

<b>STATE OF WASHINGTON</b> Contracts & Procurement Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	<b>CONTRACT ASSIGNMENT</b>	
	Contract No.:	02016
<b>ASSIGNOR</b> Terry's Dairy, Inc. 2382 North Highway Colville, WA 99114	Effective Date:	July 19, 2021
<b>ASSIGNEE</b> Cart and Can, LLC. 449 E. Fircrest St. Othello, WA 99344		

**ASSIGNMENT, ASSUMPTION, & CONSENT AGREEMENT  
FOR  
CONTRACT NO. 02016  
FRESH DAIRY**

This Assignment, Assumption, and Consent Agreement ("Agreement") for Contract No. 02016 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"), Terry's Dairy, Inc., a Washington corporation ("Assignor"), and Cart and Can, LLC, a Washington limited liability company ("Assignee"), for the North Central and South Central regions and is dated and effective as of July 14, 2020 ("Effective Date").

**RECITALS**

- A. State and Assignor entered into that certain Contract No. 02016 dated effective as of July 1, 2017 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 for the North Central and South Central regions. A copy of the Contract, with all

modifications and amendments thereto, if any, is attached hereto as Exhibit A and made a part hereof.

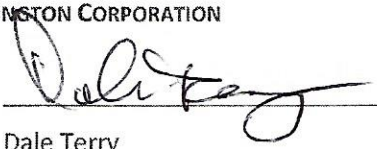
2. ASSUMPTION OF CONTRACT. As of the Effective Date, Assignee hereby undertakes, accepts, and assumes the assignment of the Contract for the North Central and South Central regions and assumes all duties and obligations of the Assignor under the Contract and covenants to perform and discharge the same 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: Kevin Gilbert  
Cart and Can, LLC.  
449 E. Fircrest St.  
Othello, WA 99344  
  
Email: [kevin@cartandcan.com](mailto:kevin@cartandcan.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. A signed copy of this Agreement 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 Agreement or such other ancillary agreement for all purposes.

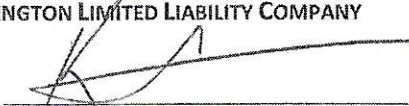
11. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and 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  
TERRY'S DAIRY, INC.  
A WASHINGTON CORPORATION

By:   
Name: Dale Terry  
Title: President/Owner  
Date: 2-19-21

ASSIGNEE  
CART AND CAN, LLC.  
A WASHINGTON LIMITED LIABILITY COMPANY

By:   
Name: Kevin Gilbert  
Title: GM  
Date: 7/20/21

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES

By:   
Name: Clayton Long  
Title: Contracts Specialist 3  
Date: July 19, 2021

CONTRACT TO BE ASSIGNED



Exhibit A.pdf

Exhibit A

**MASTER CONTRACT**

**No. 02016**

**DAIRY - FRESH**

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 Terry's Dairy, Inc., a Washington Corporation ("Contractor") and is dated as of July 1, 2017.

**RECITALS**

- A. Pursuant to Legislative direction codified in RCW chapter 39.26, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods and/or services for general use by Washington state agencies and certain other entities (eligible purchasers).
- B. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Invitation For Bid No. 02016 dated February 23, 2017 regarding DAIRY, FRESH.
- C. Enterprise Services evaluated all responses to the Invitation For Bid and identified Contractor as an/the apparent successful bidder.
- D. Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington.
- E. The purpose of this Master Contract is to enable eligible purchasers to purchase the goods and/or services as set forth herein.

**AGREEMENT**

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

- 1. **TERM.** The term of this Master Contract is twenty-four (24) months, commencing July 1, 2017 and ending June 30, 2019. The Master Contract is subject to earlier termination. The total contract term, including initial term and all extensions will not exceed eight years unless circumstances require a special extension. Extensions will be exercised at the sole discretion of DES upon written mutual agreement.
- 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 GOODS/SERVICES AND PRICE.**

- 3.1. **CONTRACT SCOPE.** Pursuant to this Master Contract, Contractor is authorized to sell only those goods and/or services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices*. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell any goods and/or services beyond those set forth in *Exhibit A – Included Goods/Services*.
- 3.2. **STATE’S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT.** Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the goods and/or services included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Contract.
- 3.3. **PRICE 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).
- 3.4. **PRICE ADJUSTMENTS.** Adjustments in mark-up (only) will be considered on an annual basis only, with a forty five day advance notice requirement, to be accompanied by sufficient documentation to warrant the adjustment.
- 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 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. **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.
- 4.5. **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.

