

EXHIBIT D – MASTER CONTRACT

STATE OF WASHINGTON Contracts, Procurement, & Risk Management Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	MASTER CONTRACT	
	Contract No.:	00816
	Commodity:	TRAILERS
	Term:	96 MONTHS
VENDOR Pape Machinery Inc. 3607 20 th St East Tacoma, WA 98424	Effective Date:	January 09, 2017

MASTER CONTRACT

No. 00816

TRAILERS

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

Pape Machinery Inc.

Dated January 09, 2016

MASTER CONTRACT

No. 00816

TRAILERS

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 Pape Machinery Inc., a Washington State Corporation ("Vendor") and is dated as of January 09, 2017.

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. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Invitation For Bid No. 00816 dated November 17, 2016 regarding TRAILERS.
- C. Enterprise Services evaluated all responses to the Invitation For Bid and identified Vendor 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 goods and/or 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 Ninety Six (96) months, commencing January 09, 2017 and ending December 31, 2024.
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, the regional universities, The Evergreen State College, the community colleges, and the 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 GOODS/SERVICES AND PRICE.

- 3.1. **CONTRACT SCOPE.** Pursuant to this Master Contract, Vendor 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*. Vendor shall not represent to any Purchaser under this Master Contract that Vendor 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. **ECONOMIC ADJUSTMENT.** Contract is a discount off list price model and regular Economic Adjustments will not be approved. In the event of an increase in costs not foreseen by vendor and outside vendor’s control (e.g., Government raise of minimum wage), vendor may submit an Economic Adjustment request to DES. DES shall have 90 days to review and approve/disapprove request.
- 3.4. **PRICE CEILING.** Although Vendor may offer lower prices to Purchasers, during the term of this Master Contract, Vendor 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. VENDOR REPRESENTATIONS AND WARRANTIES. Vendor 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, Vendor cannot make such representations and warranties, Vendor 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.** Vendor 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.** Vendor 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.** Vendor 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. Vendor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Vendor will repair or replace (at no charge to Purchaser) any goods and/or services whose nonconformance is discovered and made known to the Vendor. If, in Purchaser's judgment, repair or replacement is inadequate, or fails of its essential purpose, Vendor 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. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Vendor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Vendor providing gifts or anything of economic value, directly or indirectly, to Purchasers' employees.
- 4.5. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS).** Vendor 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, Vendor shall maintain an accurate profile in WEBS.
- 4.6. **STATEWIDE PAYEE DESK.** Vendor represents and warrants that it is registered with the Statewide Payee Desk, maintained by Enterprise Services which registration is a condition to payment.
- 4.7. **MASTER CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT.** Vendor 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. Vendor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Vendor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Vendor 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.
- 4.8. **MASTER CONTRACT TRANSITION.** Vendor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned to another vendor (e.g., Master Contract expiration or termination), Vendor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another vendor.
- 4.9. **AUTHORIZED DEALER.** Vendor represents and warrants that it as an authorized service provider or product reseller for the goods and/or services and that it shall maintain its authorized service provider or product reseller status for the Term of this Master Contract. Upon

request by Enterprise Services, Vendor shall provide evidence of its status as an authorized service provider or product reseller.

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 Vendor and Purchaser but, at a minimum, including the use of a purchase order. When practicable, Vendor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order").
- 5.2. **DELIVERY REQUIREMENTS.** Vendor 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 Vendor. The following apply to all deliveries:
- (a) Vendor 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 Vendor at the time of order placement.
 - (b) Vendor shall ship all goods and/or services purchased pursuant to this Master Contract, freight charges prepaid by Vendor, FOB Purchaser's specified destination with all transportation and handling charges included. Vendor 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.
 - (c) 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.
- 5.3. **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 Vendor 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 Vendor. At Purchaser's option, and without limiting any other rights, Purchaser may require Vendor to repair or replace, at Vendor'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.
- 5.4. **ON SITE REQUIREMENTS.** While on Purchaser's premises, Vendor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, or other security requirements.

6. INVOICING & PAYMENT.

- 6.1. **VENDOR INVOICE.** Vendor shall submit to Purchaser's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:
- (a) Master Contract No. 00816
 - (b) Vendor name, address, telephone number, and email address for billing issues (i.e., Vendor Customer Service Representative)
 - (c) Vendor's Federal Tax Identification Number
 - (d) Date(s) of delivery
 - (e) Invoice amount; and
 - (f) Payment terms, including any available prompt payment discounts.

Vendor'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), Vendor 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.** Vendor 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 Vendor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Vendor 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 Vendor.
- 6.4. **NO ADVANCE PAYMENT.** No advance payments shall be made for any products or services furnished by Vendor pursuant to this Master Contract.
- 6.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Vendor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.6. **TAXES/FEEES.** Vendor 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. Vendor, however, shall not make any charge for federal excise taxes and Purchaser agrees to furnish Vendor 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. Vendor's contract administrator shall be Vendor'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: Steve Hatfield
Washington Dept. of Enterprise
Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-9276
Email: Steve.Hatfield@des.wa.gov

Vendor

Attn: Gerald Warren
Pape Machinery, Inc.
3607 20th St East
Tacoma, WA 98424
Tel: (360) 340-0396
Email: gwarren@papemachinery.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. VENDOR CUSTOMER SERVICE REPRESENTATIVE. Vendor 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

Vendor

Attn: Gerald Warren
Pape Machinery, Inc.
3607 20th St East
Tacoma, WA 98424
Tel: (360) 340-0396
Email: gwarren@papemachinery.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. VENDOR SALES REPORTING; VENDOR MANAGEMENT FEE; & VENDOR REPORTS.

