

MASTER CONTRACT

No. 00419

DOCUMENT DESTRUCTION SERVICES

Not For Use by Eligible Purchasers

By and Between

STATE OF WASHINGTON

DEPARTMENT OF ENTERPRISE SERVICES

and

DEVRIES BUSINESS RECORDS MANAGEMENT, INC.

Dated July 1, 2019

MASTER CONTRACT

No. 00419

DOCUMENT DESTRUCTION SERVICES

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 DeVries Business Records Management, Inc., a Washington Corporation ("Contractor") and is dated and effective as of July 1, 2019.

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 services for general use by Washington state agencies and certain other entities (eligible purchasers).
- B. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 00419 dated April 24, 2019 regarding Document Destruction Services.
- C. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder.
- D. 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.
- E. The purpose of this Master Contract is to enable eligible purchasers to purchase the services 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 July 1, 2019 and ending June 30, 2025.
2. **ELIGIBLE PURCHASERS.** This Master Contract may be utilized by any of the following types of entities ("Purchaser"):
 - 2.1. **WASHINGTON STATE AGENCIES.** This Master Contract may be utilized by:
 - Washington state agencies, departments, offices, divisions, boards, and commission; and
 - Any the following institutions of higher education: state universities, regional universities, state college, community colleges, and technical colleges.

- 2.2. **MCUA PARTIES.** This Master Contract also may be utilized by 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);
 - 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.

3. SCOPE – INCLUDED SERVICES AND PRICE.

- 3.1. **CONTRACT SCOPE.** Pursuant to this Master Contract, Contractor is authorized to sell only those services set forth in *Exhibit A – Document Destruction Services* for the prices set forth in *Exhibit B – Prices for Document Destruction Services*. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell any services beyond those set forth in *Exhibit A – Document Destruction 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 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. **ECONOMIC ADJUSTMENT.** Beginning twenty four (24) months after the effective date of this Master Contract and for every 2 year anniversary thereafter, the Contractor may request the prices set forth in *Exhibit B* be adjusted, based upon the percent changes (whether up or down) in the United States Department of Labor, Bureau of Labor and Statistics (BLS) indices described below, for the most recent year. Economic adjustment will lag one (1) calendar quarter past the Contract commencement date to allow for publication of BLS data. All calculations for the index shall be based upon the latest version of data published as of May each year. Prices shall be adjusted on October 1 if requested. If an index is recoded, that is the replacement is a direct substitute according to the BLS, this Contract will instead use the recode. If an index becomes unavailable, Enterprise Services shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available will be used. The economic adjustment shall be calculated as follows and use the PPI in the below chart based on Regions awarded:
- $\text{New Price} = \text{Old Price} \times (\text{Current Period Index} / \text{Base Period Index})$.

Region	PPI	Series
Eastern	Spokane-Spokane Valley, WA: Total Private Average Hourly Earnings	SMU53440600500000003
North Central	Wenatchee, WA: Total Private Average Hourly Earnings	SMU53483000500000003
South Central	Yakima, WA: Total Private Average Hourly Earnings	SMU53494200500000003

- 3.4. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Services at no greater than the prices set forth in *Exhibit B – Prices for Document Destruction 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 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. 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.
- 4.4. PAY EQUALITY. Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of this Master Contract for the time period of July 1, 2019 through June 30, 2025, it agrees to equality among its workers by ensuring 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 the Master Contract.

- 4.5. **QUALITY OF SERVICES.** Contractor represents and warrants that any 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, and shall be produced and delivered in full compliance with applicable law. 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.
- 4.6. **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.
- 4.7. **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.
- 4.8. **STATEWIDE PAYEE DESK.** Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 4.9. **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 services or suggesting that such 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.
- 4.10. **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 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.

5.2. 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, or other security requirements.

Safety issues and/or environmental concerns (excessive and disruptive noise or fumes, trucks parked in inappropriate locations, debris/oil left in truck operation areas, etc.) are expected to be avoided. Contractor is expected to self-monitor all operations. If any of these issues are noticed and reported by the agency being serviced, Contractor is responsible for immediate and complete compliance and for notifying the state of the corrective actions that were employed.

