

STATE OF WASHINGTON Contracts & Procurement Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	CONTRACT ASSIGNMENT	
	Contract No.:	01117
ASSIGNOR Greg Swain UBI: 600 635 144 Norstar Industries, Inc. 2302 A St. SE Auburn, WA 98002		Effective Date: 5/1/2023
ASSIGNEE Tracey Kelly UBI: 604 652 661 Norstar Industries, Inc. 2302 A St. SE Auburn, WA 98002		

**ASSIGNMENT, ASSUMPTION, & CONSENT AGREEMENT
FOR
CONTRACT NO. 01117
DUMP BODIES SNOW PLOWS VARIOUS TYPES, CONTROLS & SERVICES**

This Assignment, Assumption, and Consent Agreement ("Agreement") for Contract No. 01117 is made and entered into by and among the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("State"), Norstar Industries, Inc., a Washington corporation ("Assignor"), and Norstar Industries, Inc., a Washington corporation ("Assignee") and is dated and effective as of May 1, 2023 ("Effective Date").

RECITALS

- A. State and Assignor entered into that certain Contract No. 01117 dated effective as of May 1, 2018 which is attached hereto as Exhibit A ("Contract");
- B. Assignor desires to assign all of its rights, obligations, and liabilities under the Contract to Assignee;
- C. Assignee desires to accept and assume all of the rights, obligations, and liabilities of Assignor under the Contract; and
- D. State desires to consent to such assignment, acceptance, and assumption.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below:

1. **ASSIGNMENT OF CONTRACT.** As of the Effective Date, Assignor hereby conveys and assigns to Assignee, its successors and assigns, all of Assignor's rights, title, and interests in, to, and under the Contract. A copy of the Contract, with all modifications and amendments thereto, if any, is attached hereto as Exhibit A and made a part hereof.
2. **ASSUMPTION OF CONTRACT.** As of the Effective Date, Assignee hereby undertakes, accepts, and assumes the assignment of the Contract and assumes all duties and obligations of the Assignor under the Contract and covenants to perform and discharge the same as the Assignee of the Assignor.
3. **CONSENT TO ASSIGNMENT & ASSUMPTION.** State hereby consents to the foregoing assignment and assumption which is effective as of the Effective Date. Notwithstanding the foregoing, the parties hereto agree that State shall be entitled to pursue claims accruing or arising incident to the Contract on or before the Effective Date of this Agreement, and all its rights and remedies related to such claims, for (a) payments of indemnity now or hereafter due under the Contract from Assignor, and/or (b) insurance payments or proceeds.
4. **INSURANCE.** The State's consent to this Agreement is conditioned, in part, on Assignee's compliance with the Contract's insurance requirements. Accordingly, notwithstanding any provision to the contrary, within ten (10) calendar days, Assignee shall provide State with written confirmation that Assignee is in full compliance with all applicable insurance requirements set forth in the Contract. Assignee's failure to provide such timely written confirmation shall constitute material breach of the Contract and shall entitle State to all applicable remedies.
5. **NOTICES.** Unless otherwise notified by Assignee, any notice to be provided pursuant to the Contract shall be delivered to Assignee at the following address:

Attn: Tracey Kelly
Norstar Industries, Inc.
2302 A St. SE
Auburn, WA 98002
Email: traceyk@norstarind.com
6. **BINDING EFFECT.** All provisions, covenants, and agreements herein shall be binding upon and inure to the benefit of, and be enforceable by or against, the parties hereto and their respective successors and assigns.
7. **THIRD-PARTY BENEFICIARY.** This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no other person has any right, benefit, priority, or interest under or because of the existence of this Agreement.
8. **INTEGRATED AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations and representations. This Agreement may not be modified except in writing signed by the parties.
9. **AUTHORITY.** Each party to this Agreement, 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

Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

10. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Amendment or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
11. COUNTERPARTS. This Agreement may be executed in one or more 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 Agreement 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 Agreement.

EXECUTED AND EFFECTIVE as of the day and date first above written.