- 8.1. MASTER CONTRACT SALES REPORTING. Vendor shall report total Master Contract sales quarterly to Enterprise Services, as set forth below.
- (a) Master Contract Sales Reporting System. Vendor shall report quarterly Master Contract sales in Enterprise Services' Master Contract Sales Reporting System. Enterprise Services will provide Vendor with a login password and a Vendor number to the Sales Reporting Representative(s) listed on the Bidder Profile.
 - (b) Data. For each report, Vendor must identify every Purchaser who has made Master Contract purchases during the reporting period based on the Master Contract Usage Agreement. If there are no Master Contract sales during the

reporting period, Vendor must report zero sales. The reporting system automatically rounds sales to the nearest dollar (e.g. - \$0.49 rounds down, \$0.50 rounds up).

- (c) Due dates for Master Contract Sales Reporting. Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines:

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.** Vendor shall pay to Enterprise Services a vendor management fee ("VMF") of 0.74 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 Vendor to Enterprise Services as a result of the VMF is calculated as follows:

$$\text{Amount owed to Enterprise Services} = \text{Total Master Contract sales invoiced (not including sales tax)} \times .0074.$$

- (b) The VMF must be rolled into Vendor'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 Vendor quarterly based on Master Contract sales reported by Vendor. Vendors are not to remit payment until they receive an invoice from Enterprise Services. Vendor'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 Vendor'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.
- (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 Vendor when any subsequent adjustment of the VMF might justify a change in pricing.

- 8.3. **ANNUAL MASTER CONTRACT SALES REPORT.** At the request of DES, Vendor 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 MS Excel.

- 8.4. **SMALL BUSINESS INCLUSION.** Upon Request by Enterprise Services, Vendor shall provide, within thirty (30) days, an Affidavit of Amounts Paid. Such Affidavit of Amounts Paid either shall state, if applicable, that Vendor 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. Vendor 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.** Vendor 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. Vendors 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 Vendor has properly invoiced Purchasers and that Vendor has paid all applicable vendor management fees. Accordingly, Vendor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Vendor'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, Vendor 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 Vendor'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 Vendor's records (e.g., if Vendor underpays the Vendor Management Fee by \$500, Vendor 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, Vendor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*.
- 10.2. **WORKERS COMPENSATION.** Vendor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Vendor 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 Vendor. In addition, Vendor 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. Vendor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees, agents, and Vendors in connection with Vendor's operations under this Master Contract. Enterprise Services has made no representations regarding any factor affecting Vendor's risks. Vendor 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 Vendor or its agents.

11.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Vendor 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 Vendor or its successors, agents, and subcontractors under this Master Contract, except claims caused solely by Enterprise Services or any Purchasers' negligence. Vendor shall take all steps needed to keep Purchaser's property free of liens arising from Vendor'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 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 Vendor'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, Vendor remains in default, Enterprise Services may terminate Vendor's rights under this Master Contract. All of Vendor's obligations to Enterprise Services and Purchasers survive termination of Vendor'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 Vendor:

- (a) Vendor fails to perform or comply with any of the terms or conditions of this Master Contract including, but not limited to, Vendor's obligation to pay vendor management fees when due;
- (b) Vendor breaches any representation or warranty provided herein; or
- (c) Vendor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

13.3. REMEDIES FOR DEFAULT.

- (a) Enterprise Services' rights to suspend and terminate Vendor'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, Vendor 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. MUTUAL TERMINATION. Vendor and Enterprise Services may terminate this Master Contract, in whole or in part, at any time, by mutual agreement.

13.6. GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may 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 termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such 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 termination for withdrawal of authority, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Vendor.
- (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 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 convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Vendor.

- 13.7. **TERMINATION PROCEDURE.** Regardless of basis, in the event of termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient termination. Accordingly, Vendor 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, Vendor shall not process any orders after notice of termination.

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.** Vendor 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.** Vendor 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 Vendor provides written notice to Enterprise Services within thirty (30) days, Vendor may assign its rights under this Master Contract in full to any parent, subsidiary, or affiliate of Vendor that controls or is controlled by or under common control with Vendor, is merged or consolidated with Vendor, or purchases a majority or controlling interest in the ownership or assets of Vendor. Unless otherwise agreed, Vendor 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.** Vendor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Vendor now has or which may accrue to the Vendor 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 Vendor'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 Vendor 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

By:


Cynthia Shaw
Its: Procurement Supervisor

Pape Machinery Inc.
a Washington State Corporation

By:


Gerald Warren
Its: Territory Manager

EXHIBIT A

INCLUDED GOODS/SERVICES

Contract award for all products consistent in contract scope from the following manufacturers:

Class 1: 11,999 GVWR or less
Tow Master

Class 2: 12,000 - 59,999 GVWR
Tow Master
Trail King Industries

Class 3: 60,000 GVWR or more
Tow Master
Trail King Industries

PRICES FOR GOODS/SERVICES

Class 1: 11,999 GVWR or less

Tow Master 20% over MSRP

Class 2: 12,000 - 59,999 GVWR

Tow Master 10% over MSRP

Trail King Industries 10% over MSRP

Class 3: 60,000 GVWR or more

Tow Master 0% off MSRP

Trail King Industries 4% off MSRP