- 4.6. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 4.7. 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.
- 4.8. 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.
- 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.
  - (b) Contractor shall ship all goods and/or services purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Purchaser's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the goods and/or



services ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence.

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

5.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or services purchased under this Master Contract are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Master Contract and Purchaser's Purchase Order. Purchaser may charge 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.

## 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. 02016
- (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
- (c) Contractor's Federal Tax Identification Number
- (d) Date(s) of delivery
- (e) Invoice amount; and
- (f) Payment terms, including any available prompt payment discounts.

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

- 6.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchaser. Payment is due within thirty (30) days of invoice. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 6.3. **OVERPAYMENTS.** Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchaser may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 6.4. **NO ADVANCE PAYMENT.** No advance payments shall be made for any products or services furnished by Contractor pursuant to this Master Contract.
- 6.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.6. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor, however, shall not make any charge for federal excise taxes and Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

**7. CONTRACT MANAGEMENT.**

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

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

<b>Enterprise Services</b>	<b>Contractor</b>
Attn: Scott Schumacher	Attn: Dale Terry
Washington Dept. of Enterprise Services	Terry's Dairy, Inc.

PO Box 41411  
Olympia, WA 98504-1411  
Tel: (360) 407-8527  
Email: scott.schumacher@des.wa

2382 North HWY  
Colville, WA 99114  
Tel: (509) 684-2936  
Email: DALE@TERRYSDAIRY.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: Legal Services Manager  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Email: greg.tolbert@des.wa.gov

**Contractor**  
Attn: Dale Terry  
Terry's Dairy  
2382 North HWY  
Colville, WA 99114  
Email: DALE@TERRYSDAIRY.COM

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

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

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

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

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

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

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

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

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on Master Contract sales reported by Contractor. Contractors are not to remit payment until they receive an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Master Contract number, work request number (if applicable), the year and quarter for which the VMF is being remitted, and the Contractor's name as set forth in this Master Contract, if not already included on the face of the check.
- (d) Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the VMF, may be cause for Master Contract termination or the exercise of other remedies provided by law. Without limiting any other available remedies, the Parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums. the sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.

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

8.3. ANNUAL MASTER CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Master Contract sales report. Such report shall include, at a minimum: Product description, part number or other Product identifier, per unit quantities sold, and Master Contract price. This report must be provided in an electronic format that can be read by MS Excel.

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

## 9. RECORDS RETENTION & AUDITS.

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

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

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

## 10. INSURANCE.

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

## 11. CLAIMS.

- 11.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees, agents, and Contractors in connection with Contractor's operations under this Master Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from its acts or omissions under this Master Contract, even if not attributable to negligence by Contractor or its agents.
- 11.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Purchaser and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Master Contract, except claims caused solely by Enterprise Services or any Purchasers' negligence. Contractor shall take all steps needed to keep

Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

**12. DISPUTE RESOLUTION.** 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. To the extent that any Purchaser uses federal funds to purchase goods and/or services pursuant to this Master Contract, such Purchaser shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.
- 14.12. SEVERABILITY. If any provision of this Master Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Contract, and to this end the provisions of this Master Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Contract.
- 14.13. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Contract, nor shall any purported oral modification or rescission of this Master Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 14.14. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Contract shall survive and remain in effect following the expiration or termination of this Master Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 14.15. GOVERNING LAW. The validity, construction, performance, and enforcement of this Master Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.
- 14.16. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Master Contract, the parties agree to 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:  5-15-17  
Its: Greg Tolbert  
Legal Services Manager

TERRY'S DAIRY, INC.,  
a Washington Corporation

By:   
Its: Dale Terry  
Title: Kristina King  
Executer for Dale Terry  
and Terry's Dairy  
5/10/17



## EXHIBIT A

### INCLUDED GOODS/SERVICES

#### 1. GENERAL REQUIREMENTS

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**Product quality** - The dairy products contract specifications are intended to be descriptive. If the quality of a dairy products item varies from this description and is questionable, it is the contractor's responsibility prior to delivery to get the acceptance from the institution's food manager.