ASSIGNOR
NORSTAR INDUSTRIES INC.
UBI: 600 635 114
A WASHINGTON STATE CORPORATION

By: 

Name: Greg Swain

Title: OWNER

Date: 3/21/23

ASSIGNEE
NORSTAR INDUSTRIES INC.
UBI: 604 652 661
A WASHINGTON STATE CORPORATION

By: 

Name: Tracey Kelly

Title: OWNER / Pres.

Date: 3/22/23

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: 

Name: Kelli Carmony

Title: Contracts & Procurement Supervisor

Date: 3/22/23

CONTRACT TO BE ASSIGNED

Dump Bodies, Snow Plows Various Types, Controls & Services, 01117, May 1, 2018

As amended by:

First Amendment to Contract (dated March 26, 2020) to extend the term of the Contract;

Second Amendment to Contract (dated March 10, 2022) to extend the term of the Contract;

Third Amendment to Contract (dated December 15, 2022) for an economic price adjustment.

EXHIBIT D MASTER CONTRACT

No. 01117

DUMP BODIES SNOW PLOWS VARIOUS TYPES, CONTROLS & SERVICES

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

Norstar Industries, Inc.

Dated May 1, 2018

MASTER CONTRACT

No. 01117

DUMP BODIES SNOW PLOWS VARIOUS TYPES, CONTROLS & 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 **Norstar Industries, Inc., a Washington** ("Contractor") and is dated as of 5/1/2018

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 Request for Proposals No. 01117 dated November 14, 2017 regarding Dump Bodies Snow Plows Various Types, Controls & Services.
- C. Enterprise Services evaluated all responses to the Request for Proposals and identified Contractor as an/the apparent successful proposer.
- 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 Dump Bodies Snow Plows Various Types, Controls & 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. **Contract Term.** The contract initial term will be for twenty-four (24) months with the option to extend for additional term(s) or portions thereof, commencing May 1, 2018 and ending on April 30, 2020. This will be followed by four (4) two-year term extensions not to exceed ten years, unless emergency or special circumstances require an extension beyond the max term limit. Extensions will be exercised at the sole discretion of DES, via written notification. **(May be an electronically transmitted document or message)** DES reserves the right to extend with all or some of the contractors. The total Contract Term will be for a total term of ten years (120) months after the award of the contract.
2. **ELIGIBLE PURCHASERS.** This Master Contract may be utilized by any of the following types of entities in the State of Washington ("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 ORCPP. The Master Contract also will be available for use by the [Oregon Cooperative Purchasing Program \(ORCPP\)](#) based on the contractor's acceptance. While use of the Master Contract is optional for political subdivisions and public benefit nonprofit corporations authorized by the MCUA and ORCPP, these entities' use of the Master Contract can increase Master Contract use significantly. DES accepts no responsibility for orders or payments by MCUA entities or ORCPP members.

All purchasers are subject to the same contract terms, conditions, and pricing as state agencies.

- 2.3 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.
- MCUA members:

<https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx>

3. SCOPE – INCLUDED GOODS AND PRICE

- 3.1 CONTRACT SCOPE. Pursuant to this Master Contract, Contractor is authorized to sell only those goods and/or services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices and Contractor entire catalog*. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell any goods and/or services beyond those set forth in *Exhibit A – Included Goods/Services*.
- 3.2 STATE'S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the goods and/or services included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Contract.
- 3.3 PRICE ADJUSTMENTS. Contractor requests for adjustments in pricing will be considered at sole discretion of the DES. The Contract period pricing shall remain firm and fixed for 365 days following Award of the Contract, and then on a pass through basis only that does not produce a higher profit margin for Contractor than that established by the original Contract pricing. Contractors shall not make extensions contingent on price adjustments. Price Increases will not be considered without supporting documentation sufficient to justify the requested increase. A minimum of forty-five (45) calendar days advance written notice of price increase is required accompanied by sufficient documentation to justify the requested increase. Documentation must be based on applicable industries wide changes to the commodities to this contract, and as the result of increases at the manufacturer's level, incurred after Contract commencement

