MASTER CONTRACT

NO. 00120

CATCH BASIN CLEANERS AND JET RODDER TRUCKS (VARIOUS SIZES)

For Use by Eligible Purchasers

By and Between

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

and

SOLID WASTE SYSTEMS, INC. DBA SWS EQUIPMENT, INC.

Dated October 1, 2020

MASTER CONTRACT

NO. 00120

CATCH BASIN CLEANERS AND JET RODDER TRUCKS (VARIOUS SIZES)

This Master Contract ("Master Contract") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Solid Waste Systems, Inc. DBA SWS Equipment, Inc., a Washington Profit Corporation ("Contractor") and is dated and effective as of October 1, 2020.

RECITALS

A. Pursuant to Legislative direction codified in RCW chapter 39.26, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods and/or services for general use by Washington state agencies and certain other entities (eligible purchasers).

B. Pursuant to its statutory authority, Enterprise Services is establishing a Master Contract for Catch Basin Cleaners and Jet Rodder Trucks (Various Sizes) on Manufacturer OR Customer Provided Chassis, with Options, Parts and Operator and Mechanic Training that is designed to enable eligible purchasers to procure Catch Basin Cleaners and Jet Rodder Trucks (Various Sizes) to include options, parts, and Operator and Mechanic Training from the awarded Contractor in a cost-effective, efficient manner using the terms and conditions of the Master Contract.

C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 00120 dated June 16, 2020.

D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder.

E. Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington.

F. The purpose of this Master Contract is to enable eligible purchasers to purchase Catch Basin Cleaners and Jet Rodder Trucks (Various Sizes) on Manufacturer OR Customer Provided Chassis, to include options, parts, and operator and mechanic training. Vehicles offered on this contract shall include the most cost-effective, low-emission options available, as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. TERM. The term of this Master Contract is seventy-two (72) months, commencing October 1, 2020 and ending September 30, 2026.

2. ELIGIBLE PURCHASERS. This Master Contract may be utilized by any of the following types of entities ("Purchaser"):

2.1. WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.

2.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following institutions of higher education in Washington:

- State universities – i.e., University of Washington & Washington State University;
- Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
- Evergreen State College;
- Community colleges; and
- Technical colleges.

2.3. MCUA PARTIES. Any of the following types of entities that have executed a Master Contract Usage Agreement with Enterprise Services:

- Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
- Federal governmental agencies or entities;
- Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
- Federally-recognized Indian Tribes located in the State of Washington.

2.4 OREGON COOPERATIVE PURCHASING PROGRAM (ORCPP). The Master Contract also is available for use by the State of Oregon and its eligible purchasers through the Oregon Cooperative Purchasing Program (ORCPP).

3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.

3.1. CONTRACT SCOPE. Pursuant to this Master Contract, Contractor is authorized to sell only those goods and/or services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices*. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell any goods and/or services beyond those set forth in *Exhibit A – Included Goods/Services*.

3.2. STATE'S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the goods and/or services included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Contract.

3.3. PRICE ADJUSTMENTS. The Master Contract prices are the maximum prices the Contractor may charge. Pricing shall remain firm and fixed for one (1) year from the Master Contract's effective date. Pricing is list price at the time of order. Beginning twelve (12) months after the effective date of this Master Contract and for every annual anniversary thereafter, Contractor may request an annual price adjustment by written notice to the Contract Administrator. Contractor may not change the percent discount. Price adjustment requests must be based on changes in the current Manufacturer's Suggested Retail Prices (MSRP) list. Consideration of price adjustments will be at the sole discretion of the Contract

Administrator. A completed list of suggested pricing (MSRP) changes must be sent to the Contract Administrator for approval sixty (60) days prior to the requested date of the changes taking effect. No changes may be made to the Contractor hosted catalog until approval is provided by the Contract Administrator. If a price increase is approved in part or in full, the resulting new Master Contract pricing will be implemented through a Contract Amendment. Contractor may not make Master Contract extensions contingent on price adjustments.

3.4. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services* (subject to economic adjustment as set forth herein).

3.5. MASTER CONTRACT INFORMATION. Enterprise Services shall maintain and provide information regarding this Master Contract, including scope and pricing, to eligible Purchasers.

4. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Master Contract and at the time any order is placed pursuant to this Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

4.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.

4.2. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.

4.3. QUALITY OF GOODS OR SERVICES. Contractor represents and warrants that any goods and/or services sold pursuant to this Master Contract shall be merchantable, shall conform to this Master Contract and Purchaser's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered and the services provided free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to Purchaser) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in Purchaser's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

4.4. WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued

by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.