**Minimum Order Amount** – Contractor imposed minimum orders are not permitted for state agency customers under the terms of this contract, nor will future requests for minimum orders be considered.

However, due to the nature of other potential customer orders (ie: Master Contract Usage Agreement Customers (MCUA) which may include school districts, jails, etc), contractor may choose to impose a minimum order, based upon a minimum dollar amount per order. Access to the MCUA list is available on the DES website.

**General Delivery Requirements** - Deliveries will be consistently scheduled to arrive at each Institution at a day and time mutually agreed upon by the Contractor and the Institution. Deliveries once or twice a week are common. When items are backordered, each Institution reserves the right to cancel the order and purchase needed items (the same quantity as was ordered, and, if possible similar quality) from another source, and deduct any costs over and above contract prices, incurred from purchasing from another source, from a subsequent invoice. The determination of what constitutes similar quality shall be at the sole discretion of the Institution.

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#### 2. PRICING AND ADJUSTMENTS

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This is an adjustable price contract, with pricing permitted to change on a monthly basis. The prices for items on this contract may be based upon one of the following two options, or a combination thereof:

- The Federal Milk Marketing Order (FMO) price.
- Pacific Northwest FO 124

Contract/invoiced Pricing will reflect the allowable published price in either the Federal Milk Marketing Order or the PNW FO 124 plus the contractor's established mark-up in effect at time of order placement . The mark-up is defined as a firm fixed price which must be offered as a dollar amount, which represents all elements of the contract price other than the published price. The mark-up typically consists of the bidder's projected general and administrative costs, overhead, packaging costs, transportation costs to the end-users location as well as all fuel costs and any other projected expenses. Excluded from this price are any optional prompt payment discounts.

### **3. SUBSTITUTIONS**

Substitutions must be approved by authorized customer personnel prior to shipment. Sufficient advance notification (as mutually agreed but preferably 48 hours prior to shipping) must be provided of substitutions to give customer adequate opportunity to change menus if required.

### **4. SHORTAGES**

All shortages will be noted and identified on the delivery receipt/invoice by the Contractor's driver and the authorized institution representative. Invoices shall be adjusted accordingly.

### **5. PACKAGING & LABELING**

All packaging shall be in accordance with good commercial practice. Labeling shall be in accordance with national UPC bar coding complying with the Federal Food, Drug and Cosmetic Act and regulation promulgated there under. USDA nutritional labels shall be included on products delivered to institutions requesting this labeling (such labeling is mandatory for customers receiving National School Lunch Program reimbursement). Shipping containers shall be in compliance with the National Motor Freight Classification and Uniform Freight Classification Code.

Items shall be packed in single or multi-service shipping containers that fully comply with the National Motor Freight Classification and Uniform Freight Classification Code, as applicable. Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contract number, contractor, state stock numbers, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Proposers are encouraged to offer product packaging with recycled content.

Labeling shall be in accordance with commercial labeling complying with the Federal Food, Drug and Cosmetic Act and regulation promulgated thereunder. USDA nutritional labels shall be included on products delivered to institutions requesting this labeling (such labeling is mandatory for customers receiving National School Lunch Program reimbursement). Shipping containers shall be in compliance with the National Motor Freight Classification and Uniform Freight Classification Code.



## 6. DELIVERY

**Equipment:** The Contractor is expected to maintain sufficient and reliable delivery equipment to execute and accomplish deliveries. All dairy products must be delivered in refrigerated trucks only. The temperature of the dairy products upon delivery must not be warmer than 40 degrees Fahrenheit. Any dairy product delivered that does not conform to this requirement will be returned at the contractor's expense.

**Rotation of drivers:** The proposer is required to have sufficient personnel to rotate drivers for deliveries at secured institutions. Background checks may be required.

