

MASTER CONTRACT

No. 01818

WASTE PUMPING SERVICES

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

NRC ENVIRONMENTAL SERVICES

Dated January 1, 2019

MASTER CONTRACT
No. 01818
WASTE PUMPING 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 NRC Environmental Services, a Washington Corporation ("Contractor") and is dated as of January 1, 2019.

RECITALS

- A. Pursuant to Legislative direction codified in RCW chapter 39.26, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for services for general use by Washington state agencies and certain other entities (eligible purchasers).
- B. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Invitation For Bid No. 01818 dated November 1, 2018 regarding Waste Pumping Services.
- C. Enterprise Services evaluated all responses to the Invitation for Bid and identified Contractor as an apparent successful bidder.
- D. Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington.
- E. The purpose of this Master Contract is to enable eligible purchasers to purchase the services as set forth herein.

AGREEMENT

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

- 1. **TERM.** The term of this Master Contract is seventy-two (72) months, commencing January 1, 2019 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, regional universities, state college, community colleges, and technical colleges.
 - 2.2. **MCUA PARTIES.** This Master Contract also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts);

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

3. SCOPE – INCLUDED SERVICES AND PRICE.

- 3.1. **CONTRACT SCOPE.** Pursuant to this Master Contract, Contractor is authorized to sell only Waste Pumping Services set forth in Exhibit A – Services for the prices set forth in Exhibit B – Prices. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell any services beyond those set forth in Exhibit A – Services.
- 3.2. **STATE’S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT.** Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the services included in this Master Contract; Provided, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and Provided further, that any such modification must be within the scope of this Master Contract.
- 3.3. **ECONOMIC ADJUSTMENT.** If requested by Contractor no less than 34 months from the effective date of the Contract then beginning thirty (36) months after the effective date of this Master Contract and for every annual anniversary thereafter, the prices set forth in Exhibit B may be adjusted, based upon the percent changes (whether up or down) in the change in the Consumer Price Index for All Urban Consumers (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>) for the most recent year. All calculations for the index shall be based upon the latest version of data published. The economic adjustment shall be calculated as follows:

$$\text{New Price} = \text{Old Price} \times (\text{Current Period Index} / \text{Base Period Index}).$$

- 3.4. **PRICE CEILING.** Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Services at no greater than the prices set forth in *Exhibit B – Prices* (subject to economic adjustment as set forth herein).
- 3.5. **MASTER CONTRACT INFORMATION.** Enterprise Services shall maintain and provide information regarding this Master Contract, including scope and pricing, to eligible Purchasers.
- 4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Master Contract and at the time any order is placed pursuant to this Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
- 4.1. **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.

- 4.2. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 4.3. **QUALITY OF SERVICES.** Contractor represents and warrants that any services sold pursuant to this Master Contract shall be merchantable, shall conform to this Master Contract and Purchaser's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. The rights and remedies of the parties under any 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. **SUBCONTRACTORS.** Contractor represents and warrants that it shall incorporate all obligations and understandings of the Master Contract into any subcontract and require such obligations and understandings to flow down to all subcontractors of any tier.
- 4.7. **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.

- 4.8. 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.
- 4.9. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment. Registration information and materials are available at:
<http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>
- 4.10. MASTER CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Master Contract with eligible Purchasers and to ensure that those entities that utilize this Master Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor's services or suggesting that such 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.
- 4.11. MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned to another contractor (e.g., Master Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

5. USING THE MASTER CONTRACT – PURCHASES.

5.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order services from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but, at a minimum, including the use of a purchase order. The terms of this Master Contract shall apply to all orders and shall prevail in the event of any conflict with the terms of any other ordering document. All order documents must reference the Master Contract number. The following apply to all ordering:

- (a) When practicable, Contractor and Purchaser shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order").
- (b) Set-up a job schedule within one (1) business day of Purchaser's notification.
- (c) Immediately notify the Purchaser, if a scheduled service time will be delayed. If Contractor cannot perform within the service requirements as identified herein, then the Purchaser may cancel the service order with no cost to the Purchaser.
- (d) Provide notification of the scheduled service with adequate time for the Purchaser to prepare. A 24-hour notification is customary and may be required. Notification shall be made during Purchaser's business hours.
- (e) For State facilities, Normal business (working) days/hours shall be Monday through Friday, 7:00 AM to 6:00 PM (Pacific Time), excluding Washington State government holidays or unless otherwise requested and mutually agreed.
- (f) Provide 24 hours/7 days emergency pumping service within four (4) hours of notification. If a Contractor is called out on an emergency but unable to arrive on-site within the time frame because of traffic delays, then the Contractor shall immediately notify the Purchaser of the delay and the anticipated arrival time.
- (g) Ordering Information: Purchaser is to provide necessary site information when ordering: receiving person contact information (business phone, cell phone, fax number, and emergency/after-hours phone numbers, as necessary), driving directions, delivery address and instructions, delivery time/days, drawings or site maps (as necessary), security restrictions, and any service truck restrictions.
- (h) Nonconforming Waste. Waste Materials to be handled pursuant to this Agreement shall be agreed upon in advance in writing by Contractor and Purchaser. At the time Purchaser requests the services of Contractor, Purchaser shall provide a Waste Profile Sheet or similar document ("Waste Profile") to Contractor completely and accurately describing the waste materials. Purchaser warrants that it has legal title or authority to waste materials; that the description of the waste materials on the Waste Profile is accurate and complete; that waste materials will conform to such description; and that it has communicated to Contractor those hazards known by the Purchaser to be associated with the handling, transportation, treatment, storage and disposal of the waste materials.

5.2. SERVICE REQUIREMENTS. Contractor must ensure that services will be performed 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 services:

- (a) Contractor shall provide all services at the applicable 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 service order placement.

- (b) Coordinate requested service with the Customer's designated representative(s) and follow any safety and security requirements of the Customer.
- (c) Supervise, direct the work, and be solely responsible for all portions of the work as identified herein.
- (d) Contractor shall complete the entire job within one (1) calendar day, except for unanticipated site conditions or large volume job which in that case the remaining balance must be worked on daily until the job is complete, unless otherwise agreed to by the Purchaser. Once a job is commenced the work will not be interrupted, unless agreed to by the Purchaser.
- (e) Contractor will work with Purchaser to establish a regular pumping maintenance schedule.

5.3. RECEIPT AND INSPECTION OF SERVICES. 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 services that are not in accordance with this Master Contract and Purchaser's Purchase Order. The state reserves the right to require Contractor to repair all damages or provides full compensation as determined by the state. Contractor shall be responsible for any damage done to the tanks, covers and access areas while performing services under this Contract. If there are any apparent defects in the services at the time of service, Purchaser promptly will notify Contractor.

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.

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. 01818
- (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 service
- (e) Detailed invoice with breakdown of all charges; and
- (f) Payment terms, including any available prompt payment discounts.

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

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

- 6.3. OVERPAYMENTS. Contractor shall promptly 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. PREVAILING WAGES. This Contract is subject to Washington's Prevailing Wage on Public Works Act (RCW 39.12). Accordingly, for work pursuant to this Contract, Contractor (including any subcontractors), unless exempt, shall pay all workers employed in the performance of any part of the work in accordance with RCW 39.12 and the rules promulgated by the Washington State Department of Labor and Industries.
- (a) WAGE RATES. Contractor, and any subcontractor or other person doing any portion of the work covered by this Contract, shall not pay any laborer, worker, or mechanic less than the applicable and most current prevailing hourly wage rates and fringe benefits for said worker's classification to all laborers, workers, or mechanics who perform any work pursuant to any resulting contract, in conformance with the scope or work description of the Industrial Statistician of the Washington State Department of Labor and Industries. Contractor shall have sole responsibility to ascertain the applicable prevailing rate of wage for such classification, as set forth by the State of Washington for the County in which the work is performed. The applicable prevailing wage rates are set forth on the website for the Washington State Department of Labor and Industries. Prevailing wage rates are updated twice a year, on the first business day in February and August, and take effect thirty (30) days after publication.
 - (b) STATEMENT OF INTENT TO PAY PREVAILING WAGES. Before commencing any work under this Contract, Contractor (and all subcontractors) shall file with the Washington State Department of Labor and Industries, for approval, a statement, under oath, certifying its Intent to Pay Prevailing Wages. Contractor also shall provide a copy of the Intent to Pay Prevailing Wages to Enterprise Services.
 - (c) INVOICES & CONTRACT PAYMENTS. Contractor understands and agrees that each invoice for payment submitted to Enterprise Services shall state that prevailing wages have been paid in accordance with the pre-filed Statement(s) of Intent, as approved. Copies of the Intent to Pay Prevailing Wages shall be posted on the work site with the address and telephone number of the Industrial Statistician of the Washington State Department of Labor and Industries where a complaint or inquiry regarding prevailing wages may be made.
 - (d) AFFIDAVIT OF WAGES PAID. Upon completion of the work under this Contract, Contractor (and each subcontractor) shall file with the Washington State Department of Labor and Industries the approved Affidavit of Wages Paid. Enterprise Services shall condition final payment to Contractor on the submittal of such Affidavit of Wages Paid.