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. 00419
- (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 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 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 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:

<p>Enterprise Services Attn: Leslie Edwards Washington Dept. of Enterprise Services PO Box 41411 Olympia, WA 98504-1411 Tel: (360) 407-8416 Email: leslie.edwards@des.wa.gov</p>	<p>Contractor Attn: Jim Shasky DeVries Business Records Management, Inc. 601 E Pacific Avenue Spokane, WA 99202 Tel: (509) 838-1044 x312 Email: jshasky@devriesinc.com</p>
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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
 Attn: Legal Services Manager
 Washington Dept. of Enterprise Services
 PO Box 41411
 Olympia, WA 98504-1411
 Email: greg.tolbert@des.wa.gov

Contractor
 Attn: Jim Shasky
 DeVries Business Records Management,
 Inc.
 601 E Pacific Avenue
 Spokane, WA 99202
 Email: jshasky@devriesinc.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 1.50 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 .0150.

- (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 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, customer location, 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 MS Excel.

8.4. SMALL BUSINESS INCLUSION. Upon Request by Enterprise Services, Contractor shall provide, within thirty (30) days, an Affidavit of Amounts Paid. Such Affidavit of Amounts Paid either shall state, if applicable, that Contractor still maintains its MWBE certification or state that its subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE subcontractor under this Master Contract. Contractor shall maintain records supporting the Affidavit of Amounts Paid in accordance with this Master Contract's records retention requirements.

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 contract 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 \times 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*.
- 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, agents, and Contractors in connection with Contractor's 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.

- 12.1. 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 manager 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 contract 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 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 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 Convenience.** Enterprise Services, for convenience, may terminate this Master Contract; Provided, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and Provided further, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and Provided further, that such termination for convenience shall not relieve any Purchaser from payment for services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for 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 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 hereto.
- 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. ASSIGNMENTS. 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 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 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 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 submit to exclusive in personam 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.

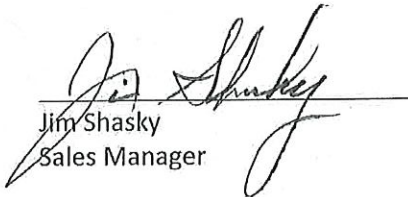
- 14.21. CAPTIONS & HEADINGS. The captions and headings in this Master Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Contract nor the meaning of any provisions hereof.
- 14.22. ELECTRONIC SIGNATURES.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

DEVRIES BUSINESS RECORDS MANAGEMENT, INC.,
a Washington Corporation

By: 
Leslie Edwards
Its: Contracts Specialist

By: 
Jim Shasky
Its: Sales Manager

Document Destruction Specifications

1. IMPLEMENTATION

Within 10 days following execution of contract, the awarded Contractor(s) will begin scheduling comprehensive site visits with key personnel at purchaser's location to perform an initial "needs assessment". Contractor will make recommendations, and assist the agencies with establishing the initial bin locations, and the service schedules, and will continue to monitor and advise as required during the contract's period of performance. Contractor will provide training to the purchaser at the purchaser's location, in accessing their online reporting/tracking system.

2. SERVICE REQUIREMENTS:

The services shall be mutually agreed upon by the Contractor and the Purchaser. Ideally the service schedule will be determined at the onset of the contract. If there is a need to deviate from an established schedule, services shall be provided no later than seven (7) calendar days after a request for service is made, or as scheduled by the Purchaser, whichever date is furthest out. Contractor shall provide reasonable notification (as soon as the disruption/delay is known to the Contractor) to the Purchaser in the event of a disruption/delay to pick-up services.

- a) Contractor is responsible for meeting the pre-determined service schedules and all costs and risk of loss associated with same.
- b) Contractor shall provide the appropriate size and number of secure containers to each facility requesting service under the contract.
- c) Each container shall contain a drop-slot, have a capacity that is suitable for the needs of the participating agencies, and have a key-locked or combination dead bolt.
- d) Each container shall be placed in the location requested by the Purchaser, provided that placement is in accordance with applicable fire codes. All containers shall be provided free of charge.
- e) Contractor(s) shall provide locked, security containers that are prominently labeled, for the off-site destruction of digital media (computer tapes, discs, x-rays, hard drives, etc).
- f) The same chain of custody requirements apply for on-site document destruction, off-site document destruction, and off-site digital media destruction and all will require the issuance of a certificate of destruction.