date. Contractor shall provide a detailed breakdown of their costs upon request. Documentation should include justification on Contractor's letterhead, documentation received from a manufacturer on manufacturer's letterhead and additional documentation that justifies the price adjustment. The grant of any price adjustment will be at the sole discretion of DES and, if granted, shall not produce a higher profit margin for the Contractor than that established by the original Contract pricing. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted by DES. Such price adjustment shall be set forth in a written amendment to the Contract. Price adjustments granted by the DES shall remain unchanged for at least 180 calendar days thereafter, and no request for adjustments in price will be considered during that time period. In no case will the effective date of the price adjustment be retroactive.

- 3.4 **ITEM ADDITION.** Requests for an item addition will only be considered if the item(s) requested are within the scope of the contract. . A minimum of forty-five (45) calendar days advance written notice of an item addition is required accompanied by sufficient documentation to justify the requested item addition. The Contractor shall be notified in writing by the Contract Administrator of any item addition granted by the DES, and such item addition shall be set forth in a written amendment to the Contract. In no case will the effective date of the item addition be retroactive.
- 3.5 **EMERGING TECHNOLOGY DURING THE LIFE OF THE CONTRACT.** If emerging technology produces new categories or types of dump bodies snow plows and controls within the scope and life of this contract, DES reserves the right to competitively solicit said emerging technology enhancements exclusively from the incumbent contract holders. In the event said awarded contractors are unable to furnish these products at discount pricing commensurate with their current products, DES shall competitively solicit and award to supplementary (new) contractors and place them / the product(s) on this contract.
- 3.6 **PRICE CEILING.** Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services* (subject to economic adjustment as set forth herein).
- 3.7 **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.
- 4.1.1 **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 **QUALITY OF GOODS OR SERVICES.** Contractor represents and warrants that any goods and/or services sold pursuant to this Master Contract shall be merchantable, shall conform to this Master Contract and Purchaser's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to Purchaser) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in Purchaser's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 4.4 **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.5 **PAY EQUALITY.** Contractor represents and warrants that, 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, 2017 through June 30, 2019, 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.
- 4.6 **THE MANUFACTURERS STANDARD PRODUCT WARRANTY.** The Manufacturer's standard product warranty shall cover all commodities and contractual services of the Contract. The Manufacturer's standard warranty is required to provide coverage against defective material, workmanship, and failure to perform in accordance with the specifications and required performance criteria. The Manufacturer's standard warranty coverage shall be identical to or exceed the most inclusive of those normally provided for the Commodities and contractual services specified herein that are

sold to any state or local governments. The Manufacturer's standard warranty shall have a minimum term of one (1) year from the date of acceptance of delivery of the commodity, and shall begin only at the time of acceptance by the purchaser. If the Manufacturer's standard warranty conflicts with any requirements, specifications, terms, or conditions of the Contract, the Contract requirements, specifications, terms and conditions shall prevail. The Manufacturer's standard warranty terms and conditions are not part of the Contract requirements, specifications, terms, and conditions.

Manufacturer Authorized Warranty Repair Proof of Certification/Authorization:

Contractor shall also provide, upon request of the purchaser prior to order placement, documentation demonstrating the qualification of each facility to perform service and repairs for all equipment categories and manufacturers identified in Appendix B, including at least the following:

- (a) A letter signed by an authorized representative of the manufacturer certifying that each facility listed is an authorized service and repair facility for materials, supplies, or equipment;
- (b) Geographic area served by each facility;
- (c) Manufacturer authorized service must be available in the geographic area(s) within forty-eight (48) hours to any location in the State of Washington.

Warranty Services and Performance:

Equipment Contractors must provide technical support and reasonable equipment modifications for a period of ninety (90) calendar days after the date the equipment is reported in service per manufacturer and/or factory warranty requirements. This is to ensure that the purchased equipment is capable of performing the specified operational functions.