4.5. PAY EQUALITY. Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Master Contract.

4.6. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

4.7. VEHICLE RESELLER BUSINESS LICENSE. Contractor represents and warrants, as previously certified in Contractor's Bidder Certification, that Contractor is licensed to sell vehicles in the state of Washington. Contractor shall maintain this license for the duration of the Master Contract.

4.8. AUTHORIZED DEALER/DISTRIBUTOR/SERVICE REPRESENTATIVE. Contractor represents and warrants, as previously certified in Contractor's Bidder Certification, that Contractor is an authorized Dealer and Service Representative for a Manufacturer of Catch Basin Cleaner and Jet Rodder Tucks. Contractor shall maintain this certification for the duration of the Master Contract. Upon request by Enterprise Services, Contractor shall provide evidence of its status as an authorized service provider or product reseller.

4.9. EQUIPMENT WARRANTY. Contractor represents and warrants, as previously certified in Contractor's Submitted *Exhibit B – Performance Requirements*, that those goods and/or services provided by Contractor set forth in *Exhibit A – Included Goods/Services* will meet the equipment warranty set forth in this Master Contract.

4.10. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to,

restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasers' employees.

4.11. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Master Contract, Contractor shall maintain an accurate profile in WEBS.

4.12. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.

4.13. MASTER CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Master Contract with eligible Purchasers and to ensure that those entities that utilize this Master Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Purchaser, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.

4.14. MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned to another contractor (e.g., Master Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

5. USING THE MASTER CONTRACT – PURCHASES.

5.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order goods and/or services from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order"). All order documents must reference the Master Contract number. The terms of this Master Contract shall apply to any Purchase Order and, in the event of any conflict, the terms of this Master Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or other agreement modify the terms and conditions of this Master Contract. Prior to time of order, Contractor must provide Purchaser with the current MSRP for Chassis with applicable options and Contractor's discounted price, as defined in *Exhibit B – Prices* of Master Contract.

5.2. PURCHASE ORDERS. Contractor shall, in accordance with all terms and conditions of this Master Contract, fully perform and shall be obligated to comply with all Purchase Orders received by the Contractor prior to the expiration hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all Purchase Orders received prior to but not fully performed and satisfied at the expiration of this Contract.

5.3. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Master Contract, the Purchase Order used by Purchasers, or as

otherwise mutually agreed in writing between the Purchaser and Contractor. The following apply to all deliveries:

(a) Vehicle delivery must be within 365 days of receipt of Purchase Order, or upon receipt of Purchaser Provided Chassis, whichever is later.

(b) Contractor shall not impose any delivery charges on completely configured vehicles. Delivery fees for completely configured vehicles offered within this Master Contract are included in purchase prices set forth in this Master Contract. Delivery fees for completely configured vehicles will not be allowed as a separate line item. Delivery fees for parts purchased separately as opposed to a completely configured vehicle are allowed as a separate line item.

(c) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchaser's normal work hours and within the time period mutually agreed in writing between Purchaser and Contractor.

(d) Contractor shall ship all goods and/or services purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Purchaser's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the goods and/or services ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence.

(e) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Master Contract shall be identified by the Master Contract number set forth on the cover of this Master Contract and the applicable Purchaser's Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

(f) Contractor must provide the following documents for review at time of delivery for each item:

1. Contractor Delivery Checklist (see Exhibit D)
2. The manufacturer's line production sheet stating the equipment serial numbers and listing all of the equipment's components.
3. Completed Invoice
4. One (1) copy of the operator, maintenance and parts manuals are required at time of delivery. Digital copy preferred.
5. The Manufacturer's Statement of Origin (MSO)
6. Axle weight slips (for all units with axles)
7. Vehicle weight slips from certified scales for:
    1) empty truck and
    2) fully loaded with fresh water
8. A completed Washington State title application with original signature must be delivered with the vehicle. showing both the legal and registered owner as Purchaser. Contractor(s) may contact ordering Purchaser to obtain a Washington State title application or addresses and information regarding the title.

9. Engineering schematic drawings of the electrical and hydraulic systems are due upon delivery of each unit. Digital copies preferred.

(g) Contractor must notify Purchaser at the phone number listed in the Purchase Order, twenty-four (24) hours prior to equipment delivery. This is to ensure that a Purchaser employee is available to sign and date the bill of lading (or other type delivery document) and receive the above mentioned documents, and to indicate that Purchaser has received delivery of the equipment.