3. CERTIFICATE OF DESTRUCTION

Contractor shall provide to the customer a Certificate of Destruction at the time service is completed. At a minimum, this certificate shall include the name and address of the facility, date of service, description and quantity or weight of materials destroyed, exact number of bins serviced, service representative's name, and truck number.

4. SHREDDING SPECIFICATIONS:

All paper or printed media will be destroyed to the dimensions outlined in the NAID™ specifications.

Those dimensions include:

Continuous Shred:

Maximum Width: 5/8 inch
Maximum Length: Indefinite

Cross Cut or Pierce and Tear:

Maximum Width: 3/4 inch
Maximum Length: 2.5 inches

Pulverized (Equipment with Screens):

Maximum Screen Size: 2-inch diameter holes

Note: The above listed specifications are the current dimensions for document destruction used in the NAID™ Certification Program. If at any point these specifications are updated by NAID™ it is the Contractor's responsibility to abide by the new specifications and apply them to this contract.

The Contractor shall be required to furnish all materials, equipment and/or services necessary to perform contractual requirements. Materials and workmanship in the construction of equipment for this contract shall conform to all codes, regulations and requirements for such specifications contained herein and set forth in the NAID™ certification. The Contractor shall exercise due diligence in site clean-up and restoration after shredding operations have concluded.

5. AUDITABLE CHAIN OF CUSTODY REQUIREMENTS

Contractor shall submit, upon request from any user agency or representative of DES, electronic verification of the chain of custody for any documents/materials that have been in the Contractor's charge for the purpose of destruction. This includes but is not limited to: Electronic, date/time-stamped tracking records, container weights at time of collection and deposit into grinding trucks, operator's name or employee ID number, or any other such documentation that verifies service performance and chain of custody process for state audit purposes.

6. BIN TIPPING POLICY

Contractor shall make every effort to provide "right-sizing" of collection bins to insure a minimum of secure documents being left after the scheduled pick up date. To this end, and in keeping with NAID™ recommendations for mitigating customer risk, contents in partial bins containing a volume of 1/3 or more, are to be tipped (collected and destroyed). If, at the customer's request, a bin containing a volume representing less than 1/3 bin requires tipping, Contractor is allowed to tip. If, at the customer's request, a bin containing a volume of 1/3 or more is not tipped, Contractor shall make a note in a daily log of the individual making the request and a brief summary of cause, including date, time and the Contractor's representative.

7. GENERAL CONTRACTOR PERFORMANCE

Contractor shall work with the individual agencies' Contract Manager and DES Contract Administrator to address any and all issues pertaining to performance of the contract and to resolve disputes in a professional and expeditious manner whenever possible.

The State, in conjunction with purchasers from the user agencies, monitors and maintains records of Contractor performance. Said performance shall be a factor in evaluation and award of this and all future contracts and potential time extensions to this contract. Purchasers will have access to be able to provide service performance report forms to forward to DES Procurement Coordinator indicating poor to superior performance ratings. Procurement Coordinator will advise Contractor in a timely manner of Contractor Report Cards comments.

8. PURGING FILES

One-time purge shredding service is designed for Customers who need a single clean-out of their unwanted documents and papers. A purge is defined as additional volumes of paper to shred, and involve large or small volumes of documents that don't occur on a regular basis. Purging files is not considered part of the routine scheduled pick up. Off day, not regular scheduled pickups will be charged at the purge rate. The price for purging files will be a flat rate per file box identified within the price sheet. The Vendor will not supply temporary containers for purging.

Bin to Box Conversion:

35 Gallon = 3 Standard Boxes
65 Gallon = 6 Standard Boxes
95 Gallon = 10 Boxes

9. STAGED AND UN-STAGED ENVIRONMENTS

Contractor will partner with the purchasers to establish any special security requirements, limited hours of operation, access issues such as stairs or barriers, etc. Most agencies will provide a staged environment for bin servicing, which means the agencies will provide an area where all bins are brought to in order to be serviced, however, some agencies may utilize an un-staged method whereby the Contractor will walk through the facility collecting documents from smaller bins or the Contractor may collect the bins in the building and bring them to a specific area for tipping. Contractor will assist and advise purchasers in determining their collection bin requirements (type, size and quantities) as well as their appropriate service types and schedules.