- (a) Proposers/Contractors must include, as part of the Proposal, the factory and/or manufacturer's one year warranty, which shall cover 100% parts and labor for the entire unit offered. This warranty must be honored by all authorized factory and/or manufacturer's dealerships.
- (b) Contractor shall be liable for all costs associated with warranty repair(s), including, but not limited to, materials, parts, labor, and transport of equipment that are disabled due to the failure of the equipment during the warranty period.
- (c) Warranty coverage will not commence until the date the completed equipment is placed into service as reported by purchaser pursuant to the warranty requirements, or thirty (30) days after final payment for the equipment, whichever occurs first.
- (d) The equipment Proposer/Contractor must be capable of and will be liable for providing repair parts and supply support for a period of ten (10) years after the delivery date of the equipment.
- (e) During the warranty period Contractor must begin physical repairs on equipment failures within seventy-two (72) hours after purchaser has notified the Contractor of an equipment failure. Should the Contractor fail to begin equipment repairs within seventy-two (72) hours after notification, however purchaser may elect (based on operational requirements) to make the warranty repairs. Should purchaser elect to make such warranty repairs, the Contractor agrees to fully reimburse purchaser for all parts, materials, labor, shipping and

travel costs incurred by purchaser for such warranty repairs. Purchaser shall provide Contractor with a detailed invoice, and Contractor agrees to remit payment to the purchaser within thirty days (30) after receipt of the invoice. Failure to provide and complete warranty service/repair within two weeks (fourteen (14) calendar days) of vehicle/equipment entering contractor's facility may be sufficient grounds for purchaser to deny the contractor from proposing in future contracts due to poor performance

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

(g) The contractor shall identify a single point of contact for equipment repair and through which the Purchaser can direct all warranty and repair related services. This single point of contact will be responsible for coordinating any 3rd party services necessary to address warranty and repair related services.

4.7 RECALLS. In the event there is a recall of any of the commodities, any of its components or any parts of the base commodities ("Commodity Recall"), Authorized Manufacturer Dealers in a customer's service area shall provide reasonable assistance to Enterprise Services in developing a recall strategy and shall cooperate with the Enterprise Services and the Buyers in monitoring the recall operation and in preparing such reports as may be required. Each Contractor or Authorized Manufacturer Dealer shall immediately notify and provide copies to Purchasers of any communications, whether relating to recalls or otherwise. The Authorized Manufacturer Dealer, at its own cost, shall ensure defective Recalled Equipment are rectified, replaced or destroyed in compliance with all applicable laws, rules, regulations and DES policies.

4.8 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.

4.9 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.

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

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

4.12 MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned to another contractor (e.g., Master Contract

expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

5 USING THE MASTER CONTRACT – PURCHASES.

5.1 ORDERING REQUIREMENTS. Eligible Purchasers shall order goods and/or services from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order"). All order documents must reference the Master Contract number (01117). Customer will fax or email field orders to the Contractor. Contractor will acknowledge receiving field order via fax or email within three (3) business days.

5.2 DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Master Contract, the Purchase Order used by Purchasers, or as otherwise mutually agreed in writing between the Purchaser and Contractor. The following apply to all deliveries:

- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchaser's normal work hours and within the time period mutually agreed in writing between Purchaser and Contractor at the time of order placement. Contractor must give three (3) business days advance notice to purchaser of when the delivery will be made. Regular business hours are defined as 8:00 AM to 3:30 PM Monday through Friday, excluding Washington State Holidays. If delivery is being made by a common carrier, contractor must still comply by giving three (3) business days advance notice to purchaser of when the delivery will be made. It is contractor's responsibility and not the common carrier's to communicate with purchaser. Delivery and Acceptance. Delivery Locations Dump Bodies Snow Plows Various Types and Controls Equipment shall be delivered to the location points as indicated on the Purchase Order which may be throughout the State of Washington.
- (b) Deliveries outside the regular business hours must be pre-arranged with the purchaser. If contractor attempts to make delivery without prior arrangements, the State reserves the right to reject delivery.