**Title and risk of loss:** Regardless of FOB point, Contractor agrees to bear all risks of loss, injury or destruction of goods identified herein, which occur prior to delivery and acceptance. Such loss, injury or destruction shall not release the Contractor from any obligation hereunder.

**Frequency of Delivery:** The institution food service manager or designated representative and the Contractor will mutually agree upon delivery schedules. Contractors may be asked to deliver products outside the established delivery schedule to respond to emergency situations.

**Time of Delivery:** Delivery must be made during normal work hours of the requesting institution. The Contractor is required to verify the specific normal work hours of individual institutions and so instruct carrier(s) to deliver accordingly. The Purchaser reserves the right to refuse shipment when delivered after normal working hours. To comply with security procedures, some institutions may designate specific days of the week and/or hours in the day during which a scheduled and authorized delivery may be made. Failure to comply with this requirement may subject the Contractor to non-delivery assessment charges and/or liquidated damages as appropriate.

The contractor(s) must place dairy products in the delivery location coolers immediately upon delivery. Products shall not be left on receiving docks, shelves or non-refrigerated areas.

**Terms:** Unless otherwise specified, all goods are to be shipped FOB Destination freight prepaid and included. Each invoice for shipping charges shall contain the original or a copy of the freight bill indicating that the payment for shipping has been made. Regardless of F.O.B. point, title of the goods does not transfer until successful delivery to the purchaser. The purchaser reserves the right to refuse COD shipments.

**Location:** All deliveries are to be made to the applicable delivery site as indicated by the institution. Where applicable, the Contractor shall take necessary actions to safeguard items during inclement weather. Products for individual customers/ dining facilities at the same delivery location must be segregated into separate loads. The intention is to provide expeditious off loading and delivery to the customer.

**Unauthorized Delivery:** In no case shall a Contractor initiate performance prior to the receipt of an order; any expenses incurred otherwise shall be borne solely by the Contractor.

**Delivery Default:** Delivery default occurs when the Contractor does not deliver dairy products within the specified delivery time; and does not replace rejected items within 24 hours of a rejection notice. If delivery default occurs the institution may buy those rejected and/or undelivered items on the open market and charge the difference back to the contractor.

## **7. INSPECTION, ACCEPTANCE, REJECTION, AND REPLACEMENT**

**Inspection/Acceptance:** Inspection at the time of delivery is for the sole purpose of identification. Such inspection shall not constitute final acceptance. All deliveries are subject to a final inspection for the purpose of verifying specified quality and quantity within a reasonable amount of time after receipt at destination.

**Rejection:** The Purchaser reserves the right to reject:

- Items warmer than 40 degrees Fahrenheit
- Any product that is visibly damaged
- Any unauthorized substitutions
- Any unauthorized delivery

**Replacement:** If a purchaser rejects an item for not meeting the quality or freshness specification the Contractor is required to replace the item(s) within 24 hours of rejection (reference Section II, paragraph 8.D.). The purchaser may request a USDA inspection, at the Contractor's expense, of any dairy product item of questionable quality or freshness.

All items rejected at the time of delivery will be picked up by the contractor within 24 hours of delivery. All pickups of rejected dairy products will be coordinated, scheduled and authorized by a designated institution representative. Any cost incurred by the institution as a result of this process will be at the expense of the Contractor.

The State reserves the right to inspect Contractor delivery trucks and premises for cleanliness. Unsatisfactory conditions will be reported to appropriate state or county health authorities and the State Procurement Officer. The outcome of the inspection as well as the response and corrective action by the Contractor will be documented in the Procurement Coordinator's contractor files.

**Shelf Life:** All products furnished shall be dated to provide adequate shelf life normal use. Milk and cream shall have a minimum shelf life of 7 days from the day of delivery. Cottage Cheese, cheese, yogurt, sherbet and ice cream shall have a minimum of 14 days.

## **8. INVOICES/PAYMENT, PAYMENT TERMS AND PROMPT PAYMENT DISCOUNTS**

***Certification of Delivery:*** At the time of delivery, it is the Contractor's responsibility to have the delivery checked and inspected, shortages identified and the delivery receipt/invoice signed by a designated institution representative. Payment will not be made to the Contractor without a signed delivery receipt/invoice.