- (e) LABOR & INDUSTRIES FEES. Contractor shall pay to the Washington State Department of Labor and Industries any applicable fees for the Statement of Intent and/or Affidavit of Wages Paid that are to be submitted to the Washington State Department of Labor and Industries for certification.
 - (f) PAYROLL RECORDS. Contractor shall retain payroll records pertaining to work performed for this Contract for three (3) years following expiration or termination of this Contract and, upon request, provide certified copies of such payroll records to Enterprise Services.
- 6.6. 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.
- 6.7. TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased services. Contractor, however, shall not make any charge for federal excise taxes and Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

7. CONTRACT MANAGEMENT.

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

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

Enterprise Services	Contractor
Attn: Richard Worthy	Attn: Rob Greer
Washington Dept. of Enterprise Services	NCR Environmental Services, Inc.
PO Box 41411	9520 10 th Ave., South Ste. 150
Olympia, WA 98504-1411	Seattle, WA 98108
Tel: (360) 407-7932	Tel: (206) 247-2917
Email: richard.worthy@des.wa.gov	Email: rgreer@nrcc.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:

<p>Enterprise Services Attn: Legal Services Manager Washington Dept. of Enterprise Services PO Box 41411 Olympia, WA 98504-1411 Email: greg.tolbert@des.wa.gov</p>	<p>Contractor Attn: Rob Greer NCR Environmental Services, Inc. 9520 10th Ave., South Ste. 150 Seattle, WA 98108 Tel: (206) 247-2917 Email: rgreer@nrcc.com</p>
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Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

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

- 8.1. MASTER CONTRACT SALES REPORTING. Contractor shall report total Master Contract sales quarterly to Enterprise Services, as set forth below.
- (a) Master Contract Sales Reporting System. Contractor shall report quarterly Master Contract sales in Enterprise Services' Master Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Bidder Profile.
 - (b) Data. Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized purchasers specified herein during the term of the Master Contract. If there are no Master Contract sales during the reporting period, Contractor must report zero sales.
 - (c) Due dates for Master Contract Sales Reporting. Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

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

VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.50 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

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

Amount owed to Enterprise Services = Total Master Contract sales invoiced (not including sales tax) x .0150.

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

8.2. 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.

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

9. RECORDS RETENTION & AUDITS.

- 9.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 9.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced Purchasers and that Contractor has paid all applicable contract management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Contract or orders placed by a Purchaser under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 9.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Master Contract or orders, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records; and (b) reimburse Enterprise Services for any underpayment of fees, at a rate of 125% of such fees found as a result of the examination of the Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by \$500, Contractor would be required to pay to Enterprise Services $\$500 \times 1.25 = \625).

10. INSURANCE.

- 10.1. REQUIRED INSURANCE. During the Term of this Master Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*.
- 10.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.

11. CLAIMS.

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

11.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Purchaser and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Master Contract, except claims caused solely by Enterprise Services or any Purchasers' negligence. In the event of claims caused by the concurrent negligence of Contractor and any indemnitee, Contractor's indemnification obligations shall apply only to the extent of Contractor's 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 services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

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

13.5. GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Master Contract if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Contract; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Purchaser from payment for services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.
- (b) Termination for Convenience. Enterprise Services, for convenience, may terminate this Master Contract; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve any Purchaser from payment for services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

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

GENERAL PROVISIONS.

- 13.7. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Contract.
- 13.8. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.
- 13.9. 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.
- 13.10. 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.
- 13.11. 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.
- 13.12. 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.
- 13.13. ASSIGNMENT. Contractor may not assign its rights under this Master Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Master Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Master Contract notwithstanding any prior assignment of its rights.
- 13.14. 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.
- 13.15. 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.
- 13.16. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any services provided in Washington for the purpose of carrying out the Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 13.17. FEDERAL FUNDS. To the extent that any Purchaser uses federal funds to purchase services pursuant to this Master Contract, such Purchaser shall specify, with its order, any applicable

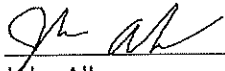
requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.

- 13.18. 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.
- 13.19. 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.
- 13.20. 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.
- 13.21. 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.
- 13.22. 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 person 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.
- 13.23. 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.
- 13.24. 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.