10. CONFIDENTIALITY

Contractor shall ensure that Contractor's staff does not use or disclosure any information concerning a client or customer, which was obtained while providing service under this Contract, as provided under Chapter 40.14 RCW and Chapter 70.02 RCW, as well as any other applicable federal and state statutes and regulations.

Contractor and personnel servicing this contract will be required to sign confidentiality statements.

Prices for Document Destruction Services

North Central Region		Counties: Chelan, Douglas, Grant, and Okanogan	
Item	Unit		
35 Gallon Bin - staged	Gallon	\$	4.00
35 Gallon Bin - un-staged	Gallon	\$	6.00
65 Gallon Bin - staged	Gallon	\$	8.00
65 Gallon Bin - un-staged	Gallon	\$	10.00
95 Gallon Bin - staged	Gallon	\$	10.00
95 Gallon Bin - un-staged	Gallon	\$	10.00
35 Gallon Temporary Bin	Delivery and Removal fee		No Charge
65 Gallon Temporary Bin	Delivery and Removal fee		No Charge
95 Gallon Temporary Bin	Delivery and Removal fee		No Charge
On-site digital Media Destruction	per pound	\$	0.65
Off-site digital Media Destruction	per pound	\$	0.60
Hard Drive Destruction	each	\$	1.00
On/off-site paper destruction - Purging	per box	\$	3.00
South Central Region		Counties: Kittitas, Yakima, Franklin, Walla Walla, Columbia, Garfield, and Asotin	
Item	Unit		
35 Gallon Bin - staged	Gallon	\$	4.00
35 Gallon Bin - un-staged	Gallon	\$	6.00
65 Gallon Bin - staged	Gallon	\$	8.00
65 Gallon Bin - un-staged	Gallon	\$	10.00
95 Gallon Bin - staged	Gallon	\$	10.00
95 Gallon Bin - un-staged	Gallon	\$	10.00
35 Gallon Temporary Bin	Delivery and Removal fee		No Charge
65 Gallon Temporary Bin	Delivery and Removal fee		No Charge
95 Gallon Temporary Bin	Delivery and Removal fee		No Charge
On-site digital Media Destruction	per pound	\$	0.65
Off-site digital Media Destruction	per pound	\$	0.60
Hard Drive Destruction	each	\$	1.00
On/off-site paper destruction - Purging	per box	\$	3.00

Eastern Region	Counties: Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman	
Item	Unit	
35 Gallon Bin - staged	Gallon	\$ 4.00
35 Gallon Bin - un-staged	Gallon	\$ 6.00
65 Gallon Bin - staged	Gallon	\$ 6.00
65 Gallon Bin - un-staged	Gallon	\$ 7.50
95 Gallon Bin - staged	Gallon	\$ 9.50
95 Gallon Bin - un-staged	Gallon	\$ 9.50
35 Gallon Temporary Bin	Delivery and Removal fee	No Charge
65 Gallon Temporary Bin	Delivery and Removal fee	No Charge
95 Gallon Temporary Bin	Delivery and Removal fee	No Charge
On-site digital Media Destruction	per pound	\$ 0.65
Off-site digital Media Destruction	per pound	\$ 0.55
Hard Drive Destruction	each	\$ 0.55
On/off-site paper destruction - Purging	per box	\$ 3.00

Insurance Requirements

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor must obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Master Contract.
 - b. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per accident shall not be less than \$1,000,000.
 - c. **WORKER'S COMPENSATION INSURANCE & EMPLOYER'S LIABILITY (STOP GAP).** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law, including Employer's or Stop-Gap Liability with a minimum limit of \$1,000,000 per accident.
2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Except for Works' Compensation, and Commercial Automobile Liability, all required insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Upon request by Enterprise Services, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. A renewal certificate shall be delivered to Enterprise Services no less than ten (10) days prior to coverage expiration. Failure to provide proof of insurance, as required, will result in contract cancellation. All policies and certificates of insurance shall include the Master Contract number stated on the cover of this Master Contract.
5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.

6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least forty-five (45) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Contract number stated on the cover of this Master Contract.