***Substance:*** Invoices must, at a minimum, reflect: quantity ordered, quantity shipped, price per line item, and invoice total.

*Procedure:* If agreed to by the institution, the Contractor may arrange to submit an invoice after each delivery or consolidate invoices for monthly submittal. The Contractor is responsible for the accuracy of each invoice.

The following information will be included on each invoice:

1. The optional Prompt Payment Discount
2. the variety, grade, size, number of cartons or weight of the items delivered;
3. Contract number and order number assigned by ordering institution (if applicable);

Incorrect invoices will be returned unpaid for correction and re-issue. Continual incorrect invoicing will be considered instances of non-compliance.

### **9. DISPENSER REQUIREMENTS**

The contractor shall provide countertop refrigerated bulk milk dispensers (1, 2 or 3 bay) to institutions/facilities on an as needed basis. Contractor shall train personnel on the proper daily maintenance routine of equipment. Maintenance and repair costs shall be included in the cost of the product sold to the facilities. Dispensers are typically owned by the incumbent contractor and occasionally need to be replaced. It will be negotiated between the contractor and customer for replacement costs.

### **10. SERVICE AND TRAINING REQUIREMENTS**

The service and training identified in this paragraph are required in order to establish and maintain open communication and rapport between the Contractor and the institution(s). The Contractor is expected to periodically initiate and schedule a visit with the institution(s) or respond to a request by the food service manager to provide on-site training for institution personnel, regardless of the location of that institution, at no additional cost.

*Training:* At a minimum, the training shall, 1) address handling procedures for dairy products, storage techniques/methods, quality control, inventory turnover necessary to maximize the life of dairy products. 2) Address product seasonality, availability, substitution, accessibility, current market conditions and associated health hazards.

*Service:* Will include review and evaluation of ordering procedures, lead times, discussion and resolution of any concerns or grievances. If requested to do so, the Contractor shall respond in writing to any problem areas requiring documentation.

### **11. COMMERCIAL ELECTRONIC ORDERING SYSTEM**

If available, Customers will endeavor to place orders directly to the vendor through a commercial online ordering system provided at no cost to the customer. The vendor shall provide the customer the information, training and customer service/repair necessary to perform the ordering. If vendor-owned software and/or hardware is furnished, the vendor shall be responsible for its installation and maintenance. All such software and/or hardware will be provided free of charge and shall remain the property of the vendor. It will be returned to the vendor at the conclusion of the contract.

It is conceivable that all items available to be purchased through the vendor's ordering system will not be appropriate for ordering due to some restriction. Therefore, it is necessary for contractor to be able to install a "locking feature, device or lock out" that would preclude these types of items from being ordered. Due to additional internal controls, the customer may also provide the vendor a list of other items required to be blocked.

The products ordered through the commercial system shall be received according to accepted receipt procedures at the facility. The receiving official shall document and sign the delivery ticket /invoice as the shipment is being made but before the delivery truck leaves the customer.

The vendor shall be responsible for providing on-site customer training on the use of the electronic ordering system. Furthermore, the vendor shall be responsible for providing training materials, i.e. user manuals, etc. to the customer.

Any emergency service or repair calls for vendor equipment and/or software shall be made on an unlimited basis at no additional cost to the State. Upon receipt of notice that any part of the vendor-owned equipment is not functioning properly, the vendor shall, within 24 hours after notification by the State, furnish a qualified representative to inspect the equipment and return to normal and efficient operating condition. If repair is not feasible, the vendor shall provide a replacement at no cost. By either repair or replacement, the ordering facility shall not be without an acceptable ordering system for more than forty-eight hours.

The ordering system shall ensure that the customer receives a confirmation order at the customer's location. As a minimum, the confirmation shall include the time identification, quantity to be delivered, unit of issue, delivered price and delivery order number.