- (c) Contractor shall ship all goods and/or services purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Destination Purchaser's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the goods and/or services ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence.
- (d) Purchaser will not accept any responsibility for equipment that has been delivered to or left at a purchaser facility, unless a purchaser authorized representative has signed and dated the bill of lading or other delivery documents indicating purchaser has accepted delivery of the equipment.
- (e) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Master Contract shall be identified by the Master Contract number, (01117), set forth on the cover of this Master Contract and the applicable Purchaser's Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- (f) Pre-Delivery Inspection. Contractor must conduct a pre-delivery inspection of the bill of lading to ensure that each item purchased by purchaser found in the purchase order is the exact item that is loaded onto to the delivery truck be it contractor's truck or a common carrier. If the contractor used their own truck for delivery, contractor with purchaser will conduct an inspection of all products during the unloading to ensure items in the purchase order were the items actually delivered.
- (g) Delivery and Acceptance. Purchaser will require the successful vendor to provide the "Contractor Confirmation of Specification Compliance" at time of delivery. The form is attached at the end of the Proposal requirements Edit. Contractors are responsible for ensuring that all equipment purchased, pursuant to this contract, complies with all of the requirements and specifications listed in the contract.

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

1. The manufacturer's line production sheet stating the equipment serial numbers and listing all of the equipment's components
2. Completed Invoice
3. Contractor Confirmation of Specification Compliance
4. The Manufacturer's Statement of Origin (MSO)
5. Axle weight slips (for all units with axles)

Contractors must notify purchaser at the phone number listed on the contract or the equipment order, twenty-four (24) hours prior to equipment delivery. This is to ensure that a purchaser employee is available to sign and date the bill of lading (or other type delivery document) and receive the above mentioned documents, to indicate purchaser has accepted delivery of the equipment.

Purchaser will not accept any responsibility for equipment that has been delivered to or left at a purchaser facility, unless a purchaser employee has signed and dated the bill of lading or other delivery documents indicating purchaser has accepted delivery of the equipment. Contractor shall be solely liable for any equipment damages that occurred prior to purchaser accepting delivery of the equipment.

- 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 Contractor for the cost of inspecting rejected goods. If there are any apparent defects in the goods and/or services at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at Purchaser's option, Purchaser may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment. Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods.
- 5.4 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.
- 5.5 TRAINING.
- (a) Equipment Contractor shall provide on-site instructor(s) to conduct operational training per unit delivered and repair technician training per unit delivered. During the training period, the length and number of training session(s) required may vary based on the equipment's complexity and personnel experience levels. Training session(s) duration will be at the purchaser on-site supervisor or Equipment Training Manager's discretion insuring that all personnel have completed training and the Contractor's training obligation has been fulfilled. The training session(s) shall include, but not be limited to, the below listed items.
 - (b) Operator training will be designed to familiarize personnel with the controls, safety features, operating characteristics and operator checks and services.
 - (c) Operator training may include teaching operators shifting, acceleration, and braking techniques to maximize operational effectiveness of the unit's power train configuration for equipment so configured.
 - (d) Mechanic training shall be designed to familiarize service and repair technicians with preventative maintenance checks and services, system diagnostics procedures, repairs, adjustments, and any unique requirements associated with the entire unit.
 - (e) All training shall be scheduled and coordinated with the ship to addressee. Coordination will include dates, times, location, number of students per session, number of sessions required, facilities and training equipment and material.
 - (f) Qualified individuals shall conduct training sessions. "Qualified" means that the trainer must have a high level of knowledge and experience relating to the type of equipment offered or purchased:
 - (g) Person(s) conducting the operator training session(s) must have a minimum of one year of experience in actually operating the unit for which training is being conducted or a factory/manufacture certified trainer.
 - (h) Person(s) conducting repair technician training session(s) must have at least one year of experience in the performance of preventive maintenance and repair on the unit for which the training is being conducted or a factory/manufacture certified trainer.

- (i) An on-site purchaser supervisor or the Equipment Training Manager will evaluate training sessions; who shall determine whether or not the training was adequate. If the training is deemed inadequate, the Contractor agrees to conduct additional training sessions, at no cost to the purchaser, to the satisfaction of the purchaser.