(h) When the unit is ready for final delivery, it may be delivered to Purchaser (as specified in the Purchase Order) as arranged with the specific Purchaser. Unless otherwise agreed in writing by Purchaser, deliveries must NOT be made on weekends or on legally recognized state and federal holidays.

(i) Purchaser will not accept any responsibility for equipment that has been delivered to or left at a Purchaser facility, unless a Purchaser employee has signed and dated the bill of lading or other delivery documents indicating Purchaser has received delivery of the equipment.

(j) Contractor is solely liable for any equipment damages that occurred prior to Purchaser receiving delivery of the equipment.

5.4. NOTIFICATION OF DELAY. Contractor shall provide prompt notice to Purchaser and Enterprise Services for any delay in the manufacturing process that will affect the expected delivery date. Contractor will provide notice of the delay within fourteen (14) days of discovery of the potential delay. This notice of delay must include a reasonable expectation of when the delay will be resolved, the reason for the delay, whether the delay will cause the delivery to exceed the delivery date, and any other applicable information regarding the delay.

(a) Purchaser shall provide Contractor with notice of acceptance of the reasonable delay or notice that the delay is determined to be non-excusable within seven (7) days of receipt of the notice of delay.

(b) If there is a dispute between Contractor and Purchaser as to whether the delay is reasonable, the Contractor may appeal the Purchaser's decision to Enterprise Services within seven (7) days of receipt of the notice that the delay is non-excusable. Enterprise Services will review the provided information and make a final determination as to whether the delay is reasonable or non-excusable.

(c) If a dispute remains after this procedure, parties shall follow the dispute resolution process of Section 16. Contractor shall promptly comply with any request from Enterprise Services or Purchaser for additional information in making the delay determination. A request for more information from Enterprise Services or Purchaser tolls the time for required response until the time that Contractor responds to the request for more information.

(d) Reasonable delay is a delay for which the Contractor is not responsible. A reasonable delay must arise from unforeseeable causes, be beyond the control of the contractor, and be without the fault or negligence of the Contractor. A reasonable delay will extend the delivery date by the agreed upon length of the delay.

(e) Non-excusable delay is a delay for which the Contractor is wholly or partially responsible. A non-excusable delay is a delay that arises from a foreseeable cause, is within the control of the Contractor, or is due to the fault or negligence of the Contractor. A non-excusable delay will not extend the agreed upon delivery date.

5.5. DELAY DAMAGES. Purchaser may incur damages by any failure on the part of Contractor to deliver the products as defined in this contract within the time specified in delivery date. The amount of such damages Contractor shall pay to Purchaser is the reasonable equipment rental rate for a comparable piece of equipment for each late delivery day. *Damages will not be assessed unless an equipment rental actually occurs and documentation is provided to Contractor.* In lieu of equipment rental requiring monetary compensation, Contractor may provide comparable equipment for Purchaser to use if equipment is deemed acceptable by Purchaser, for each late delivery day. This will apply for each workday the Catch Basin Cleaner and/or Jet Rodder Trucks are not delivered in substantially good condition as inspected by the Purchaser, based on acceptance criteria. The Purchaser may elect to deduct the amount of the damages from the amount due to the Contractor under the Purchase Order or may invoice the Contractor for the amount due based on the delay. If Purchaser requires Contractor to pay the delay damages, Contractor shall pay the entire amount within thirty (30) days after receipt of invoice by Purchaser. The payment of damages will be in lieu of any damages for any loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind that may be suffered by Purchaser arising at any time from the failure of Contractor to fulfill the delivery obligations in a timely manner.

5.6. EQUIPMENT WARRANTY. Contractor must provide technical support and reasonable equipment modifications for a period of ninety (90) calendar days after the date the equipment is reported in service per manufacturer and/or factory warranty requirements. This is to ensure that the purchased equipment is capable of performing the specified operational functions. Contractor must include the factory and/or manufacturer's one-year warranty, which must cover 100% parts and labor for the entire unit offered. This warranty must be honored by all authorized factory and/or manufacturer's dealerships.

(a) Contractor is liable for all costs associated with warranty repair(s), including, but not limited to, materials, parts, labor, and transport of equipment that are disabled due to the failure of the equipment during the warranty period.

(b) Warranty coverage will not commence until the date the completed equipment is placed into service as reported by Purchaser pursuant to the warranty requirements, or 30 days after final payment for the equipment, whichever occurs first.