## **12. QUALITY PROGRAM**

Quality must meet or exceed the specifications stated for each item on the order. All of the Agreement's product requirements, temperature requirements and specifications must be met and milk products must be delivered fresh, free of visible spoilage, contamination, rodents, insects and/or any matter which would render the product unsafe for human consumption. When items are rejected due to unacceptable quality, unauthorized product substitutions, spoilage or damage, unauthorized unit size, or due to short use by dates, the Contractor must replace those goods with product of equal quantity and quality or must issue a credit (at the Institution's sole option). These issues shall be acknowledged and documented on the delivery paperwork and signed and dated by both parties at time of delivery. Additionally, each Institution reserves the right to cancel the order and purchase needed items (the same quantity as was ordered, and, if possible similar quality) from another source, and deduct any costs over and above Agreement prices, incurred from purchasing from another source, from a subsequent invoice.

## **13. WAREHOUSING AND SANITATION PROGRAM/HACCP**

The vendor shall develop and maintain a sanitation program to comply, at a minimum, with the Code of Federal Regulations, Title 21, Part 110 and other applicable federal, state or local standards. Records of inspections performed by the firm, subcontractor, or recognized industry association shall be maintained and made available to the state at the DES RFP Coordinator's request. Any findings by the

firm or its agent documenting a critical sanitation deficiency shall be reported immediately to the RFP Coordinator with an attached report of corrective action.

#### **14. PRODUCT SANITARY APPROVED SOURCE REQUIREMENTS**

Applicable food products, e.g. poultry, dairy and seafood items delivered to customers shall originate either from an establishment which has been inspected under the guidance of the United States Department of Commerce (USDC) or the United States Department of Agriculture (USDA).

#### **15. STORED PRODUCTS PEST MANAGEMENT PROGRAM**

The vendor shall develop and maintain a stored products pest management program for food and other co-located non-food items. Accepted industry standards for pest management shall include, but are not limited to, the Code of Federal Regulations, Title 21, part 110, Food Manufacturing Practices, the Federal Insecticide, Fungicide and Rodenticide Act (as amended), the Food, Drug, and Cosmetic Act of 1938, and pertinent federal, state and local laws and regulations.

#### **16. HAZARD ANALYSIS CRITICAL CONTROL POINT (HACCP) PROGRAM**

Definition: HACCP is a system of preventative controls and scientific testing designed to improve the safety of products from "farm to table" Food and Drug (FDA) and Food Safety and Inspection Service (FSIS) HACCP regulations require the industry to verify the effectiveness of its operations by continuous monitoring of the controls established, end item product testing, and careful record keeping of the complete HACCP system. The state may review each plant" records and conduct other in plant inspection activities to verify that proper food safety procedures are being followed in accordance with the establishment" HACCP plan. The HACCP-based system requires a commitment by establishments to consistently control operations in the interest of public health.

#### **17. CATALOG ORDER GUIDE and CURRENT PRICING**

Current contract dairy pricing is to be provided to CPRM at least three days prior to its effective date and will be published on the state's website.

The vendor shall provide a catalog order guide (either hard copy or electronic version) with descriptions and pack sizes, to each of the customers serviced under this contract. At a minimum, the order guide should list the item description, specifications, the contractor's part number, UPC code, the product brand for each item and the price.

#### **18. MANAGEMENT REPORTS**

The following reports are to be submitted to the DES Procurement Coordinator as indicated or upon request:

Line item detail of products sold:

1. Description
2. Contractor stock number and Brand name
3. Unit of Issue
4. Units sold
5. Cost per unit
6. Total dollars per line item sold

**Traceability Reports:** On a monthly basis, or as requested, Contractor shall provide a report of all locally sourced dairy products. This report shall include the following items:

1. The sourced dairy item(s);
2. Where the sourced dairy item(s) came from;
3. Date Contractor sourced the dairy item(s)

**Fill Rate Reports:** The Contractor shall report quarterly fill rate information to each customer, and DES upon request, which shall include the following:

1. Number of orders received by the Contractor;
2. Number of orders delivered by the Contractor;
3. Items ordered but not delivered, including item name, item description, item order number, and quantity;
4. Items substituted without prior approval by the customer, including item name, item description, item order number, and quantity

**Substitution Reports:** A quarterly report indicating product outages and substitutions and the fill rate percentage (number of substitutions and outages compared to number of items ordered) specific to each institution. The report must also detail which items were out, which items were substituted, and a full description of both the substituted item and the substitute, as well as prices, quantities and pack size descriptions for both the items substituted and each substituted item.