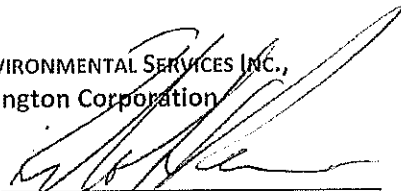
- 13.25. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Master Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Contract.
- 13.26. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Master Contract in their entirety.
- 13.27. 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.
- 13.28. 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.
- 13.29. 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: 
John Allen
Its: Procurement Supervisor

NRC ENVIRONMENTAL SERVICES INC.,
a Washington Corporation

By: 
Robert Keese
Its: Vice President, PNW Region

SERVICE REQUIREMENTS

Awarded County	Adams
Awarded County	Benton
Awarded County	Chelan
Awarded County	Clallam
Awarded County	Clark
Awarded County	Cowlitz
Awarded County	Grays Harbor
Awarded County	Jefferson
Awarded County	King
Awarded County	Klickitat
Awarded County	Lewis
Awarded County	Lincoln
Awarded County	Mason
Awarded County	Pacific
Awarded County	Pierce
Awarded County	Skagit
Awarded County	Skamania
Awarded County	Snohomish
Awarded County	Spokane
Awarded County	Stevens
Awarded County	Thurston
Awarded County	Wahkiakum
Awarded County	Walla Walla
Awarded County	Whatcom
Awarded County	Yakima

Pumping and Cleaning Services

1. Grease Collection Tanks: Contractor shall pump entire contents of the waste in the tank, clean inlet and outlet baffles, and wash or scrape surfaces to eliminate cake-on substances and oily residue.
2. Septic Tank or Vault: Contractor shall pump, clean or remove wastewater and sludge from septic tank or vault, pump chambers, clean baffles, cesspools and drywells as necessary. If requested by customer, the Contractor shall dig out tank portals and after pumping, replace soil as necessary for the service. Digging out and soil replacement time shall be figured based on the applicable Contractor's Job Service Charge.
3. Sewage Ejector Pump Pit and Lift Stations: Contractor shall pump, clean and remove sewage from sewage pump pit. Inspect pump float system and confirm proper operation.
4. Oil and Water Separator: Contractor shall clean the sludge trap and separator of sludge and low viscosity liquid so that it is completely emptied and cleaned out.

5. Pressure Jet Line Washing: Contractor shall pressure wash main line (outfall) pipes from the source (cleanout and floor drains) to the grease storage tank. Pipes are approximately 4 inches to 6 inches in diameter.

Service Expectations

Contractor shall provide the following:

A. Service Requirements:

- a. Completion of small volume (under 10,000 gallons) waste service request within five (5) business days of notice.
- b. Completion of large volume (over 10,001 gallons) waste service request within ten (10) business days of notice.
- c. Completing the request in the most cost efficient way. For example; the Contractor shall not take two or more days to complete the job if it can be done in one.
- d. The Contractor shall communicate with the Customer so all parties are aware of the work to be done.

B. Service Sites

- a. Service Locations: Contractor is advised to visit Customer's service location(s) for the purpose of job and site familiarization.
- b. Job Site Accessibility: To avoid unnecessary site delays, Customer shall provide the following for the service work: ready access to pumping site, adequate room for maneuvering and pumping, easy access to tank connection, and a clearly identified pumping location. If a pumping site is not adequate for requested service, then the Contractor is to immediately notify the Customer.
- c. Site Utilities: Customer to provide as necessary access to water connections, electrical power, and lighting to ensure service work can be performed in a safe environment. Backflow prevention shall be the responsibility of the Contractor in accordance with Department of Health standards.
- d. Crew Identification: Contractor's employees shall display their company name badge when requested and it shall be visible on the outside of their clothing while on the job when possible.

C. Service Charges

- a. Pumping and Disposal: Pumping and Disposal of wastes is the responsibility of the Contractor, there shall be no additional cost to the Customer for related activities, except those charges identified herein (e.g. extra hoses, extra laborer, etc.). The cost for pumping shall include all related expenses, trucks/equipment, operator and cost for disposal of waste.
- b. Gallons Pumped: Contractor will pay for actual gallons pumped based on the Contract price, with the exception of 100 gallons or less, which is a flat price rate. Customer will confirm in writing the total gallons pumped at the time of pumping.