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. 01117
- (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. A Payment is the sole responsibility of, and will be made by, the Purchaser. Payment is due within thirty (30) days of invoice. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

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

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

6.5 NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing. (Credit Card fees per solicitation Section 3.4 "Pricing" are authorized)

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

7. CONTRACT MANAGEMENT.

7.1 CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this

Master Contract. Enterprise Services' contract administrator shall provide Master Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Master Contract. The parties may change contractor administrators by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email (prepared), 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: Mark Roush Contracts Specialist
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-9311
Email: Mark.Roush@des.wa.gov

Contractor

Greg Swain
Norstar Industries, Inc.
2302 A St. SE
Auburn, WA 98002
Tel: 253-735-1881
Email: gregs@norstarind.com

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

- 7.2 CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Master Contract.
- 7.3 LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Greg Tolbert Legal Services Manager
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel. (360) 407-9038
Email: greg.tolbert@des.wa.gov

Contractor

Greg Swain
Norstar Industries, Inc.
2302 A St. SE
Auburn, WA 98002
Tel: 253-735-1881
Email: gregs@norstarind.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; CONTRACTOR 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 Contractor number. The password and Contractor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Proposer 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 **CONTRACTOR/VENDOR MANAGEMENT FEE.** Contractor shall pay to Enterprise Services a Vendor Management Fee ("VMF") of 1.5 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

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

Amount owed to Enterprise Services = Total Master Contract sales invoiced (not including sales tax) x .015.
- (b) The VMF must NOT be included in contract pricing. The VMF will be shown as a separate line item on invoices.
- (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, 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 Contractor 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 coverages set forth in *Exhibit C – Insurance Requirements*.

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. 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 goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

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

13.5 GOVERNMENTAL TERMINATION.

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

13.6 TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all goods and/or services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Master Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

14 GENERAL PROVISIONS.

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

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

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

14.4 AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party 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 GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 14.11 FEDERAL FUNDS. If federal funds become available to purchasers during the total term of the contract, 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, all applicable requirements as specified by the Federal Grant Funding Agency. In the alternative the applicable requirements must be satisfied by Contractor at the time the order is placed or upon delivery. DES upon receiving notification from purchasers of federal funds becoming available will make any necessary changes to the contract by issuing an amendment to contractors to ensure compliance with all federal fund requirements and require contractors to comply with all federal requirements and certifications.
- 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.

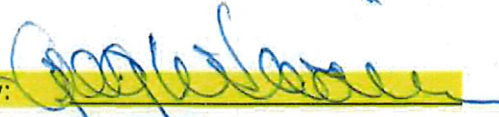
EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

By: 

Authorized Representative

Norstar Industries, Inc.

By: 
Greg Swain

Authorized Representative

INCLUDED DUMP BODIES SNOW PLOWS VARIOUS TYPES, CONTROLS & SERVICES SPECIFICATIONS

Dump Body Category A

Plow Category 6

PRICE SHEET FOR DUMP BODIES SNOW PLOWS VARIOUS TYPES, CONTROLS & SERVICES



INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor 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 \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Master Contract.

The limits of all insurance required to be provided by Contractor shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits.

A cross-liability clause or separation of insured condition shall be included in the general liability policy required by this Master Contract.
 - b. **BUSINESS AUTOMOBILE LIABILITY INSURANCE.** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with no limit no less than \$1,000,000.00 per accident for bodily injury and property damage
 - c. **WORKERS COMPENSATION.** Contractor shall comply 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.
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 Workers Compensation, Business Automobile Liability, and Pollution Liability Insurance, all required insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as an Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE.** 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 (01117), 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 to DES 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 hereby grants to the State of Washington a waiver of any and all rights to subrogation which any insurer of said Contractor may acquire against the State of Washington by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Washington received a waiver of subrogation endorsement from the insurer.
8. **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductibles or self-insured retentions must be declared to and approved by the State of Washington. The State of Washington may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
9. **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 sixty (60) days prior written Legal Notice by Contractor to Department of 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.