(c) During the warranty period, Contractor must begin physical repairs on equipment failures within 72 hours after Purchaser has notified the Contractor of an equipment failure. Should Contractor fail to begin equipment repairs within 72 hours after notification, Purchaser may elect (based on operational requirements) to make the warranty repairs. Should Purchaser elect to make such warranty repairs, Contractor agrees to fully reimburse Purchaser for all parts, materials, labor, shipping and travel costs incurred by Purchaser for such warranty repairs. Purchaser must provide Contractor with a detailed invoice, and Contractor agrees to remit payment

to the Purchaser within thirty days (30) after receipt of the invoice. Failure to provide and complete warranty service/repair within two weeks (14 calendar days) of vehicle/equipment entering Contractor's facility may be sufficient grounds for Enterprise Services to deny Contractor from bidding in future procurements due to poor performance.

(d) During warranty period the Contractor may, upon notification of a warranty failure, authorize Purchaser equipment repair technicians to make warranty repairs when it advantages Purchaser and Contractor. Contractor must reimburse Purchaser for all costs associated with the warranty repair.

5.7. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or services purchased under this Master Contract are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Master Contract and Purchaser's Purchase Order. Purchaser may charge Contractor for the cost of inspecting rejected goods. If there are any apparent defects in the goods and/or services at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at Purchaser's option, Purchaser may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment. Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods.

5.8. ON SITE REQUIREMENTS. While on Purchaser's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, safety, and other security requirements.

6. INVOICING & PAYMENT.

6.1. CONTRACTOR INVOICE. Contractor shall submit to Purchaser's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:

(a) Master Contract No. 00120

(b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)

(c) Contractor's Federal Tax Identification Number

(d) Date(s) of delivery

(e) Invoice amount; and

(f) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Master Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

6.2. PAYMENT. Payment is the sole responsibility of, and will be made by, the Purchaser. Payment is due within thirty (30) days of invoice. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of $1. Payment will not be considered late if a check or warrant is mailed within the time specified.

6.3. OVERPAYMENTS. Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchaser may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.

6.4. NO ADVANCE PAYMENT. No advance payments shall be made for any products or services furnished by Contractor pursuant to this Master Contract.

6.5. NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for delivery, shipping, handling, or payment processing.

6.6. TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor, however, shall not make any charge for federal excise taxes and Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

7. CONTRACT MANAGEMENT.

7.1. CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Master Contract. Enterprise Services' contract administrator shall provide Master Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Master Contract. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services
Attn: Kelli Carmony
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360)407-8160
Email:
DESContractsTeamCypress@des.wa.gov

Contractor
Attn: Tracy Ball
SWS Equipment, Inc.
PO Box 13040
Spokane Valley, WA 99213
Tel: (509) 533-9000
Email: tracyb@swsequipment.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

7.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Master Contract.

7.3. LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services	**Contractor**
Attn: Legal Services Manager	Attn: Tracy Ball
Washington Dept. of Enterprise Services	SWS Equipment, Inc.
PO Box 41411	PO Box 13040
Olympia, WA 98504-1411	Spokane Valley, WA 99213
Email: greg.tolbert@des.wa.gov	Email: tracyb@swsequipment.com

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

8. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.

8.1. MASTER CONTRACT SALES REPORTING. Contractor shall report total Master Contract sales quarterly to Enterprise Services, as set forth below.

(a) Master Contract Sales Reporting System. Contractor shall report quarterly Master Contract sales in Enterprise Services' Master Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Bidder Profile.

(b) Data. Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of the Master Contract. If there are no Master Contract sales during the reporting period, Contractor must report zero sales.

(c) Due dates for Master Contract Sales Reporting. Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

FOR CALENDAR QUARTER ENDING	MASTER CONTRACT SALES REPORT DUE
March 31:	April 30
June 30:	July 31
September 30:	October 31
December 31:	January 31

8.2. VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

(a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total Master Contract sales invoiced (not including sales tax) x .015.

(b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.

(c) Enterprise Services will invoice Contractor quarterly based on Master Contract sales reported by Contractor. Contractors are not to remit payment until they receive an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Master Contract number, work request number (if applicable), the year and quarter for which the VMF is being remitted, and the Contractor's name as set forth in this Master Contract, if not already included on the face of the check.

(d) Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the VMF, may be cause for Master Contract suspension or termination or the exercise of other remedies provided by law. Without limiting any other available remedies, the Parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums, the sum of $200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.

