.320 provides that Oregon law applies to this Contract. The parties also agree that Oregon law applies to this Contract, even if ORS 15.320 is determined to be inapplicable or invalid. Venue shall be in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

15.4 Successors and Assigns

This Contract shall bind the parties and their partners, successors, executors, administrators, and permitted assignees.

15.5 Provider Identification

Provider shall furnish to the Port Provider's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

15.6 No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

15.7 Modification

Except as provided in Section 2, this Contract may be modified only by a writing signed by both parties. No oral modification shall be effective.

15.8 Attorney Fees

The prevailing party on a claim shall be entitled to reasonable attorney fees with respect to the claim at trial and on appeal in an action brought with respect to this Contract.

15.9 Permissive Cooperative Procurement Allowed

Other public contracting agencies may establish contracts or price agreements under the terms, conditions and prices of this Contract. Provider agrees to extend the terms, conditions and prices of this Contract to any purchasing Contracting agency, as that term is defined at ORS 279A.200 (1)(h). Contracts or price agreements between Provider and purchasing public contracting agencies are entirely independent of and have no effect upon this Contract.

15.10 Integration

This Contract contains the entire agreement between the parties regarding the subject matter of this Contract and supersedes all prior written or oral discussions or agreements regarding the subject matter of this Contract.

15.11 Attachments

Any exhibits, schedules, and other attachments referenced in this Contract are part of this Contract.

15.12 Authority of Signers

The individuals signing below warrant that they have full authority to execute this Contract on behalf of the party for which they sign.

To access pricing information, please use your login at www.uscommunities.org.