- c. Pressure Jet Line Washing: Contractor has two charge line items for this service, an equipment charge that includes truck/equipment and driver, and a separate pressure jet line washing labor charge for the work, charges applies only to on-site work.
- d. Job Service Charge: Job Service charge includes one laborer, vehicle and driver as a part of the job service charge. Job Service charges applies when additional work is not considered included in the service request (e.g. digging out for septic tanks, emergency service requests, etc.), but still necessary for the completion of the service request. Job Service charge is figured on an hourly basis. Minimum Job Service charge is 30 minutes and applies to on-site work.
- e. Extra Laborer: Contractor shall provide additional laborer(s) if the service request requires extra laborers for safety reasons or additional laborers are necessary for a particular job site or job size.
- f. Standby Charge: Standby charge would apply if Contractor arrives at job site at the agreed scheduled time and date, and is unable to accomplish work due to no fault of Contractor. Typically, DOC facilities have security procedures that could create delays at their facilities, in these cases stand-by time may apply. Contractor will be compensated for costs associated with wait times after initial fifteen (15) minutes. Standby charge will be figured on fifteen minute wait time increments. Contractor shall notify Customer of standby charges prior to invoicing for them.
- g. Emergency Service: Contractor shall be paid for gallons pumped or service provided, and the on-site time to do the job according to the Job Service charge rate.
- h. Extra Charges: Contractor is responsible to obtain prior Customer's written approval to charge for Job Service, Extra Laborer, Emergency Service Call, and Extra Hoses before the start of the job.
- i. Ferry Fees: If Contractor is required to ride a state-owned vessel, Contractor shall any pay tolls and fees as required. Fares shall be reimbursed provided proper documentation is presented to the Customer with the invoice that relates to a specific job. Standby Ferry Charge applies to ferry time delays and the time on a ferry.
- j. Ferry Delays: In few cases because of emergencies or weather conditions the ferries may be temporarily shut down, this might cause Contractor's personnel and equipment to be required to remain on the ferries between terminals or might be required to remain on a ferry over night or find another return route, if this is the case, the state will pay the state Per Diem per person or compensate the Contractor for additional mileage and labor expenses.

D. Miscellaneous Job Site Requirements

- a. Electrical Switches: At the start of a job, all electrical switches that could be activated accidentally shall be locked out. Contractor shall notify Customer before deactivating any electrical switches or systems. When job is completed, all electrical switches and system components shall be returned to an operable state.

- b. Cleaning Materials: Flammable solvents or other flammable cleaning aids shall not be used.
- c. Pumping Service Range: Contractor shall provide service within one hundred fifty (150) feet of the pumping location, beyond 150 feet Contractor may charge by the linear foot for extra hoses to reach the job location.
- d. Repair or Replacement Work: Any repair and replacement work of Customer's equipment/tanks/lines shall not be considered a part of this Contract.

E. Job Completion

- a. Job Clean-up: Contractor shall leave the work area in clean, safe and operable condition upon completion of service activity. All access panels cover plates and protective insulation shall be properly replaced.
- b. Inspection Form: Contractor shall file inspection forms as required by local health department for service provided.
- c. Service Inspection Report: Contractor shall note any site problems, hazardous conditions or defective equipment found during the job by documenting it on the Contractor's Work Order and relaying the same information to the Customer's representative for corrective action. There shall be no charge to the Customer for service inspections.
- d. Job Documentation: After pumping and cleaning is completed, Contractor shall supply the Customer supporting service documents, with service company name, the service location, date-cleaned and amount of material pumped.
- e. Contractor's Job Log: Each invoice shall be accompanied with a copy of the job log. The job log shall include: the arrival date and time, number of gallons pumped, any standby time, any extra laborers, any extra hoses, any other charges, signature of the Contractor's authorized employee, and the signature of the Customer's on-site representative.

Disposal of Waste

1. Contractor shall dispose of waste in accordance with federal, state and local laws, permits and regulations.
2. Prior to any disposal activities, the Contractor shall contact the local health jurisdiction in the county(s) where management will occur to determine management options available.
3. All waste shall be only transported, stored, recycled, destroyed or disposed of within the continental United States; unless no national capacity exists for a waste material. Before any waste can be shipped outside of the United States, the Contractor shall obtain Customer's written approval prior to shipping waste.
4. Typically, waste management method for grease, septic and sewage is treatment followed by land application at permitted land application sites or transfer to a permitted waste water treatment facility. However, depending on the quality and source of the waste materials, other management alternatives may be necessary in accordance with federal, state, and local laws and regulations. If the Customer requests incineration of aforementioned waste material, then the Contractor shall have prior written approval from

the Customer and shall be reimbursed for any additional disposal fees above the normal cost for disposal under this Contract.

5. If the Contractor determines that the waste material does not conform to Customer's description or is materially different than its description, then the Contractor has the right to refuse to handle the waste materials. If a shipment is refused by the Contractor, then Customer shall be obligated to pay Contractor's cost of transportation to and from site by the Contractor.

Spill and Release Responsibilities

Contractor is solely responsible for any and all spills, leaks or releases, which occur as a result of or are contributed to by the actions of its agents, employees, or Subcontractors. In the event of a spill, leak; or release the Contractor agrees to take the following actions:

1. Evacuate and warn those persons that may be affected by the spill.