#### **19. QUARTERLY BUSINESS REVIEWS**

The state reserves the right to conduct quarterly business reviews with the contractor and customers in attendance; the purpose of which is to proactively identify and resolve any contractual issues and/or concerns.

**21. WASHINGTON GROWN:** Washington State RCW 39.26.090 (9) requires state agencies to maximize purchases of Washington grown food to serve their facilities. RCW 15.64.060's definition of "Washington Grown" is "grown and packed or processed in Washington".

While no bid preference exists for "Washington Grown" products, Executive Order #13-06 "Improving the Health and Productivity of State Employees and Access to Health Foods in State Facilities", Section 3a states:

*"Whenever practical, Washington-grown products shall be purchased and promoted"*

Please note that the Contractor has indicated on the Regional Price Sheets embedded in Exhibit B whether or not the product provided is Washington Grown.

**22. HEALTHY EATING:** In 2013, Governor Inslee issued Executive Order No. 13-06 which focuses on key areas to improve health, one of which requires executive state agencies to implement healthy food and beverage guidelines. The guidelines emphasize fruits, vegetables, whole grains, lean protein, and low-fat dairy and minimize the use of added sugar, sodium, and saturated fats.

**PRODUCT SPECIFICATIONS FOR  
HEALTHY FOOD AND BEVERAGE DAIRY PRODUCTS**

**Milk**

- Fat-free fluid milk, unflavored
- Fat-free fluid milk, flavored
- Low-fat (1%) fluid milk, unflavored

**Cheese**

Cheese should meet one or both of these criteria:

- Be part skim or reduced fat; and
- 230 mg or less of sodium per serving

**Yogurt**

Yogurt should meet both of these criteria:

- Fat-free or low-fat (1%); and
- 30 grams or less of sugar per serving

**Cottage cheese**

- Labeled “reduced fat”; and
- 140 mg or less of sodium per serving

**Cream cheese**

Cream cheese should meet both of these criteria:

- Labeled “reduced fat”; and
- 140 mg or less of sodium per serving

**Single-serve Snacks**

Any single-serve product that meets USDA Smart Snack in Schools for high schools. An [online tool](#) is available to determine product eligibility. Standards and exemptions are listed below:

- Be a grain product that has a whole grain as the first ingredient; or have as the first ingredient a fruit, vegetable, dairy product, or protein foods; or be a food that contains at least ¼ cup fruit and/or vegetable.
- 200 calories or less per package
- 35% of calories from total fat or less
- Less than 10% of calories from saturated fat

- 0 grams artificial trans fat
- 35% of weight from total sugars or less
- 200 mg of sodium or less

## Exhibit B

### PRICES FOR GOODS/SERVICES

#### Pricing and Adjustments

This is an adjustable price contract, with pricing permitted to change on a monthly basis. The prices proposed for items on this contract may be based upon one of the following two options, or a combination thereof:

- The Federal Milk Marketing Order (FMO) price.
- Pacific Northwest FO 124

Note: Terry's Dairy utilizes a combination of both of the above

Contract/invoiced Pricing will reflect the contractor's actual "landed cost" in effect at time of order placement plus an allowable mark-up. The "landed cost" is defined as the actual invoice cost of a product at the contractor's distribution point. The mark-up is defined as a firm fixed price, must be offered as a dollar amount, which represents all elements of the contract price other than the landed cost. The mark-up typically consists of the bidder's projected general and administrative costs, overhead, packaging costs, transportation costs to the end-users location as well as all fuel costs and any other projected expenses. Excluded from this price are optional prompt payment discounts.

For actual contract deliveries the price invoiced shall be the landed cost in effect at the time the order was delivered, if delivered on time, according to the published price list and the delivery time, with the mark-up appropriately applied.



Eastern 02016



South Central 02016



North Central 02016

Terry's Dairy Master.:Terry's Dairy Master.:Terry's Dairy Master.>