(e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Master Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

8.3. ANNUAL MASTER CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Master Contract sales report. Such report shall include, at a minimum:

Product description, part number or other Product identifier, per unit quantities sold, and Master Contract price. This report must be provided in an electronic format that can be read by Microsoft (MS) Excel.

9. RECORDS RETENTION & AUDITS.

9.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

9.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced Purchasers and that Contractor has paid all applicable vendor management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Contract or orders placed by a Purchaser under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

9.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Master Contract or orders, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records; and (b) reimburse Enterprise Services for any underpayment of fees, at a rate of 125% of such fees found as a result of the examination of the Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by $500, Contractor would be required to pay to Enterprise Services $500 x 1.25 = $625).

10. INSURANCE.

10.1. REQUIRED INSURANCE. During the Term of this Master Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.

10.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Contract. This provision does not waive any of the Washington State Department of Labor

and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.

11. CLAIMS.

11.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Master Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from its acts or omissions under this Master Contract, even if not attributable to negligence by Contractor or its agents.

11.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Purchaser and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Master Contract, except claims caused solely by Enterprise Services or any Purchasers' negligence. Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

12. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Master Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

13. SUSPENSION & TERMINATION; REMEDIES.

13.1. SUSPENSION & TERMINATION FOR DEFAULT. Enterprise Services may suspend Contractor's operations under this Master Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Contract. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Master Contract, until such obligations have been fulfilled.

13.2. DEFAULT. Each of the following events shall constitute default of this Master Contract by Contractor:

(a) Contractor fails to perform or comply with any of the terms or conditions of this Master Contract including, but not limited to, Contractor's obligation to pay vendor management fees when due;

(b) Contractor breaches any representation or warranty provided herein; or

(c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

13.3. REMEDIES FOR DEFAULT.

(a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Contract are in addition to all other available remedies.

(b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasers replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

13.4. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchaser be liable to the other for exemplary or punitive damages.

13.5. GOVERNMENTAL TERMINATION.

(a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Master Contract if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Contract; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Purchaser from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

(b) Termination for Public Convenience. Enterprise Services, for public convenience, may terminate this Master Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Purchaser from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

13.6. TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all goods and/or services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Master Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary,

Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

14. GENERAL PROVISIONS.

14.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Contract.

14.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.

14.3. INTEGRATED AGREEMENT. This Master Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.

14.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.

14.5. AUTHORITY. Each party to this Master Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Master Contract and that its execution, delivery, and performance of this Master Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

14.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Master Contract. Neither party is an agent of the other party nor authorized to obligate it.

14.7. ASSIGNMENT. Contractor may not assign its rights under this Master Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Master Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Master Contract notwithstanding any prior assignment of its rights.

14.8. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Master Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

14.9. PUBLIC INFORMATION. This Master Contract and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56.

14.10. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.

14.11. FEDERAL FUNDS. To the extent that any Purchaser uses federal funds to purchase goods and/or services pursuant to this Master Contract, such Purchaser shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.

14.12. SEVERABILITY. If any provision of this Master Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Contract, and to this end the provisions of this Master Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Contract.

14.13. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Contract, nor shall any purported oral modification or rescission of this Master Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.

14.14. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Contract shall survive and remain in effect following the expiration or termination of this Master Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.

14.15. GOVERNING LAW. The validity, construction, performance, and enforcement of this Master Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.

14.16. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Master Contract, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

14.17. ATTORNEYS' FEES. Should any legal action or proceeding be commenced by either party in order to enforce this Master Contract or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.

14.18. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Master Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Master Contract. Each party hereto and its counsel has reviewed and revised this Master Contract and agrees that the normal rules of construction to the effect that any

ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Master Contract. Each term and provision of this Master Contract to be performed by either party shall be construed to be both a covenant and a condition.

14.19. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Master Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Contract.

14.20. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Master Contract in their entirety.

14.21. CAPTIONS & HEADINGS. The captions and headings in this Master Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Contract nor the meaning of any provisions hereof.

14.22. ELECTRONIC SIGNATURES. A signed copy of this Master Contract or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Master Contract or such other ancillary agreement for all purposes.

14.23. COUNTERPARTS. This Master Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Master Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Master Contract.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

By: _____
Corinna Cooper
Its: Enterprise Procurement Manager

SOLID WASTE SYSTEMS, INC. DBA SWS EQUIPMENT, INC.,
a Washington Profit Corporation

By: _____
Paul Cochran
Its: President

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Final Audit Report 2020-09-10

Created:	2020-09-10
By:	Kelli Carmony (kelli.carmony@des.wa.gov)
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